

**CITY OF WAYZATA
HENNEPIN COUNTY, MINNESOTA
DRAFT ORDINANCE NO. 825**

**AN ORDINANCE AMENDING CITY CODE
CHAPTER 936 RELATED TO TREE PRESERVATION,
SECTION 918.03 RELATED TO FENCING, SCREENING, AND LANDSCAPING, AND
SECTION 902.02 RELATED TO DEFINITIONS**

WHEREAS, the City Council, pursuant to Ordinance 818 (the “Ordinance”), recently made amendments to City Code related to tree management and preservation to better protect, preserve, and enhance the City’s tree canopy and natural environment;

WHEREAS, City Staff has identified certain further related amendments to the Zoning Ordinance that are needed to better clarify and administer the provisions thereof; and

WHEREAS, the Planning Commission has reviewed such proposed amendments, and recommends approval and adoption of them as detailed in the Report and Recommendation of the Planning Commission dated May 1, 2023.

NOW THEREFORE, THE CITY OF WAYZATA ORDAINS:

Section 1. Adoption of Findings. The findings set forth in the Report and Recommendation of the Planning Commission dated May 1, 2023 are hereby adopted.

Section 2. Amendments to Chapter 936 (Tree Preservation) of Part IX of City Code (Zoning Ordinance). Chapter 936 of the Wayzata City Code (Tree Preservation) is hereby amended to read in its entirety as set forth on Attachment A of this Ordinance (~~struck~~ text deleted, underlined text added).

Section 3. Amendments to Section 918.03 (Required Fencing, Screening, and Landscaping) of Part IX of City Code (Zoning Ordinance). Section 918.03 of the Wayzata City Code (Required Fencing, Screening, and Landscaping) is hereby amended to read in its entirety as set forth on Attachment B of this Ordinance (~~struck~~ text deleted, underlined text added).

Section 4. Amendments to Section 902.02 (Definitions) of Part IX of City Code (Zoning Ordinance). Section 902.02 of the Wayzata City Code (Definitions) is hereby amended to read in its entirety as set forth on Attachment C of the Ordinance (~~struck~~ text deleted, underlined text added).

Section 5. Effective Date. This Ordinance will become effective upon passage and publication.

Adopted by the City Council this _____ day of _____, 2023.

Johanna Mouton
Mayor

ATTEST:

Jeffrey Dahl
City Manager

First Reading:
Second Reading:
Publication:

CHAPTER 936 TREE PRESERVATION

936.01 Purpose and Intent.

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

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

936.02 Definitions.

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

- A. **"City Forester"** means that person appointed as City Forester in Section 710.02.
 - B. **"Coniferous Tree"** means a woody plant bearing seeds and cones oftentimes, but not always, retaining foliage throughout the year.
 - C. **"Construction Area"** means any area in which movement of earth, alteration in topography, soil compaction, disruption of vegetation, change in soil chemistry, or any other change in the natural character of the land occurs as a result of site preparation, grading, building construction or any other construction activity.
 - D. **"Critical Root Zone"** means the area around a tree measured from the trunk of the tree with a radius that is equal to 1.5 feet for each one inch of DBH of the tree. For example, if a tree's DBH is ten inches, then its critical root zone radius is 15 feet (10 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 4½ feet from the ground will be measured at the narrowest point below 4½ feet. Trunks that originate from the ground shall be considered separate trees.
 - G. **"Healthy Tree"** means a tree that is in the average or better condition and vitality for the area, as determined by the City Forester.
 - H. **"Heritage Tree"** means a **Healthy** Rapid-Growth Tree that is 30 inches or greater in DBH, a **Healthy** Standard-Growth Tree that is 25 inches or greater in DBH, or a Healthy Coniferous Tree that is 25 inches or greater in DBH.
 - I. **"Landscape Architect"** means a person licensed by the State of Minnesota as a landscape architect.
 - J. **"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.
-

-
- K. **"Public Infrastructure"** means the construction or maintenance of:
1. Collector or arterial roads as defined by the City Transportation Plan;
 2. Public recreational trails;
 3. Stormwater infrastructure;
 4. Installation or maintenance of trunk utility infrastructure as described in the Comprehensive Sewer or Water Plans; or
 5. Any essential service or public improvement.
- L. **"Rapid-Growth Tree Species"** means a species of tree recognized as rapid-growth trees by the City Forester, including cottonwood, poplar/aspens, box elder, willow, silver maple, elm, mulberry, and ash.
- M. **"Removal"** or **"Tree Removal"** means:
1. Manual, mechanical, chemical, or abiotic or biotic (fire, water, insects or inoculation) methods which results in the physical removal of a tree;
 2. Grading impact, compaction, or other damage up to 40 percent of a tree's Critical Root Zone;
 3. Excessive pruning that severely impacts the long term survivability of the tree; or
 4. Any other impact to a tree that comprises the long term health or structural stability of a tree.
- N. **"Significant Tree"** means a Healthy Standard-Growth Tree that is six inches or greater in DBH, a Healthy Rapid-Growth Tree that is 12 inches or greater in DBH, or a Healthy Coniferous Tree that is 12 feet or greater in height or 12 inches or greater in DBH.
- O. **"Site Plan"** means the site plan established and described in this Chapter.
- P. **"Standard-Growth Tree Species"** means a species of tree recognized as standard-growth trees by the City Forester.
- Q. **"Structural Root Zone" means the area around a tree with a radius that is equal to three inches for each one inch of DBH of the tree.**
- R. **"Tree Inch(es)"** means the DBH of a tree or trees on a site.
- S. **"Tree Preservation Plan"** means the tree preservation plan established and described in this Chapter.
- T. **"Tree Preservation Zone"** means the tree preservation zone established and described in this Chapter.
- U. **"Tree Removal Permit"** means a permit that is required under this Chapter for tree removal.

936.03 Establishment of Tree Preservation Zone.

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

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

936.04 City Forester Role.

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

936.05 Tree Removal Permit Requirement.

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

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

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

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

- A. Submission of a completed Tree Removal Permit Application and other required submittals to the City
- B. City staff review of the Application and determination if the Application is complete
- C. Submission of any required tree escrow payment to cover tree replacement
- D. Staff approval or denial of the Tree Removal Permit
- E. If the Permit is approved, removal of the trees covered by the Permit can commence by the property owner or a licensed tree contractor under City Code Ch. 519

936.06 Tree Replacement Thresholds.

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

- A. **Subdivision, Public Infrastructure, Construction of Single-Family Home.** The following tree removal thresholds shall apply to all Subdivisions, Public Infrastructure projects, and construction of single-family homes.
 - 1. Heritage Trees. Heritage Trees are valued and special trees for the City of Wayzata due to their size and age. All practical measures must be taken to preserve Heritage Trees. Heritage Tree removal may occur only when there is not a practical alternative. There shall be a zero percent removal threshold of Heritage Trees, meaning every DBH inch of Heritage Tree removed requires full replacement in accordance with the standards of Section 936.09, in addition to any other requirements hereunder.
 - 2. Significant Trees. Although the City encourages preservation of the maximum amount of trees possible, the City recognizes that a certain amount of Significant Trees removal is sometimes necessary during development. Accordingly, 25 percent (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 25 percent will require replacement in accordance with the standards of Section 936.09.
 - 3. Public Infrastructure. The City Council may waive the tree replacement requirements of this Section for Public Infrastructure projects if the City Council makes a finding that the tree replacement requirement would create an undue financial or other burden on the project, and the public benefits of the Public Infrastructure project outweigh the benefits of the required tree replacement.
- B. **Land Disturbance Permits, Design Review, and Expansions to Single-Family Homes.** The following tree removal thresholds apply to projects that require a Land Disturbance Permit under City Code Section 409.05, projects that require Design Review under City Code Section 909.04.B, and expansions or additions to an existing single-family home:

-
1. Heritage Trees. Heritage Trees are valued and special trees for the City of Wayzata due to their size and age. All practical measures must be taken to preserve Heritage Trees. Heritage Tree removal may occur only when there is not a practical alternative. There shall be a zero percent removal threshold of Heritage Trees, meaning every DBH inch of Heritage Tree removed requires full replacement in accordance with the standards of Section 936.09 in addition to any other requirements hereunder.
 2. Significant Trees. The City recognizes that additional tree removal may occur after the construction of new houses or commercial developments, or the expansion of existing homes or commercial developments, but to a lesser degree than the original development. Therefore, ten percent (10%) of the existing DBH inches of trees can be removed without obligation of replacement. Any removal beyond ten percent will require replacement in accordance with the standards of Section 936.9.
- C. **Heritage Tree Removal.** Heritage trees removed in connection with a project not listed in Sections 936.06.A and 936.06.B shall be replaced at a ratio of one (1) inch to one (1) inch DBH removed in accordance with the standards of Section 936.09.
- D. **Trees Exempt From Replacement Requirements.** The following types of trees shall not be included as part of the tally of tree removals for purposes of calculating replacement in accordance with the standards within Section 936.09:
1. Dead, Diseased, Dying, or Hazard Trees as determined by the City Forester prior to removal; or
 2. Trees that are transplanted from the site to another appropriate location within the City as approved by the City Forester; or
 3. Trees that were planted as part of a commercial business such as a tree farm or nursery; or
 4. Trees that are structurally unstable and pose a risk to people or permanent structures, as deemed by a certified arborist with a Tree Risk Assessment Qualification and the City Forester.
 5. Significant trees that are not part of any project not listed in 936.06.A or 936.06.B.
- E. **Trees Included for Structural Root Zone Disturbance. Any tree with a Structural Root Zone that will be disturbed in any way in connection with a project listed in Sections 936.06.A and 936.06.B must be (i) inventoried and removed prior to grading or excavation, and (ii) included as part of the tally of tree removals for purposes of calculating replacement in accordance with the standards within Section 936.09.**

936.07 Tree Preservation Plan.

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

- A. The name(s) and address(es) of property owners and applicants.
 - B. Delineation of the buildings, structures, impervious surfaces, utilities, and other site improvements situated thereon or contemplated to be constructed thereon.
 - C. Delineation of all areas to be graded and limits of land disturbance, including the contouring of all areas to be
-

-
- graded.
- D. Size, species, location and condition of all Significant and Heritage Trees located on the property as well as on adjacent properties where the Critical Root Zones of the trees are within the proposed Construction Area. The size of Deciduous Trees must be recorded in DBH and the size of Coniferous Trees must be recorded both in DBH and approximate height.
 - E. Identification of all Dead, Diseased, Dying and Hazard Trees.
 - F. The Critical Root Zone of all Significant and Heritage Trees proposed to be preserved.
 - G. Identification of all Significant and Heritage Trees proposed to be removed within the Construction Area.
 - H. Identification of all Significant and Heritage Trees on all individual lots. The Developer must submit a list of all lot and block numbers identifying those lots.
 - I. Measures to protect Heritage and Significant Trees as outlined in Section 936.08.
 - J. Size, species, and location of all replacement trees to be planted on the property in accordance with the tree replacement requirements.
 - K. Calculations of the total amount of tree inches proposed to be removed, the allowed removal percentage, and tree replacement inches required and proposed.
 - L. Signature of the person preparing the plan and statement which includes acknowledgment of the fact the trees to be used as replacements are appropriate species with respect to survival of the replacement trees.

936.08 Tree Protection.

The following tree protection measures are required:

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

-
5. Transplanting of Significant Trees into a protected area for later moving into permanent location within the Construction Area.
 6. Safety pruning for people working within the construction limits and for the trees involved.
- C. **Construction Protection.** Three (3) years after construction has been completed on residential properties, and five (5) years after construction has been completed for commercial or institutional properties, the City Forester shall inspect trees on a project site for which a Tree Removal Permit has been issued to ensure the health of the trees. If the trees are determined to be dead, dying, or in general poor health because of the construction on the site, the same number of tree inches must be replaced on the site.

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

936.09 Tree Replacement.

- A. **Tree Replacement Formula.** Replacement of removed or disturbed trees in excess of the percentage allowed under Section 936.06 shall be according to the following ratios.
1. All Significant Trees shall be replaced at the ratio of one (1) caliper inch per one (1) inch of DBH removed.
 2. All Heritage Trees removed in connection with a project listed in Sections 936.06.A and 936.06.B shall be replaced at the ratio of two (2) caliper inches per one (1) inch of DBH removed. Heritage trees removed in connection with a project not listed in Sections 936.06.A and 936.06.B shall be replaced at a ratio of one (1) inch to one (1) inch DBH removed.
 3. The height of Coniferous Trees shall count towards the caliper inches of tree replacement or tree removal as follows:
 - a. A 4-6 foot tall coniferous tree shall be equivalent to 2 caliper inches of tree replacement. For every two-foot range in additional coniferous tree height, above six feet, one additional caliper inch shall be counted towards tree replacement (e.g., a 15 foot coniferous tree = 7 caliper inches of replacement).
- B. **Size, Types and Diversification of Replacement Trees.** A Tree Replacement plan must include a diversity of tree species that are suitable for the property given soil conditions, hydrology, topography, and tree pathogens. No more than twenty percent (20%) of the replacement trees planted may be of the same genus unless otherwise approved by the City Forester. If more than 20% of the same genus of trees are planted on the site, the tree inches of the same genus over 20% shall not be included in the total tree inch replacement calculations. The recommended tree replacement species shall be those found on the Hennepin County Recommended Tree List.
- 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 Plants List.
- E. **Tree Replacement Location.** Replacement trees must be located only on the property for which a Tree Replacement Permit has been issued unless the City Council approves tree replacement on neighboring properties with the consent of such property owner and findings that (i) all the options for planting trees on the project site have been exhausted and tree replacement on the site is impractical; and (ii) it will allow additional screening from the neighboring property.
- F. **Tree Replacement Reduction for Preserving Heritage Trees.** Heritage trees that are protected and saved during a construction process, that otherwise had a significant probability of removal or loss based on the construction project, and that are healthy after the construction process, all as determined by the City
-

Forester, may be used to reduce the total number of required tree replacement inches for the project associated with the construction. Such reduction will equate to the total DBH inches of the saved tree.

- G. **Other Replacement Tree Requirements.** Choice of replacement trees species and location of the trees should also take into account the following information:
1. **Soil Composition.** Comparisons should be made between soil conditions and the ecology of the proposed species to make sure they are compatible. This is particularly important for the existing and proposed soil composition for the root balls of spaded and B&B trees.
 2. **Spatial Requirements.** The potential height and crown spread of the proposed replacement trees should be known. Generally, half of the adult tree crown diameter is the amount of distance a tree should be planted from any aboveground objects.
- H. **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.
- I. **Fee-In-Lieu of Tree Replacement or Replacement Trees Planted in Public Areas.** The City recognizes that there may be instances where the total amount of tree replacement required under this section cannot occur on site. In those instances, the City may, at its option, accept a fee-in-lieu of tree replacement or allow the planting of replacement trees in public areas. Tree replacement is encouraged to happen on site as much as possible and fee in lieu-of-tree replacement should be used only when replacement on site is not feasible. The amount of fee-in-lieu of tree replacement will be determined annually by the City Council through the City fee schedule.

936.10 Past Tree Removal.

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

936.11 Financial Guarantee.

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

-
3. Second year inspection determining the installed tree is still healthy: 15 percent of the financial guarantee for that tree shall be released.
 4. Third year inspection determining the installed tree is still healthy: 20 percent of the financial guarantee for that tree shall be released.

936.12 Penalties.

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

Attachment B

918.03 Required Fencing, Screening and Landscaping.

A. **Fencing and Screening.** Where any townhouse, quadraminium, manor home, multiple family or non-residential use (i.e., structure, parking or storage) abuts property zoned for residential use, the higher density residential or the non-residential use shall provide screening along the boundary of the residential property. Screening shall also be provided where a non-residential use is across the street from a residential zone, but not on that side of a non-residential use considered to be the front (as determined by the Zoning Administrator). All the fencing and screening specifically required by this Ordinance shall be subject to Section 916.05 and shall consist of either a fence or a green belt planting strip as provided for below.

1. A green belt planting strip shall consist of evergreen trees and/or deciduous trees and plants and shall be of sufficient width and density to provide an effective visual screen. This planting strip shall be designed to provide complete visual screening to a minimum height of six feet. Earth mounding or berms may be used but shall not be used to achieve more than three feet of the required screen. The planting plan and type of plantings shall require the approval of the City Council.
2. A required screening fence shall be constructed of masonry, brick, wood or metal. Such fence shall provide a solid screening effect of six feet in height. The design and materials used in constructing a required screening fence shall be subject to the approval of the City Council. Fences in excess of height limitations established in Section 918.01 shall require approval pursuant to procedures noted.

B. **Landscaping—New Residential Subdivisions, Semi-Public and All Income Producing Property Uses.** (Excluding residential structures containing less than four dwelling units.) Prior to approval of a building permit, all above referenced uses shall be subject to mandatory landscape plan and specification requirements. Said landscape plan shall be developed with an emphasis upon the boundary or perimeter of the proposed site at points adjoining other property and the immediate perimeter of the structure. All landscaping incorporated in said plan shall conform to the following standards and criteria:

1. All plants must be at least equal the following minimum size:

	Potted/Bare Root-	Balled & Burlapped-
Shade Trees*	12 -inch diameter	2 -inch diameter
Half Trees (Flowering Crabs, Russian-Olive, Hawthorn, etc.)	6- to 7-foot high	1½ -inch diameter
Evergreen Trees	6- <u>top 7-foot high</u>	3- to 4 foot high-
Tall Shrubs and Hedge Material (Evergreen or Deciduous)	3- to 4-foot high	3- to 4 foot high-
Low Shrubs-Deciduous	18- to 24-inch	24- to 30 inch-
Evergreen	18- to 24-inch potted-	24- to 30 inch-
Spreading Evergreens	18- to 24-inch potted-	18- to 24 inch-

Type and mode are dependent upon time of planting season, availability, and site conditions (soils, climate, ground water, manmade irrigation, grading, etc.)

2. Spacing.
 - a) Plant material centers shall not be located closer than three feet from the fence line or property line and shall not be planted to conflict with public plantings based on the judgement of the Zoning Administrator.

- b) Where plant materials are planted in two or more rows, plantings shall be staggered in rows unless otherwise approved by the Zoning Administrator.
- c) Where massing of plants or screening is intended, large deciduous shrubs shall not be planted more than four feet on center, and/or evergreen shrubs shall not be planted more than three feet on center.

3. Species listed by the Minnesota Department of Agriculture (MDA) as “prohibited” or “restricted” shall not be included in any landscape plan.

4. Species listed by the MDA as “regulated” may only be utilized according to their species-specific regulations.

Types of New Trees. Plantings, suitable trees include.

Quercus (varieties)	Oak
Acer platanoides (and varieties)	Norway Maple (and Schwedler, Emerald Queen, etc.)
Acer saccharum	Sugar Maple
Celtis occidentalis	Hackberry
Betula (varieties)	Birch
Gleditsia triacanthos	Honeylocust (Imperial, Majestic Skyline, Sunburst, and Thornless) Little Leaf Linden/Redmond Tilia cordata (and varieties) Greenspire, etc.
Tilia americana	Basswood (Am Linden)
Fraxinus Pennsylvania lanceolate	Green Ash (and Summit, Marshall's)
Ginkgo biloba (male tree only)	Ginkgo
Gymnocladus dioicus	Kentucky Coffee Tree

5.4- Design.

- a) The landscape plan shall show site amenities, (i.e., composition of plant materials, and/or creative grading, decorative lighting, exterior sculpture, etc.) which are largely intended for aesthetic purposes.
- b) All areas within the property lines (or beyond, if site grading extends beyond) shall be treated. All exterior areas not paved or designated as roads, parking, or storage must be planted into ornamental vegetation (lawns, ground covers, or shrubs) unless otherwise approved by the Zoning Administrator.
- c) Turf slopes in excess of 2:1 are prohibited.
- d) All ground areas under the building roof overhang must be treated with a decorative mulch and/or foundation planting.
- e) All buildings must have an exterior water spigot to ensure that landscape maintenance can be accomplished.

6.5- Landscape Guarantee. All new plants shall be guaranteed for two full years from the time planting has been completed. All plants shall be alive and in satisfactory growth at the end of the guarantee period or be replaced.

7.6- Existing Trees. All existing trees are to be managed in accordance with the standards described in Chapter 936. With respect to existing trees in new developments, all trees on the site are to be saved which do not have to be removed for street, buildings, parking, utilities, drainage or active recreational purposes. Trees over six inches in diameter that are to remain, are to be marked with a red band, and to be protected with

~~snow fences or other suitable enclosure, prior to any excavation. The City may further require that the developer retain a professional forester to prepare a forest inventory and management plan for the development, in order to control and abate any existing or potential loss. In those instances where trees of over six inches in caliper will be lost due to construction, the City Council may require the planting of new trees in an amount equal to or greater than the total caliper inches which will be removed.~~

Attachment C

902.02 Definitions.

The following words and terms, wherever they occur in this Ordinance, shall be interpreted as herein defined:

"Abutting" means making direct contact with or immediately bordering.

"Accessory Building or Use" means a subordinate building or use which is located on the same lot on which the main building or use is situated and which is reasonably necessary, appropriate and incidental to the conduct of the primary use of such building or main use.

"Addition" means a physical enlargement of an existing structure.

"Adjacent" means in close proximity to or neighboring, not necessarily abutting.

"Adult Uses" include adult bookstores, adult motion picture theatres, adult motion picture sales/rentals, adult mini-motion picture theatres, adult massage parlors, adult steam room/bathhouse/sauna facilities, adult companionship establishments, adult rap/conversation parlors, adult health/sport clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotels/motels, adult body painting studios, and other premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas" which are capable of being seen by members of the public. Activities classified as obscene as defined by Minn. Stats. § 617.241, as may be amended, are not included.

A. **"Specified Anatomical Areas"** means:

1. Less than completely and opaquely covered human genitals, pubic region, buttock, anus, or female breast(s) below a point immediately above the top of the areola; and
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

B. **"Specified Sexual Activities"** means:

1. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zoerasty; or
2. Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence; or
3. Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or
4. Fondling or touching of nude human genitals, pubic region, buttocks, or female breast; or
5. Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such persons; or
6. Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being; or
7. Human excretion, urination, menstruation, vaginal or anal irrigation.

-
- C. **"Adult Uses—Accessory"** means the offering of retail goods for sale which are classified as adult uses on a limited scale and which are incidental to the primary activity and goods and/or services offered by the establishment. Examples of such items include the sale of adult magazines, the sale and/or rental of adult motion pictures, the sale of adult novelties, and the like.
- D. **"Adult Uses—Principal."** means the offering of goods and/or services which are classified as adult uses as a primary or sole activity of a business or establishment and include, but are not limited to, the following:
1. **"Adult Use—Body Painting Studio."** An establishment or business which provides the service of applying paint or other substance, whether transparent or non-transparent, to or on the body of a patron when such body is wholly or partially nude in terms of "specified anatomical areas."
 2. **"Adult Use—Bookstore."** A building or portion of a building used for the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, or motion picture film if such building or portion of a building is not open to the public generally but only to one or more classes of the public extending any minor by reason of age or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."
 3. **"Adult Use—Cabaret."** A building or portion of a building used for providing dancing or other live entertainment, if such building or portion of a building excludes minors by virtue of age or if such dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction of "specified sexual activities" or "specified anatomical areas."
 4. **"Adult Use—Companionship Establishment."** A companionship establishment which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
 5. **"Adult Use—Conversation/Rap Parlor."** A conversation/rap parlor which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk, or discussion, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
 6. **"Adult Use—Health/Sport Club."** A health/sport club which excludes minors by reason of age, or if such club is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
 7. **"Adult Use—Hotel or Motel."** Adult hotel or motel means a hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexually activities" or "specified anatomical areas."
 8. **"Adult Use—Massage Parlor, Health Club."** A massage parlor or health club which restricts minors by reason of age, and which provides the services of massage, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
 9. **"Adult Use—Mini-Motion Picture Theatre."** A building or portion of a building with a capacity for less than 50 persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

-
10. **"Adult Use—Modeling Studio."** An establishment whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in "specified sexual activities" or display "specified anatomical areas" while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.
 11. **"Adult Use—Motion Picture Arcade."** Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled or operated still or motor picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas."
 12. **"Adult Use—Motion Picture Theatre."** A building or portion of a building with a capacity of 50 or more persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age or if such material is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.
 13. **"Adult Use—Novelty Business."** A business which has as a principal activity the sale of devices which stimulate human genitals or devices which are designed for sexual stimulation.
 14. **"Adult Use—Sauna."** A sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
 15. **"Adult Use—Steam Room/Bathhouse Facility."** A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent if such building or portion of a building restricts minors by reason of age or if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

"Alley." A public or private right-of-way primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on a street.

"Animal Clinic." A medical veterinary facility licensed by the State of Minnesota for the treatment, but not grooming or day care, of household pets, and operated only during daytime and evening business hours (not overnight) by a licensed veterinarian for surgery, diagnosis, and treatment of diseases and injuries of household animals.

"Animal Hospital." A medical veterinary facility licensed by the State of Minnesota for the treatment, but not grooming or day care, of household pets, and operated up to 24 hours a day by a licensed veterinarian for emergency procedures, surgery, diagnosis, and treatment of diseases and injuries of household animals.

"Animals, Domestic." For purposes of this Ordinance, domestic animal shall be defined as house pets such as dogs, cats, and birds which can be contained within a principal structure throughout the entire year, provided that the containment can be accomplished without special modification to the structure requiring a building permit from the City.

"Apartment." A portion of a building consisting of a room or suite of rooms which is designed for, intended for, or used as a residence by a single family or an individual, and is equipped with cooking facilities. Includes dwelling unit and efficiency unit.

"Applicant." The owner, their agent or person having legal control, ownership and/or interest in land which the provisions of this Ordinance are being considered for or reviewed.

"Attic." Space of a building located directly under a roof which is not directly free and open to the public and is unfinished or finished only to a limited degree to provide for inactive storage and/or mechanical equipment. Said space shall not be occupied or actively utilized. Under the provision of this Ordinance, said space shall not constitute a story, and shall not be included in space calculations for parking.

"Automobile Repair—Major." General repair, rebuilding or reconditioning engines, motor vehicles or trailers; collision service, including body, frame or fender straightening or repair; overall painting or paint job; vehicle steam cleaning.

"Automobile Repair—Minor." Installation, including cellular telephones, audio systems, and minor repairs, incidental body and fender work, painting and upholstery, replacement of parts (tires, glass, etc.) and minor motor services to passenger automobiles and trucks not exceeding 12,000 pounds gross weight, but not including any operation specified under "Automobile Repair—Major."

"Automobile Service Station." See "Motor Fuel Station."

"Automobile Wrecking or Junk Yard." Any place where two or more vehicles not in running condition and/or not licensed, or parts thereof, are stored in the open and are not being restored to operation or any land, building or structure used for wrecking or storing of such motor vehicles or parts thereof; and including any commercial salvaging and scavenging of any other goods, articles or merchandise.

"Basement." Any floor level below the first story in a building, except that a floor level in a building having only one floor level shall be classified as a basement unless such floor level qualifies as a first story as defined herein.

"Bay." Cantilevered area of a room.

"Bed and Breakfast." A building designed as a single family dwelling, where for compensation, meals and lodging are provided to transient guests but not including a building providing these services to more than ten persons or operating more than five guestrooms.

"Block." A tract of land bounded by streets, or a combination of streets and public parks, railroad rights-of-way, shorelines, waterways or boundary lines of the corporate limits of the City.

"Boarder." One who receives regular meals and/or regular meals and lodging for pay.

"Boarding (House) Home—Foster Children." A family dwelling where children out of their own homes are cared for.

"Boarding/Lodging House." A building other than a hotel where, for compensation and by prearrangement for definite periods, meals or boarding/lodging and meals are provided to three or more persons, not of the principal family therein, pursuant to previous arrangements and not including a building providing these services for more than five persons.

"Boarding/Lodging Room." A room rented as sleeping and living quarters, but without cooking facilities and with or without an individual bathroom. In a suite of rooms without cooking facilities, each room which provides sleeping accommodations shall be counted as one boarding/lodging room.

"Boundary Lines." Any line indicating the bounds or limits of any tract or parcel of land; also a line separating the various use districts as shown on the City's Zoning Map.

"Brewery." A facility that produces for sale beer, ale, malt liquor, or other beverages made from malt by fermentation and containing not less than one-half of one percent alcohol by volume. A brewery may include a taproom.

"Brewpub." A Brewery that operates a restaurant on the same premises as the Brewery, whose malt liquor production per calendar year may be limited by Minnesota State Statute.

"Buffer." The use of land, topography (difference in elevation), space, fences or landscape plantings to screen or partially screen a use or property from the vision of another use or property.

"Buildable Area." The space remaining on a lot after the minimum setback and open space requirements of this Ordinance have been met.

"Building." Any structure built for the support, shelter or enclosure of persons, animals, chattel or movable property of any kind, and includes any structure.

"Building Height." The vertical distance above a Grade Plane measured to the highest point of the coping of a flat roof, to the deck line of a mansard roof, to the uppermost point on a shed, round or arch type roof, or to the average height of the highest gable of a pitched, hipped or gambrel roof. Modifications to the site grading that would affect the grade plane of a lot shall not be undertaken as a means of achieving increased building height, unless approved by the City Council. The height of a stepped or terrace building is the maximum height of any segment of the building.

"Building Line." A line parallel to the street right-of-way or ordinary high water level at any story level of a building and representing the minimum distance which all or any part of the building is set back from said right-of-way or ordinary high water level.

"Building Setback." The minimum horizontal distance between the building and the lot line.

"Business." Any establishment, occupation, employment or enterprise where merchandise is manufactured, exhibited or sold, or where services are offered for compensation.

"Cellar." That portion of a building between the floor and ceiling which is wholly or partly below grade and is so located that the vertical distance from grade to the floor below is equal to or greater than the vertical distance from grade to ceiling.

"Cemetery." A site or property set apart for the burial or interment of the human dead.

"Channel." A natural or artificial depression of perceptible extent, with definite bed and banks to confine and conduct water either continuously or periodically.

"Child Care." A specialized limited day care facility which is an accessory use that provides temporary babysitting service while parents are engaged in short-term social, recreational or business activities. (See also Day Care)

"Church." A building, together with its accessory buildings and use; where persons regularly assemble for religious purposes and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain religious ceremonies and purposes.

"City Council." The governing body for the City of Wayzata.

"Clear Cutting." The removal of an entire stand of trees and/or vegetation.

"Club or Lodge." A non-profit association of persons who are bona fide members paying annual dues, with the use of the premises being restricted to members and their guests.

"Cluster Development." The development pattern and technique whereby structures are arranged in closely related groups to make the most efficient use of the natural amenities of the land as accomplished through a planned unit development.

"Coffee Shop." A business establishment providing services limited to the sale and production of coffee products and foods associated with the drinking of coffee, as distinguished from a full service restaurant or convenience (fast) food establishment.

"Commercial Recreation." Electronic games, bowling alley, jump center, golf, billiards (pool) hall, dance hall, skating, trampoline, boat rental, park, and similar uses.

"Common Open Space." Any privately owned open space including private parks, nature areas, playgrounds, trails, and recreational buildings and structures which is an integral part of a development and is not owned on an individual basis by each owner of the dwelling unit.

"Community Center." A building or a room or group of rooms within a building designed specifically as a gathering place for the general public or for a specific segment of the general public and operated on a non-profit basis.

"Comprehensive Plan." A comprehensive long range plan prepared and approved by the City, including a compilation of policy statements, goals, standards, fiscal guidelines, and maps indicating the general locations recommended for the various functional classes of land use, places and structures, and for the general physical development of the City, including any unit or part of such plan separately adopted and any amendment to such plan or parts thereof.

"Concept Plan." A report in map and text form submitted as the first stage of a Planned Unit Development (PUD) proposal, depicting the location, general purpose, general type of land use and circulation patterns, primary relationships between site elements and between the proposed development and surrounding development, proposed general schedule of development, and information on the applicant.

"Conditional Use." Those occupations, vocations, skills, arts, businesses, professions, or uses specifically designated in each zoning district, which for the respective conduct or performance in such designated districts may require reasonable, but special, unusual or extraordinary limitations peculiar to the use for the protection, promotion and preservation of the general public welfare, health, and safety, and the integrity of the City Comprehensive Plan.

"Conditional Use Permit." A permit issued by the City Council in accordance with procedures specified in this Ordinance, as a flexibility device to enable the City Council to assign dimensions to a proposed use or conditions surrounding it after consideration of adjacent uses and their functions and the special problems which the proposed use presents.

"Condominium." A multiple dwelling or development containing individually owned dwelling units and jointly owned and shared areas and facilities, which dwelling or development is subject to the provisions of the Minnesota Condominium Law, Minn. Stats. §§ 515.A.1-101 to 515.A.4-118.

"Convenience (Fast) Food Establishment." An establishment which serves food in or on disposable or edible containers in individual servings for consumption on or off the premises. (See also drive-in restaurant).

"Cooperative (Housing)." A multiple family dwelling owned and maintained by the residents and subject to the provisions of MS 290.09 and 290.13. The entire structure and real property is under common ownership as contrasted to a condominium dwelling where individual units are under separate individual occupant ownership.

"Curb Level." The elevation of the established curb in front of a building measured at the center of such front. Where no curb level has been established, the engineering staff shall determine a curb level or its equivalent for the purpose of this Ordinance.

"Day Care Facility." Any facility licensed by the State Department of Public Welfare, public or private, which for gain or otherwise regularly provides one or more persons with care, training, supervision, habilitation, rehabilitation or developmental guidance on a regular basis, for periods of less than 24 hours per day, in a place other than the person's own home. Day care facilities include, but are not limited to, family day care homes, group family day care homes, day care centers, day nurseries, nursery schools, daytime activity centers, day treatment programs and day services as defined by Minn. Stats. § 245.782, Subd. 5. (See also Child Care).

"Density, Residential." A number expressing the relationship of the number of dwelling units to an acre of land as established in the Comprehensive Plan.

"Deposition." Any rock, soil, gravel, sand or other material deposited naturally or by man into a waterbody, watercourse, floodplains or wetlands.

"Design Guidelines." The Wayzata Design Guidelines as amended.

"Distillery." A facility that produces Ethyl Alcohol, hydrated oxide of ethyl, spirits of wine, rum, brandy, gin, or other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use. A distillery may include a tasting room.

"Diversion." A channel that intercepts surface water runoff and that changes the accustomed course of all or part of a stream.

"Dog Kennel." Any place where three dogs or more over three months of age are kept for the use of the owner, or are boarded, bred and/or offered for sale, except a veterinary clinic.

"Draining." The removal of surface water or groundwater from land.

"Dredging." To enlarge or clean-out a waterbody, watercourse, or wetland.

"Drive-In Restaurant." Any place or premises used for sale, dispensing or serving of food, refreshments or beverages on the premises, typically eaten in the customers vehicle on the site. (See also convenience food establishment)

"Dwelling." A building or portion thereof, designated exclusively for residential occupancy, including one family, two family, and multiple family dwellings, but not including hotels, motels, boarding houses, or manufactured housing.

"Dwelling, Multiple (Apartment Building)." A building designed with three or more dwelling units exclusively for occupancy by three or more families living independently of each other, but sharing hallways and main entrances and exits.

"Dwelling, Single-Family." A dwelling unit designed exclusively for occupancy by one family.

A. **"Attached."** A dwelling which is joined to another at one or more sides by a party wall.

B. **"Detached."** A dwelling unit not attached to another dwelling or structure or is entirely surrounded by open space.

"Dwelling, Two Family." A residence designed for or occupied by two families only, with separate housekeeping and cooking facilities for each. A two family dwelling with a separate rooming unit(s) shall be considered and classified as a multi-family dwelling, unless specifically noted.

A. **"Double Bungalow."** A two family dwelling with two units side-by-side.

B. **"Duplex."** A two family dwelling unit with one unit above the other.

"Dwelling Unit." A residential building or portion thereof intended for occupancy by one or more persons with facilities for living, sleeping, cooking and eating, but not including hotels, motels, nursing homes, seasonal cabins, boarding or rooming houses, motor homes or travel trailers.

"Dwelling Unit Occupancy." Occupancy of a dwelling unit for the purpose of enforcing provisions of this Ordinance shall be limited by restrictions as included in the definition of family in this Section.

"Earth Berm." (House Construction) An earth covering on the above grade portions of the building walls.

"Earth Sheltered Building." A building so constructed that 50 percent or more of the completed structure is covered with earth. Earth covering is measured from the lowest level of the livable space in residential units and of usable space in non-residential buildings. An earth sheltered building is a complete structure that

does not serve just as a foundation or sub-structure for above grade construction. A partially covered building shall not be considered earth sheltered.

"Easement." A grant by an owner of land for a specific use by persons other than the owner.

"Efficiency Apartment (Dwelling Unit)." A one room dwelling unit, exclusive of bathroom, consisting of one principal room having cooking facilities and used for combined living, dining and sleeping purposes.

"Elderly (Senior Citizen) Housing." A public agency owned or controlled multiple dwelling building with open occupancy limited to persons over 62 years of age.

"Elevator Penthouse." An enclosure located on the top of a building which houses the working mechanisms of an elevator.

"Engineer." The registered engineer employed or retained by the City, unless otherwise stated.

"Erosion." The wearing away of land surface by the action of natural elements.

"Essential Services." The erection, construction, alteration or maintenance by public utilities or Municipal departments of underground or overhead telephone, gas, electrical, steam, hot water, communication or water transmission, distribution, collection, supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith for the furnishing of adequate service by such private or public utilities or Municipal departments.

"Essential Service Structures." Structures and buildings necessary for the operation of essential services, including, but not limited to, telephone buildings, telephone booths, gas regulator stations, substations, electrical stations, water tanks, lift stations.

"Exterior Storage." The storage of goods, materials, equipment, manufactured products and similar items not fully enclosed by a building.

"Family." An individual or two or more persons related by blood, marriage, adoption or a group of not more than six persons who need not be related by blood or marriage living together in a dwelling unit.

"Fence Related."

A. **"Fence"** shall mean a partition, wall, hedge, row(s) of continuous plantings, or gate erected as a dividing marker, visual or physical barrier, or enclosure.

1. **"Man Made Fence"** shall mean a partition or wall constructed of wood, metal, masonry, brick, stone, concrete, and the like.

2. **"Natural Hedge or Planting"** shall mean a divider or barrier comprised of vegetation materials.

B. **"Fence Height"** shall mean the distance from the adjacent finished grade to the highest projection of a fence structure, not including support posts, provided that the support posts are no more than four inches above the fence structure.

"Filling." The act of depositing any rock, soil, gravel, sand or other material so as to fill a waterbody, watercourse, or wetland.

"Floodplain Overlay District Related."

A. **"Base Flood Elevation."** The elevation of the regional flood. The term base flood elevation is used in the flood insurance survey.

B. **"Basement."** Any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.

-
- C. **"Development."** Any manmade change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavating or drilling operations, or storage of equipment or materials.
 - D. **"Equal Degree of Encroachment."** Method of determining the location of floodway boundaries so that floodplain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.
 - E. **"Flood."** A temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.
 - F. **"Flood Frequency."** The frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.
 - G. **"Flood Fringe."** That portion of the Special Flood Hazard Area (one percent annual chance flood) located outside of the floodway. Flood fringe is synonymous with the term "floodway fringe" used in the Flood Insurance Study for the City.
 - H. **"Flood Insurance Rate Map (FIRM)."** An official map on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).
 - I. **"Floodplain."** The beds proper and the areas adjoining a wetland, lake, or watercourse which have been or hereafter may be covered by the regional flood.
 - J. **"Flood-Proofing."** A combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.
 - K. **"Floodway."** The bed of a wetland or lake and the channel of a watercourse, and those portions of the adjoining floodplains which are reasonably required to carry or store the regional flood discharge.
 - L. **"Lowest Floor."** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR Part 60.3.
 - M. **"Manufactured Home."** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include the term "recreational vehicle."
 - N. **"New Construction."** Structures, including additions and improvements, and placement of manufactured homes, for which the start of construction commenced on or after the effective date of this Ordinance.
 - O. **"Obstruction."** Any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure or matter in, along across, or projecting into any channel, watercourse, or regulatory floodplain which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.
 - P. **"One Hundred Year Floodplain."** Lands inundated by the regional flood.
 - Q. **"Reach."** A hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or manmade obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.

-
- R. **"Recreational Vehicle."** A vehicle that is built on a single chassis, is 40 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this Ordinance, the term recreational vehicle is synonymous with the term "travel trailer/travel vehicle."
- S. **"Regional Flood."** A flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the one percent chance or 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in a Flood Insurance Study.
- T. **"Regulatory Flood Protection Elevation."** An elevation not less than one foot above the elevation of the regional flood plus any increase in flood elevation caused by encroachments on the floodplain that result from designation of a floodway.
- U. **"Repetitive Loss."** Flood related damages sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event on the average equals or exceeds 25 percent of the market value of the structure before the damage occurred.
- V. **"Special Flood Hazard Area."** A term used for flood insurance purposes synonymous with "One Hundred Year Floodplain."
- W. **"Start of Construction."** Substantial improvement, and means the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement that occurred before the permit's expiration date. The actual start is either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- X. **"Structure."** Anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, recreational vehicles not meeting the exemption criteria specified in Chapter 993 of this Ordinance, and other similar items.
- Y. **"Substantial Damage."** Damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- Z. **"Substantial Improvement."** Within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:
1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions.

-
2. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure." For the purpose of this Ordinance, "historic structure" is as defined in 44 CFR part 59.1.

"Floor Area, Gross." The sum of the gross horizontal areas of all floors of the building or portion thereof devoted to a particular use, including accessory storage areas located within selling or working space such as, activities to the production or processing of goods, or to business or professional offices. However, the floor area shall not include basement or cellar floor area other than area devoted to retailing activities, the production or processing of goods, or to business or professional offices. The floor area of a residence shall not include the cellar area.

"Floor Area Ratio (F.A.R.)." The floor area of a building or buildings on any lot divided by the area of such lot, or in the case of planned developments by the net site area. The floor area ratio requirements as set forth under each zoning district shall determine the maximum floor area allowable for a building or buildings (total floor area of both principal and accessory buildings) in direct ratio to the gross area of the zoning lot.

"Footprint." The outline of the foundation of a building, including that portion of an upper story that is occupied and/or actively utilized.

"Frontage." That boundary of a lot which abuts an existing or dedicated public street, watercourse or similar barrier.

"Garage, Private (Residential)." An accessory building or accessory portion of the principal building which is intended for and used to store the private passenger vehicles and trucks not exceeding 12,000 pounds gross weight, of the family or families resident upon the premises, and in which no business service or industry is carried on.

"Garage, Public." Any garage other than a private garage. May also mean parking ramp.

"Gas Station." See "Motor Fuel Station."

"Grade Plane." A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six feet from the building, between the building and a point six feet from the building.

"Grading." Changing the natural or existing topography of land.

"Group Day Care Center." Any location which provides care for six or more unrelated children at one time, for compensation, and which is licensed to provide such services by the Minnesota Department of Public Welfare. This term shall include, but is not limited to, uses such as nursery schools, day nurseries, child care centers and drop-in care centers.

"Growler." A specially designed 64-ounce beer container for exclusive off-sale of micro-production facility beer. A growler shall have the following packaging requirements:

- A. Growlers shall bear a twist-type closure, cork, stopper or plug.
- B. At the time of sale, paper or plastic adhesive band, strip, or sleeve shall be applied to the container and extended over the top of the closure, forming a seal.
- C. The growler and/or band, strip or sleeve shall bear the name and address of the brewer, and the container shall be identified as malt liquor, contain the name of the malt liquor, and shall be considered intoxicating liquor unless labeled otherwise.

"Halfway House." See "Residential Care Facility."

"Hardship." A situation where property in question cannot be put to a reasonable use under the conditions allowed by the official controls; the plight of the landowner is due to circumstances unique to his property,

not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute a hardship if a reasonable use for the property exists under terms of the official controls.

"Health Club." A facility which provides athletic activities such as tennis, handball, racquetball, track, basketball, exercise devices, etc. and such incidental services as whirlpool, sauna or massage service for members and guests.

"Home Occupation." Any occupation or profession engaged in by the occupant of a residential dwelling unit, which is clearly incidental and secondary to the residential use of the premises and does not change the character of said premises.

"Hotel." Any building or portion thereof occupied as the more or less temporary abiding place of individuals and containing more than ten guest rooms, used, designated, or intended to be used, let or hired out to be occupied, or which are occupied by more than ten individuals for compensation, whether the compensation be paid directly or indirectly.

"Impervious Surface." A constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increase rate of flow than prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt, or gravel roads.

"Inn Establishment." A building, other than a hotel, whose use includes the renting of rooms at a transient daily rate (whether or not billed or paid daily), and wherein a dining room and other facilities are operated on the premises. A maximum of ten guestrooms may be operated within the principal structure.

"Junk Yard." An open area where waste, used, or second hand materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled; including, but not limited to, scrap iron and other materials, paper, rags, rubber, tires, lumber, and bottles. A junk yard includes an auto wrecking yard, but does not include uses established entirely within closed buildings.

"Landscaping." Plantings such as trees, flowers, grass and shrubs and improvements directly related thereto.

"Land Reclamation." The process of the re-establishment of acceptable topography (i.e. slopes), vegetative cover, soil stability and the establishment of safe conditions appropriate to the subsequent use of the land.

"Loading Space (Off-Street)." A space or berth on the same lot with a building, or contiguous to a group of buildings, for the temporary parking of a vehicle or truck while loading or unloading merchandise or materials and which abuts upon a street, alley or other appropriate means of access.

"Lot." A parcel or portion of land of at least sufficient size to meet minimum zoning requirements for use, coverage and area, and to provide such yards and other open spaces as are herein required. Such lot shall have frontage on an improved public street.

"Lot (of Record)." Any lot which is one unit of a plat heretofore duly approved and filed, or one unit of an auditor's outlot or a registered land survey, or a parcel of land not so platted, subdivided or registered but for which a deed, auditor's subdivision or registered land survey has been recorded in the Office of the Register of Deeds or Registrar of Titles for Hennepin County, Minnesota, prior to the effective date of this Ordinance.

"Lot Area." The total land area of a horizontal plane within the lot lines.

"Lot, Base." Lots meeting all specifications in the zoning district prior to being subdivided into a two family dwelling or quadraminium subdivision.

"Lot, Corner." A lot situated at the intersection of two streets, the interior angle of such intersection not exceeding 135 degrees.

"Lot Coverage." The area of a lot occupied by the principal building or buildings and all accessory buildings.

"Lot Depth." The shortest horizontal distance between the front lot line and the rear lot line measured from a 90 degree angle from the street right-of-way within the lot boundaries.

"Lot, Double Frontage." An interior lot having frontage on two streets.

"Lot, Front." The front of a lot shall be considered to be that boundary abutting a public right-of-way having the least width.

"Lot Improvement." Any building, structure, place, work of art, or other object, or improvement of the land on which they are situated constituting a physical betterment of real property, or any part of such betterment.

"Lot, Interior." A lot, other than a corner lot, including through or double frontage lots.

"Lot Line." A property boundary line of any lot held in single or separate ownership; except that where any portion of the lot extends into the abutting street or alley, the lot line shall be deemed to be the street or alley right-of-way.

"Lot Line, Rear." That boundary of a lot which is opposite the front lot line. If the rear lot line is less than ten feet in length, or if the lot forms a point at the rear, the rear lot line shall be a line ten (10') feet in length within the lot, parallel to and at the maximum distance from the front lot line.

"Lot, Reversed Frontage." A lot in which the frontage is at right angles, or approximately right angles, to the general pattern in the area involved. A reversed frontage lot may be a corner lot or an interior lot.

"Lot, Substandard." A lot or parcel of land for which a deed has been recorded in the Office of the Hennepin County Recorder upon or prior to the effective date of this Ordinance which does not meet the minimum lot area, structure setbacks or other dimensional standards of this Ordinance.

"Lot, Through." A lot fronting on two parallel streets.

"Lot, Unit." Lots created from the subdivisions of a two family dwelling or quadraminium having different minimum lot size requirements than the conventional base lots within the zoning district.

"Lot Width." The minimum required horizontal distance between the side lot lines measured at right angles to the lot depth, at the minimum building setback line. If no setback line is established, the distance between the side lot lines measured along the public right-of-way.

"Malt Liquor." Any beverage made from malt by fermentation and containing not less than one-half of one percent alcohol by volume.

"Manor Home." A residential structure with five to eight units with each unit having a separate entrance/exit. There may be more than one floor and an attached garage space.

"Medical and Dental Clinic." A structure intended for providing medical and dental examinations and service available to the public. This service is provided without overnight care available.

"Metes and Bounds Description." A description of real property which is not described by reference to a lot or block shown on a map, but is described by starting at a known point and describing the bearings and distances of the lines forming the boundaries of the property or delineating a fractional portion of a section, lot or area by described lines or portions thereof.

"Micro-Production Facility." A facility in which beer, wine, or other alcoholic beverages are brewed, fermented, or distilled for distribution and consumption. Micro-production facilities include breweries, brewpubs, wineries, and distilleries.

"Minerals." Soil, clay, stone, sand and gravel and other similar solid material or substance to be mined from natural deposits.

"Model Home." A home which is similar to others in a development and which is open to public inspection for the purpose of selling said other homes.

"Motel/Motor Hotel." A building or group of detached, semi-detached or attached buildings containing guest rooms or units, each of which has a separate entrance directly from the outside of the building, or corridor, with garage or parking space conveniently located to each unit, and which is designed, used or intended to be used primarily for the accommodation of transient guests traveling by automobile.

"Motor Fuel Station." A place where gasoline is stored only in underground tanks, kerosene or motor oil and lubricants or grease, for operation of automobiles, are retailed directly to the public on premises, and including minor accessories and services for automobiles, but not including automobile major repairs and rebuilding.

"Non-Conforming Structure, Use, or Lot, Illegal." A lot, building, structure, premises, or use illegally established when it was initiated, created, or constructed, which did not conform with the applicable conditions or provisions of the City Code for the district in which the structure or use is located.

"Non-Conforming Structure, Use, or Lot, Legal." A lot, building, structure, premises, or use lawfully established when it was initiated, created, or constructed, which does not now conform with the applicable conditions or provisions of this Ordinance for the district in which the structure or use is located.

"Noxious Matter or Material." Material capable of causing injury to living organisms by chemical reaction, or capable of causing detrimental effects on the physical or economic well-being of individuals.

"Nursing Home." A private building with facilities for the care of children, the aged, or the infirm, or a place of rest for those suffering bodily disorders, but not containing equipment for surgical care or for treatment of disease or injury. The nursing home shall be licensed by the State Board of Health as provided for in Minnesota State Statutes.

"Obstruction." Any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure or matter in, along, across or projecting into any channel, watercourse or regulatory floodplain which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

"Occupancy." The purpose for which a building is used or intended to be used. The term shall also include the building or room housing such use. Change of occupancy is not intended to include change of tenants or proprietors.

"Open Sales Lot." Land devoted to the display of goods for purchase, sale, rent, lease or trade where such goods are not enclosed within a building, and for the storage of same prior to sale.

"Open Space." Any open area not covered by structures, including, but not limited to, the following uses, required or established yard areas, parking areas, sidewalks, school walks, trails, recreation areas, water bodies, shorelands, watercourses, wetlands, groundwater recharge areas, floodplain, floodway, flood fringe, erodible slopes, woodland, and soils with severe limitation for development.

"Open Storage." Storage of material outside of a building.

"Out-Patient Care." Medical examination or service available to the public in a hospital. This service is provided without overnight care and shall be considered a separate, independent, principal use when combined or operated in conjunction with a hospital.

"Overburden." The earth, rock and other materials that lie above a natural deposit of mineral.

"Outlot." A lot remnant or parcel of land left over after platting, which is intended as open space or other future use, and upon which no structure is to be located and for which no building permit shall be issued.

"Owner." An individual, association, syndicate, partnership, corporation, trust or any other legal entity holding an equitable or legal ownership interest in land, buildings, structures, dwelling unit(s) or other property.

"Parcel." An individual lot or tract of land.

"Parking Space (Off-Street)." An area of such shape and dimensions as provided by this Ordinance, enclosed in the principal building, in an accessory building, or unenclosed, sufficient in size to store one motor vehicle, which has adequate access to a public street or alley and permitting satisfactory ingress and egress of an automobile.

"Performance Standard." Criterion established for setbacks, fencing, landscaping, screening, drainage, accessory buildings, outside storage and to control noise, odor, toxic or noxious matter, vibration, fire and explosive hazards, or glare or heat or other nuisance elements generated by or inherent in uses of land or buildings.

"Permitted Use." A use which may be lawfully established in a particular district or districts, provided it conforms with all requirements, regulations, and performance standards (if any) of such districts.

"Person." Any individual or legal entity.

"Planned Unit Development."

- A. As a conditional use permit, a development procedure whereby internal site design standard deviations from this Ordinance may be allowed in order to accommodate two or more principal structures, and/or facilitates improved site design and operation.
- B. As a zoning district, a development procedure whereby a mixing of buildings and uses can occur which cannot be otherwise addressed under this Ordinance, and/or whereby internal site design standard deviations from this Ordinance may be allowed to improve site design and operation.

"Planning Commission." The Wayzata Planning Commission.

"Principal Use." The main use of land or buildings as distinguished from subordinate or accessory uses. A "principal use" may be either permitted or conditional.

"Protective Covenants." Contracts entered into between all owners and holders of mortgage constituting a restriction on the use of property within a subdivision for the benefit of the property owners, and providing mutual protection against undesirable aspects of property value and economic integrity of any given area.

"Public Uses." Uses owned or operated by municipal, school districts, county, state, or other governmental units.

"Public Utility." Any person, firm, corporation, municipal department or board fully authorized and furnishing under municipal regulation to the public electricity, gas, steam, communication services, cable television, telegraph services, transportation, water or the like.

"Publication." Notice placed in the official City newspaper stating time, location and date of meeting and description of the topic.

"Quadraminiums." Single structures which contain four subdivided dwelling units all of which have individually separate entrances from the exterior of the structure.

"Railroad Right-of-Way." A strip of land with railway tracks and auxiliary facilities for track operation.

"Recreation, Field or Building." An area of land, water, or any building in which amusement, recreation or athletic sports are provided for public or semi-public use, whether temporary or permanent, except a theatre, whether provision is made for the accommodation of an assembly or not. A golf course, arena,

baseball park, stadium, circus or gymnasium is a recreation field or building for the purpose of this Ordinance.

"Recreational Vehicle." Includes manufactured homes less than 30 feet in overall length, including those with telescope or fold down, chassis, mounted campers, house cars, motor homes, tent trailers, slip-in-campers (those mounted in a pickup truck or similar vehicle), converted buses, and converted vans used primarily for recreational purposes. Cars utilized for racing shall not be included in this definition.

"Residential Care Facility." Any facility licensed by the State Department of Health or Department of Public Welfare, public or private, which for gain or otherwise regularly provides one or more persons with 24 hour per day substitute for care, food, lodging, training, education, supervision, habilitation, rehabilitation and treatment they need, but which for any reason cannot be furnished in the person's own home. Residential facilities include, but are not limited to. State institutions under the control of the Commissioner of Public Welfare, foster homes, halfway houses, residential treatment centers, maternity shelters, group homes, residential programs or schools for handicapped children.

"Restaurant." An establishment which serves food in or on non-disposable dishes to be consumed primarily while seated at tables or booths within the building.

"Retail." The sale of items in small quantities directly to the consumer.

"Roof Line." Is defined as the top of the coping; or, when the building has a pitched roof, at the intersection of the outside wall with the roof.

"Roomer." One who rents a room and eats meals elsewhere.

"Satellite Dish." Shall mean a combination of:

- A. Antenna or dish antenna whose purpose is to receive communication or other signals from orbiting satellites and other extraterrestrial sources;
- B. A low-noise amplifier (LNA) which is situated at the focal point of the receiving component and whose purpose is to magnify and transfer signals;
- C. A coaxial cable whose purpose is to carry the signals into the interior of the building.

"Satellite Dish Height." Shall mean the height of the antenna or dish measured vertically from the highest point of the antenna or dish when positioned for operation, to the top of the foundation which supports the antenna.

"School." A building used for the purpose of elementary or secondary education, which meets all the requirements of compulsory education laws of the State of Minnesota, and not providing residential accommodations.

"Semi-Public Use." Uses owned by private or private non-profit organizations which are open to some, but not all, of the public, such as denominational cemeteries, private schools, clubs, lodges, recreation facilities, churches, etc.

"Septic Sewer System." A septic sewer disposal system consists of. septic tank, absorption field of standard trenches or a dry well, house sewer and outlet sewer. In the septic tank, bacterial action breaks down sewage. Standard trenches or a dry well handles final disposal of liquid from the septic tank. The house sewer brings wastes to the tank and the outlet sewer carries sewage liquids (effluent) from the absorption field.

"Setback." The minimum horizontal distance between a structure and the property line nearest thereto; within Shoreland Districts it shall also mean the minimum horizontal distance between a structure or a sewage treatment system and the ordinary high water level. For purposes of earth shelter buildings only,

above grade portions shall be used in determining setback requirements. Distances are to be measured from the most outwardly extended portion of the structure at ground level, except as provided herein after.

"Shopping Center." An integrated grouping of commercial stores, under single ownership or control.

"Shoreland Related."

- A. **"Bluff."** A topographic feature such as a hill, cliff, or embankment having the following characteristics (an area with an average slope of less than 18 percent over a distance for 50 feet or more shall not be considered part of the bluff):
 - 1. Part of all of the feature is located in a shoreland area.
 - 2. The slope rises at least 25 feet above the ordinary high water level of the waterbody.
 - 3. The grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level averages 30 percent or greater.
 - 4. The slope must drain toward the waterbody.
- B. **"Bluff Impact Zone."** A bluff and land located within 20 feet from the top of a bluff.
- C. **"Boathouse."** A structure designed and used primarily for the storage of boats or boating equipment.
- D. **"Commercial Planned Unit Development."** Uses that provide transient, short-term lodging spaces, rooms, or parcels and their operations are essentially service-oriented. For example, hotel/motel accommodations, resorts, recreational vehicle and camping parks, and other primarily service-oriented activities are commercial planned unit developments.
- E. **"Commissioner."** The Commissioner of the Department of Natural Resources.
- F. **"Deck."** A horizontal, unenclosed platform with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site and at any point extending more than three feet above ground.
- G. **"Guest Cottage."** A structure used as a dwelling unit that may contain sleeping spaces and kitchen and bathroom facilities in addition to those provided in the primary dwelling unit on a lot.
- H. **"Intensive Vegetation Clearing."** The complete removal of trees or shrubs in a contiguous patch, strip, row or block.
- I. **"Ordinary High Water Level."** The boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowage, the ordinary high water level is the operating elevation of the normal summer pool.
- J. **"Public Waters."** Any waters as defined in Minn. Stats. § 103G.005, Subdivisions 14 and 15. However, no lake, pond, or flowage of less than ten acres in size in municipalities and 25 acres in size in unincorporated areas need be regulated for the purposes of Minn. R., parts 6120.2500 to 6120.3900. A body of water created by a private user where there was no previous shoreland may, at the discretion of the local government, be exempted from Minn. R., parts 6120.2500 to 6120.2900.
- K. **"Public Waters—General Development (GD)."** Large, deep lakes or lakes of varying sizes and depths with high levels and mixes of existing development. These lakes often are extensively used for recreation and, except for the very large lakes, are heavily developed around the shore. Second and third tiers of development are fairly common. The larger examples in this class can accommodate additional development and use.

-
- L. **"Public Waters—Recreational Development (RD)."** Medium sized lakes of varying depths and shapes with a variety of landform, soil, and ground water situations on the lands around them. They often are characterized by moderate levels of recreational use and existing development. Development consists mainly of seasonal and year-round residences and recreationally-oriented commercial uses. Many of these lakes have capacities for accommodating additional development and use.
 - M. **"Sensitive Resource Management."** The preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over ground water or bedrock, highly erosive or expansive soils, steep slopes, susceptibility to flooding, or occurrence of flora or fauna in need of special protection.
 - N. **"Sewer System."** Pipelines or conduits, pumping stations, and force main, and all other constructions, devices, appliances, or appurtenances used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.
 - O. **"Shore Impact Zone."** Land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the structure setback.
 - P. **"Shoreland."** Land located within the following distances from public waters. One thousand feet from the ordinary high water level of a lake, pond, or flowage; and 300 feet from a river or stream, or the landward extent of a floodplain designated by Ordinance on a river or stream, whichever is greater. The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the commissioner.
 - Q. **"Significant Historic Site."** Any archaeological site, standing structure, or other property that meets the criteria for eligibility to the National Register of Historic Places or is listed in the State Register of Historic Sites, or is determined to be an unplatted cemetery that falls under the provisions of Minn. Stats. § 307.08. A historic site meets these criteria if it is presently listed on either register or if it is determined to meet the qualifications for listing after review by the Minnesota State Archaeologist or the Director of the Minnesota Historical Society. All unplatted cemeteries are automatically considered to be significant historic sites.
 - R. **"Steep Slope."** Land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and the site's soil characteristics, as mapped and described in available county soil surveys or other technical reports, unless appropriate design and construction techniques and farming practices are used in accordance with the provisions of this Ordinance. Where specific information is not available, steep slopes are lands having slopes over 12 percent, as measured over horizontal distances of 50 feet or more, that are not bluffs.
 - S. **"Surface Water-Oriented Commercial Use."** The use of land for commercial purposes, where access to and use of a surface water feature is an integral part of the normal conductance of business. Marinas, resorts, and restaurants with transient docking facilities are examples of such use.
 - T. **"Toe of the Bluff."** The point on a bluff where there is, as visually observed, a clearly identifiable break in the slope, from gentler to steeper slope above. If no break in the slope is apparent, the toe of the bluff shall be determined to be the lower end of a 50-foot segment, measured on the ground, with an average slope exceeding 18 percent.
 - U. **"Top of the Bluff."** The point on a bluff where there is, as virtually observed, a clearly identifiable break in the slope, from steeper to gentler slope above. If no break in the slope is apparent, the top of the bluff shall be determined to be the upper end of a 50-foot segment, measured on the ground, with an average slope exceeding 18 percent.
 - V. **"Water-Oriented Accessory Structure or Facility."** A small, above ground building or other improvement, except stairways, fences, docks, and retaining walls, which, because of the relationship

of its use to a surface water feature, reasonably needs to be located closer to public waters than the normal structure setback. Examples of such structures and facilities include boathouses, gazebos, screen houses, fish houses, pump houses, and detached decks.

"Sign Related."

- A. **"Artificial light."** Illumination resulting from internal or external artificial light sources, including glare and reflected light byproducts of artificial light sources.
- B. **"Address Sign."** A sign communicating only a street address.
- C. **"Advertising Sign."** Any permanent non-governmental sign advertising products, services, commodities, entertainment or other activity not offered at the location of the sign or not exclusively related to the premises on which the sign is located.
- D. **"Alteration."** Any change to a sign excluding routine maintenance, repair, painting or change of copy of any existing sign.
- E. **"Awning, Canopy or Marquee Sign."** A sign that is permanently or semi-permanently affixed to an awning, canopy, marquee or other similar device.
- F. **"Banners."** Attention getting devices which resemble flags and are of a paper, cloth or plastic-like consistency.
- G. **"Building Facade."** That portion of any exterior elevation of a building extending from grade to the top of the parapet wall or eaves and the entire width of the building elevation.
- H. **"Copy."** The wording on a sign surface either permanent or removable letter form.
- I. **"Directional Sign."** An on-site sign for the purpose of making specific locations known and to assist in finding these locations (e.g. "Parking," "Shipping Receiving Area").
- J. **"Directory Sign, Private."** An exterior information wall sign, or a free-standing sign identifying the names of residences, businesses or professional offices served by a common public entrance such as an apartment complex, shopping center, or office building.
- K. **"Directory Sign, Public."** A sign, group of signs on a sign panel or any identifiable object intended to communicate a public message or direction when located on public property as may be approved by the Wayzata City Council.
- L. **"District."** A specific zoning district as defined in the City Zoning Ordinance.
- M. **"Flashing Sign."** Any sign which contains an intermittent or flashing light source or which includes the illusion of intermittent or flashing light by means of animation, or an externally-mounted intermittent light source.
- N. **"Freestanding Sign."** A self-supporting sign affixed to a freestanding frame structure not attached to a building.
- O. **"Gross Surface Area."** The entire area in square feet within a single continuous perimeter enclosing the extreme limits of the complete message of any sign, which limits shall include the surface on which the message is affixed, except that if individual letters of the message are affixed directly to the surface of a wall the maximum height and width of the message shall apply. Such perimeter shall not include any structural elements lying outside the limits of the sign surface which do not form an integral part of the sign message, except where the sign structure is held by the City Manager to be larger than is required for structural strength.

-
- P. **"Ground or Low Profile Sing."** A sign not supported by exposed posts or poles which is architecturally designed and located directly at grade, and where the base width dimension is 50 percent more of the greatest width of the sign. Also called monument sign. Also called a Low Profile Sign.
- Q. **"Holiday or Seasonal Sign."** Signs such as religious decorations, etc. or those used for a historic holiday or special event and displayed for a limited period of time.
- R. **"Identification Sign."** A sign which identifies the business, owner, manager, resident or address of the premises where the sign is located and which contains no other material.
- S. **"Illuminated Sign."** A sign illuminated by an artificial light source either directed upon it or illuminated from an interior source.
- T. **"Integral Sign."** A sign carrying the name of a building, its date of erection, monumental citations, commemorative tablets and the like when carved into stone, concrete or similar material or made of bronze, aluminum or other permanent type of construction and made an integral part of the structure.
- U. **"Monument Sign."** A sign not supported by exposed posts or poles which is architecturally designed and located directly at grade, and where the base width dimension is 50 percent more of the greatest width of the sign. Also called a ground sign or low profile sign.
- V. **"Parapet."** A low wall which is located on a roof of a building.
- W. **"Political Sign."** A sign used exclusively to call attention to the candidacy of any individual or party for elective office which appears on the official ballot to be voted upon by the citizens of the City.
- X. **"Portable Sign."** A sign advertising a product or service so designed as to be movable from one location to another and not permanently attached to the ground or a structure.
- Y. **"Principal Frontage."** The wall of the principal building on a lot which fronts toward the principal public streets.
- Z. **"Projecting Sign."** Any sign which projects over 12 inches from the front edge of a roof structure and/or building facade.
- AA. **"Pylon Sign."** A sign supported by a column-type structure that is set firmly in or below ground surface and finished in a material consistent with the sign.
- BB. **"Real Estate Sign."** A business sign placed only upon a property advertising that particular property for sale, for rent or for lease.
- CC. **"Roof Sign."** A sign erected upon or against a sloping roof but no extending above or beyond the roof line.
- DD. **"Setback Line."** The minimum horizontal distance between a property line and the nearest edge of the sign, base or support structure.
- EE. **"Sign."** A name, identification, description, display or illustration which is affixed to or represented directly or indirectly upon an awning, canopy, marquee, building, structure or piece of land which directs attention to an object, product, place, activity, person, institution, organization or business, a "sign" shall not include any official court or other public notices, nor shall it include the flag, emblem or insignia of a nation, political unit, school or religious, service or fraternal group.
- FF. **"Sign Height."** Sign height shall be determined from the base of the sign structure to the peak of the sign.
- GG. **"Sign Structure."** The supports, uprights, bracing, foundations and framework of any structure which supports or is capable of supporting any sign as defined herein.

-
- HH. **"Swinging Sign."** A sign installed on an arm or spar, that is not, in addition, permanently fastened to an adjacent wall or upright pole.
- II. **"Temporary Sign."** A sign erected or displayed for a specific period of time.
- JJ. **"Time and/or Temperature Sign."** A sign that displays the current time and/or temperature without advertising material, company name, logo or other identifying marks.
- KK. **"Total Allowable Sign Area."** The maximum allowable gross surface area in square feet of a sign or signs. The maximum number of signs cannot be arranged and integrated so as to create a surface area in excess of this requirement.
- LL. **"Traffic Sign."** A sign which is erected by a governmental unit for the purpose of directing or guiding traffic.
- MM. **"UL Approved."** A device which has been approved by the "Underwriters' Laboratories (48)," a U.S. non-profit organization which establishes standards for electrical equipment.
- NN. **"Wall Sign."** A single-faced sign attached to or painted on an exterior wall of a building, parallel to the building wall and which does not project more than 12 inches from the plane of the building.
- OO. **"Window Sign."** A sign that is placed inside a window or upon the window or upon the windowpanes or glass and is visible from the exterior of the window. This does not include merchandise on display.
- "Site Plan."** A map drawn to scale depicting the development of a tract of land, including, but not limited to, the location and relationship of structures, streets, driveways, recreation areas, parking areas, easements, utilities, landscaping, and walkways, as related to a proposed development.
- "Slope."** Means the degree of deviation of a surface from the horizontal, usually, expressed in percent of degrees.
- "Solar Energy System."** Any solar collector or other solar device or any structural design of a building whose primary purpose is to collect, convert and store solar energy for useful purposes including heating and cooling of buildings, domestic water heating, electric power generation and other energy using processes.
- "Spot Zoning."** A zoning situation where a property or group of properties is unjustifiably zoned differently from adjacent properties, and is not sufficiently unique from such adjacent properties to justify a different zoning classification, nor is such action in compliance with the Comprehensive Plan.
- "Stacking Area."** That area which allows for a line of automobiles in such instances as drive-up tellers and other vehicle service areas.
- "Story."** That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, including below ground portions of earth sheltered buildings, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, or unused under floor space is more than six feet above grade as defined herein for more than 50 percent of the total perimeter or is more than 20 feet above grade as defined herein at any point, such basement or unused under floor space shall be considered as a story.
- "Story, First."** The lowest story in a building which qualifies as a story, as defined herein, except that a floor level in a building having only one floor level shall be classified as a first story, provided such floor level is not more than four feet below grade, as defined herein, for more than 50 percent of the total perimeter or not more than eight feet below grade, as defined herein, at any point.
- "Street."** A public right-of-way for vehicular traffic, whether designated as a highway, thoroughfare, arterial, parkway, collector, through-way, road, avenue, boulevard, lane, place, drive, court or otherwise designated,

which has been dedicated or deeded to the public for public use and which affords principal means of access to abutting property.

"Street—Collector." Collector roadways provide a balance between land access and mobility. Their primary function is to move traffic from the local street system to the arterial system. When collectors intersect with arterials, traffic signals generally control traffic. Intersections with local streets are usually under stop sign control with collector streets having their right-of-way.

"Street—Local." Local streets provide local land access with limited emphasis on mobility. Local streets account for 65 percent to 80 percent of the total road system mileage but carry only ten percent to 30 percent of the total traffic. In a residential setting, driveways are freely permitted and intersections of local streets are often uncontrolled. Stop signs are usually installed where traffic control is required such as at intersections with collector streets.

"Street—Minor Arterial." Minor arterials make up the class of roadways including other state highways, certain county roads and major city streets. These roads primarily provide mobility, carrying short to medium length trips (two to six miles), and have controlled land access. Minor arterials as a group account for about 15 percent to 25 percent of the total mileage and carry roughly one-fourth of all traffic for the metropolitan roadway system. Minor arterials generally are given the traffic right-of-way over local streets and they usually have traffic signals at intersections with other minor arterials and some collector streets.

"Street—Intermediate Arterial." The intermediate arterial category was developed by the City of Wayzata and is not included in the Metropolitan Council's Development Guide. Intermediate arterials function at a level between the minor arterial and major arterial categories. Intermediate arterials are not limited access facilities but serve primarily trips between rather than within subregions.

"Street—Principal (Major) Arterial." Major arterials provide a high level of mobility between subregions, serving medium to long distance trips. Principal arterials are grade separated or have high capacity controlled at-grade intersections. No parking is permitted, the posted speed limit is typically 40—55 mph and traffic volumes range from 10,000 to 50,000 ADT. The Metropolitan Council recommends that major arterials be spaced one to three miles apart.

"Street Pavement." The wearing or exposed surface of a street or roadway used by vehicular traffic.

"Street Width." The shortest distance between the lines delineating the right-of-way of a street.

"Structure." Anything which is built, constructed or erected; an edifice or building of any kind; or any piece of work artificially built up and/or composed of parts joined together in some definite manner whether temporary or permanent in character. Among other things, structures including, but not limited to, buildings, decks, walls, fences, and swimming pools.

"Structural Alteration." Any change, other than incidental repairs, which would prolong, or modify the life of the supporting members of a building, such as bearing walls, columns, beams, girders, or foundations.

"Surveyor." A land surveyor registered under Minnesota State laws.

"Swimming Pool." A structure designed to be used for swimming which has a capacity of 3,000 gallons or more or which has a depth of over 36 inches.

"Taproom (Brewery)." An area for the on-sale consumption of malt liquor produced by the brewer for consumption on the premises of a brewery. A taproom may also include sale for off-premises consumption of malt liquor produced at the brewery location or adjacent taproom and owned by the brewery for off-premises consumption, packaged subject to Minn. Stats. § 240A.301, Subd. 7(b), or its successor.

"Tasting Room (Winery/Distillery)." An area for the on-sale consumption of distilled spirits or wine produced on the premises of one winery or one distillery and in common ownership to the producer of the wine or distilled spirits.

"Townhouses." Structure housing four or more dwelling units contiguous to each other only by the sharing a common wall(s), each such unit having a separate primary entrance to the exterior of the building at or near grade level, such structures to be of the town or row houses type as contrasted to multiple apartment structures.

"Travel Trailer." Any vehicle or structure designed and used for human living quarters which meets all of the following qualifications.

- A. Is not used as the permanent residence of the owner or occupant.
- B. Is used for temporary living quarters by the owner or occupant while engaged in recreational or vacation activities.
- C. Is towed or otherwise transported by its own or by other motive power, on the public streets or highways incidental to such recreational or vacation activity.

The term "travel trailer" shall not include manufactured home. The term "travel trailer" shall include, but not be limited to, campers, camper tents, house trailers, camping trailers, travel trailers, tent trailers and any other self-propelled vehicle constructed to provide living accommodations. (See also the definition of "Recreation Vehicle.")

"Tree Related"

- A. **"City Forester"** means that person appointed as City Forester 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 for each one inch of DBH of the tree. For example, if a tree's DBH is ten inches, then its critical root zone radius is 15 feet (10 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 4½ feet from the ground will be measured at the narrowest point below 4½ feet. Trunks that originate from the ground shall be considered separate trees.
- G. **"Healthy Tree"** means a tree that is in the average or better condition and vitality for the area, as determined by the City Forester.
- H. **"Heritage Tree"** means a Healthy Rapid-Growth Tree that is 30 inches or greater in DBH, a Healthy Standard-Growth Tree that is 25 inches or greater in DBH, or a Healthy Coniferous Tree that is 25 inches or greater in DBH.
- I. **"Landscape Architect"** means a person licensed by the State of Minnesota as a landscape architect.
- J. **"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.
- K. **"Public Infrastructure"** means the construction or maintenance of:
 - a. Collector or arterial roads as defined by the City Transportation Plan;
 - b. Public recreational trails;

-
- c. Stormwater infrastructure;
 - d. Installation or maintenance of trunk utility infrastructure as described in the Comprehensive Sewer or Water Plans; or
 - e. Any essential service or public improvement.
- L. "Rapid-Growth Tree Species" means a species of tree recognized as rapid-growth trees by the City Forester, including cottonwood, poplar/aspen, box elder, willow, silver maple, elm, mulberry, and ash.
- M. "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; or
 - d. Any other impact to a tree that comprises the long term health or structural stability of a tree.
- N. "Significant Tree" means a Healthy Standard-Growth Tree that is six inches or greater in DBH, a Healthy Rapid-Growth Tree that is 12 inches or greater in DBH, or a Healthy Coniferous Tree that is 12 feet or greater in height or 12 inches or greater in DBH.
- O. "Site Plan" means the site plan established and described in this Chapter.
- P. "Standard-Growth Tree Species" means a species of tree recognized as standard-growth trees by the City Forester.
- Q. "Structural Root Zone" means the area around a tree with a radius that is equal to three inches for each one inch of DBH of the tree.
- R. "Tree Inch(es)" means the DBH of a tree or trees on a site.
- S. "Tree Preservation Plan" means the tree preservation plan established and described in this Chapter.
- T. "Tree Preservation Zone" means the tree preservation zone established and described in this Chapter.
- U. "Tree Removal Permit" means a permit that is required under this Chapter for tree removal.

"Use." The purpose or activity for which the land or building thereon is designated, arranged, or intended or for which it is occupied, utilized or maintained, and shall include the performance of such activity as defined by the performance standards of this Ordinance. Uses are classified as principal or accessory and as permitted conditional, and prohibited.

"Usable Open Space." A required ground area or terrace area on a lot which is graded, developed, landscaped and equipped and intended and maintained for either active or passive recreation or both, available and accessible to and usable by all persons occupying a dwelling unit or rooming unit on the lot and their guests. Such areas shall be grassed and landscaped or covered only for a recreational purpose. Roofs, driveways and parking areas shall not constitute usable open space.

"Variance." A variance is a relaxation of the terms of this Ordinance where such deviation will not be contrary to the public interest and where, owing to physical conditions unique to the individual property under consideration and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship.

"Veterinary Clinic." Those uses concerned with the diagnosis, treatment and medical care of animals including animal or pet hospitals.

"Warehousing." The storage of materials or equipment within an enclosed building.

"Waterbody." Means a body of water (lake, pond) or a depression of land or expanded part of a river, or an enclosed basin that holds water and is surrounded by land.

"Watercourse." A channel or depression through which water flows, such as rivers, streams, creeks, and may flow year-round or intermittently.

"Watershed." The area drained by the natural and artificial drainage system, bounded peripherally by a bridge or stretch of high land dividing drainage areas.

"Wetlands Related."

- A. **"Wetland."** Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that in normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands have the following general diagnostic environmental conditions:
1. **"Vegetation."** The prevalent vegetation consists of macrophytes that are typically adapted to areas having hydrologic and soil conditions described above. Hydrophytic species, due to morphological, physiological, and/or reproductive adaptation(s), have the ability to grow, effectively compete, reproduce, and/or persist in anaerobic soil conditions. The period of inundation or soil saturation varies according to the hydrologic/soil moisture regime.
 2. **"Soil."** Soils are present and have been classified as hydric, or they possess characteristics that are associated with reducing soil conditions.
 3. **"Hydrology."** The area is inundated either permanently or periodically at mean water depths less than two meters (6.6 feet), or the soil is saturated to the surface at some time during the growing season of the prevalent vegetation. The period of inundation or soil saturation varies according to the hydrologic/soil moisture regime.

Indicators of vegetation associated with wetlands, of developed under reducing conditions, and of hydrologic conditions that occur in wetlands are listed in the "Corps of Engineers Wetlands Delineation Manual" (U.S.-ACOE, Environmental Laboratory, 1987. Technical Report Y-87-1, U.S. Army Engineer Waterways Experiment Station, Vicksburg, Miss.). As defined here, wetlands also include any watercourse, natural drainage system, water body, stormwater detention basin or wetland that may be subject to periodic flooding, overflow, and/or seasonal high water table.

- B. **"Wetlands Overlay District."** The area containing the wetlands within the City of Wayzata, such wetlands being defined as any watercourse, natural drainage system, water body, stormwater detention basin or wetland that may be subject to periodic flooding, overflow, or seasonal high water table.
- C. **"Accessory Structure."** A structure not intended for human habitation, the structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
- D. **"Wetland District Boundary."** That area located between the calculated 100-year frequency flood elevation and 2½ feet above the 100-year frequency flood elevation.
- E. **"Essential Services."** Those services deemed by the City Council to be necessary for the health, safety and general welfare of residents of the community and surrounding area.
- F. **"Flood Envelope."** Represents the boundary of the Wayzata Overlay District, such boundary being defined as that area located between the calculated 100-year frequency flood elevation and 2½ feet above the 100-year frequency flood elevation.

-
- G. **"Flood Envelope of a Wetland/Detention Basin."** Represents the boundary of the detention basin, such boundary being defined as that area located between the calculated 100-year frequency flood elevation and 2½ feet above the 100-year frequency flood elevation.
 - H. **"Stormwater Detention Basin."** A basin, depression or holding area which is intended or used for the detention or storage of stormwater runoff.
 - I. **"Wetland System District Map."** That map showing the wetland districts within the City of Wayzata. The wetlands are classified pursuant to the "Corps of Engineer Wetlands Delineation Manual" (U.S. ACOE, Environmental Laboratory, 1987. Technical Report Y-87-1, U.S. Army Engineer Waterways Experiment Station, Vicksburg, Miss.), and the "Stormwater Management Plan for the City of Wayzata."
 - J. **"Wetland Systems Impact Plan."** Plan for development of any area within the Wayzata Wetlands Overlay District.

"Wholesaling." The selling of goods, equipment and materials by bulk to another business that in turn sells to the final customer.

"Winery." A facility operated by the owner of a Minnesota farm and producing table, sparkling, or fortified wines from grapes, grape juice, other fruit bases, or honey with a majority of the ingredients grown or produced in Minnesota. A winery may include a tasting room.

"Yard." An open space on the same lot with a building, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein.

"Yard, Depth of." The mean horizontal distance between the line of a building and the lot line.

"Yard, Front." The front yard of a lot shall be considered to be the area extending along the full length of a front lot line between side lot lines and to the depth required in the yard regulations for the district in which it is located.

"Yard, Rear." A space extending between the rear line of the principal building and the rear line of the lot and extending the full width of the lot.

"Yard, Required." That distance specified in the yard requirements pertaining to setbacks. Setbacks and required yards are used interchangeably.

"Yard, Side." A yard between the principal building and the side line of the lot extending from the front to the rear building lines.

"Zero Lot Line." The reduction of side yard setback requirements to zero, permitting the placement of a structure near or adjacent to the side yard lot line. With zero lot line, no portion of the structure or accessory appurtenance shall project over the lot line.

"Zoning Administrator." The duly appointed officer charged with the administration and enforcement of this Ordinance.

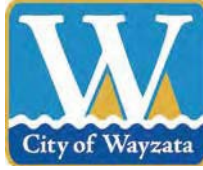
"Zoning Amendment." A change authorized by the City Council either in the allowed use within a district or in the boundaries of the district.

"Zoning District." An area or areas of the City (as delineated on the Zoning Map) set aside for specific uses with specific regulations and provisions for use and development as defined by this Ordinance.

"Zoning District Overlay." A zoning district containing regulations superimposed upon other zoning district regulations and superseding the underlying zoning district use regulations.

"Zoning District Underlying (Base)." All zoning districts except overlay zoning districts.

"Zoning Map." The map or maps incorporated into this Ordinance as part thereof, designating the zoning districts.



WAYZATA PLANNING COMMISSION

May 1, 2023

REPORT AND RECOMMENDATION OF APPROVAL OF ZONING ORDINANCE AMENDMENTS TO CHAPTER 936 RELATED TO TREE PRESERVATION AND SECTION 918.03 RELATED TO FENCING, SCREENING, AND LANDSCAPING

SUMMARY OF RECOMMENDATION

Approval* of Zoning Ordinance Text Amendments to Chapters 936 related to Tree Preservation and Section 918.03 related to Fencing, Screening, and Landscaping

REPORT AND RECOMMENDATION

Section 1. BACKGROUND

- 1.1 Zoning Ordinance Amendments (text). In October 2022, the City adopted amendments to Chapters 519, 710, and 936 of the Zoning Ordinance to help ensure the protection, preservation, and enhancement of the City's trees. Through implementation and enforcement of the new amendments, staff has discovered that additional updates are needed to help with implementation and enforcement of the Tree Preservation Ordinance, Chapter 936, as intended. Staff has also recommended amendments to Chapter 918 (Fencing/Screening) to better align Section 918.03 with the proposed new language of Chapter 936. Staff has prepared the draft Ordinance attached to this Report as Attachment A which would implement these proposed amendments to Chapter 936 and Section 918.03 (the "Zoning Ordinance Amendments").
- 1.2 Notice and Public Hearing. Notice of the public hearing on the Zoning Ordinance Amendments was published in the *Sun Sailor* on April 6, 2023 and on the City's website. The public hearing on the Zoning Ordinance Amendments was held at the April 17, 2023 Planning Commission meeting.

Section 2. STANDARDS

- 2.1 Zoning Ordinance Amendments. City Council has the discretion and authority under state law and City Code to amend the City's Zoning Ordinance (Text or Zoning Map). In considering a proposed amendment to the Zoning Ordinance under Sec. 903.02.F of the Zoning Ordinance, the Planning Commission and City Council must consider the possible adverse effects of the proposed amendment. Their judgment shall be based upon (but not limited to) the following factors:
- A. The proposed action in relation to the specific policies and provisions of the official City Comprehensive Plan.
 - B. The proposed use's conformity with present and future land uses of the area.
 - C. The proposed use's conformity with all performance standards contained in the Zoning Ordinance (i.e., parking, loading, noise, etc.).
 - D. The proposed use's effect on the area in which it is proposed.
 - E. The proposed use's impact upon property value in the area in which it is proposed.
 - F. Traffic generation by the proposed use in relation to capabilities of streets serving the property.
 - G. The proposed use's impact upon existing public services and facilities including parks, schools, streets, and utilities, and the City's service capacity.

Section 3. FINDINGS OF FACT

Based on the materials submitted by City Staff, the Staff report, information presented at the public hearing, and the standards of the Wayzata Zoning Ordinance, the Planning Commission of the City of Wayzata makes the following findings of fact:

- 3.1 Zoning Ordinance Amendments. The Planning Commission has considered all of the factors of Sec. 903.02.F of the Zoning Ordinance and finds that the proposed Zoning Ordinance Amendments would not have any adverse effects, and would better ensure the protection, preservation, and enhancement of the City's trees by making clarifications, corrections and improvements to the language of Chapter 936 in accordance with recent updates to the Chapter. The Zoning Ordinance Amendments would also better align Section 918.03 with the proposed new language of Chapter 936. The Zoning Ordinance Amendments meet the applicable standards in that:

- A. The Zoning Ordinance Amendments do not contravene any policies and provisions of the official City Comprehensive Plan, and would instead help implement several of them noted in the April 17, 2023 Staff Report and in previous Zoning Ordinance amendments for Chapter 936.
- B. The Zoning Ordinance Amendments would conform with the present and future land uses within the City in that they would provide a clearer set of regulations for tree preservation and enhancement in the City, and which would further the City's goals of sustainability, conservation and reduction of negative environmental impacts.
- C. The Zoning Ordinance Amendments would conform with all performance standards contained in the Zoning Ordinance, and provide a clearer set of regulations for tree preservation and enhancement in the City.
- D. The Zoning Ordinance Amendments would not have a negative effect on any areas of the City, including residential and commercial areas.
- E. The Zoning Ordinance Amendments would not have any significant adverse effect overall on property values in the City.
- F. There would be no effects on traffic generated by the Zoning Ordinance Amendments.
- G. The Zoning Ordinance Amendments would not negatively impact existing public services and facilities including parks, schools, streets, and utilities, and the City's service capacity, and would instead provide a clearer set of regulations for tree preservation and enhancement in the City, and further the City's goals of sustainability, conservation and reduction of negative environmental impacts.

Section 4. RECOMMENDATION

- 4.1 Planning Commission Recommendation. Based on the findings in section 3 of this Report, the Planning Commission recommends **APPROVAL** of the Zoning Ordinance Amendments.

Adopted by the Wayzata Planning Commission this 1st day of May 2023.

Attachments:

Attachment A: Ordinance to Amend Zoning Ordinance with Proposed Amendments

Attachment A

CITY OF WAYZATA

HENNEPIN COUNTY, MINNESOTA

DRAFT ORDINANCE NO. 825

CHAPTER 936 TREE PRESERVATION

936.01 Purpose and Intent.

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

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

936.02 Definitions.

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

- A. **"City Forester"** means that person appointed as City Forester in Section 710.02.
 - B. **"Coniferous Tree"** means a woody plant bearing seeds and cones oftentimes, but not always, retaining foliage throughout the year.
 - C. **"Construction Area"** means any area in which movement of earth, alteration in topography, soil compaction, disruption of vegetation, change in soil chemistry, or any other change in the natural character of the land occurs as a result of site preparation, grading, building construction or any other construction activity.
 - D. **"Critical Root Zone"** means the area around a tree measured from the trunk of the tree with a radius that is equal to 1.5 feet for each one inch of DBH of the tree. For example, if a tree's DBH is ten inches, then its critical root zone radius is 15 feet (10 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 4½ feet from the ground will be measured at the narrowest point below 4½ feet. Trunks that originate from the ground shall be considered separate trees.
 - G. **"Healthy Tree"** means a tree that is in the average or better condition and vitality for the area, as determined by the City Forester.
 - H. **"Heritage Tree"** means a Healthy Rapid-Growth Tree that is 30 inches or greater in DBH, a Healthy Standard-Growth Tree that is 25 inches or greater in DBH, or a Healthy Coniferous Tree that is 25 inches or greater in DBH.
 - I. **"Landscape Architect"** means a person licensed by the State of Minnesota as a landscape architect.
 - J. **"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.
-

-
- K. **"Public Infrastructure"** means the construction or maintenance of:
1. Collector or arterial roads as defined by the City Transportation Plan;
 2. Public recreational trails;
 3. Stormwater infrastructure;
 4. Installation or maintenance of trunk utility infrastructure as described in the Comprehensive Sewer or Water Plans; or
 5. Any essential service or public improvement.
- L. **"Rapid-Growth Tree Species"** means a species of tree recognized as rapid-growth trees by the City Forester, including cottonwood, poplar/aspen, box elder, willow, silver maple, elm, mulberry, and ash.
- M. **"Removal"** or **"Tree Removal"** means:
1. Manual, mechanical, chemical, or abiotic or biotic (fire, water, insects or inoculation) methods which results in the physical removal of a tree;
 2. Grading impact, compaction, or other damage up to 40 percent of a tree's Critical Root Zone;
 3. Excessive pruning that severely impacts the long term survivability of the tree; or
 4. Any other impact to a tree that comprises the long term health or structural stability of a tree.
- N. **"Significant Tree"** means a Healthy Standard-Growth Tree that is six inches or greater in DBH, a Healthy Rapid-Growth Tree that is 12 inches or greater in DBH, or a Healthy Coniferous Tree that is 12 feet or greater in height or 12 inches or greater in DBH.
- O. **"Site Plan"** means the site plan established and described in this Chapter.
- P. **"Standard-Growth Tree Species"** means a species of tree recognized as standard-growth trees by the City Forester.
- Q. **"Structural Root Zone"** means the area around a tree with a radius that is equal to three inches for each one inch of DBH of the tree.
- R. **"Tree Inch(es)"** means the DBH of a tree or trees on a site.
- S. **"Tree Preservation Plan"** means the tree preservation plan established and described in this Chapter.
- T. **"Tree Preservation Zone"** means the tree preservation zone established and described in this Chapter.
- U. **"Tree Removal Permit"** means a permit that is required under this Chapter for tree removal.

936.03 Establishment of Tree Preservation Zone.

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

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

936.04 City Forester Role.

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

936.05 Tree Removal Permit Requirement.

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

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

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

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

- A. Submission of a completed Tree Removal Permit Application and other required submittals to the City
- B. City staff review of the Application and determination if the Application is complete
- C. Submission of any required tree escrow payment to cover tree replacement
- D. Staff approval or denial of the Tree Removal Permit
- E. If the Permit is approved, removal of the trees covered by the Permit can commence by the property owner or a licensed tree contractor under City Code Ch. 519

936.06 Tree Replacement Thresholds.

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

- A. **Subdivision, Public Infrastructure, Construction of Single-Family Home.** The following tree removal thresholds shall apply to all Subdivisions, Public Infrastructure projects, and construction of single-family homes.
 - 1. Heritage Trees. Heritage Trees are valued and special trees for the City of Wayzata due to their size and age. All practical measures must be taken to preserve Heritage Trees. Heritage Tree removal may occur only when there is not a practical alternative. There shall be a zero percent removal threshold of Heritage Trees, meaning every DBH inch of Heritage Tree removed requires full replacement in accordance with the standards of Section 936.09, in addition to any other requirements hereunder.
 - 2. Significant Trees. Although the City encourages preservation of the maximum amount of trees possible, the City recognizes that a certain amount of Significant Trees removal is sometimes necessary during development. Accordingly, 25 percent (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 25 percent will require replacement in accordance with the standards of Section 936.09.
 - 3. Public Infrastructure. The City Council may waive the tree replacement requirements of this Section for Public Infrastructure projects if the City Council makes a finding that the tree replacement requirement would create an undue financial or other burden on the project, and the public benefits of the Public Infrastructure project outweigh the benefits of the required tree replacement.
- B. **Land Disturbance Permits, Design Review, and Expansions to Single-Family Homes.** The following tree removal thresholds apply to projects that require a Land Disturbance Permit under City Code Section 409.05, projects that require Design Review under City Code Section 909.04.B, and expansions or additions to an existing single-family home:
 - 1. Heritage Trees. Heritage Trees are valued and special trees for the City of Wayzata due to their size and

age. All practical measures must be taken to preserve Heritage Trees. Heritage Tree removal may occur only when there is not a practical alternative. There shall be a zero percent removal threshold of Heritage Trees, meaning every DBH inch of Heritage Tree removed requires full replacement in accordance with the standards of Section 936.09 in addition to any other requirements hereunder.

2. Significant Trees. The City recognizes that additional tree removal may occur after the construction of new houses or commercial developments, or the expansion of existing homes or commercial developments, but to a lesser degree than the original development. Therefore, ten percent (10%) of the existing DBH inches of trees can be removed without obligation of replacement. Any removal beyond ten percent will require replacement in accordance with the standards of Section 936.9.
- C. **Heritage Tree Removal.** Heritage trees removed in connection with a project not listed in Sections 936.06.A and 936.06.B shall be replaced at a ratio of one (1) inch to one (1) inch DBH removed in accordance with the standards of Section 936.09.
- D. **Trees Exempt From Replacement Requirements.** The following types of trees shall not be included as part of the tally of tree removals for purposes of calculating replacement in accordance with the standards within Section 936.09:
1. Dead, Diseased, Dying, or Hazard Trees as determined by the City Forester prior to removal; or
 2. Trees that are transplanted from the site to another appropriate location within the City as approved by the City Forester; or
 3. Trees that were planted as part of a commercial business such as a tree farm or nursery; or
 4. Trees that are structurally unstable and pose a risk to people or permanent structures, as deemed by a certified arborist with a Tree Risk Assessment Qualification and the City Forester.
 5. Significant trees that are not part of any project not listed in 936.06.A or 936.06.B.
- E. **Trees Included for Structural Root Zone Disturbance.** Any tree with a Structural Root Zone that will be disturbed in any way in connection with a project listed in Sections 936.06.A and 936.06.B must be (i) inventoried and removed prior to grading or excavation, and (ii) included as part of the tally of tree removals for purposes of calculating replacement in accordance with the standards within Section 936.09.

936.07 Tree Preservation Plan.

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

- A. The name(s) and address(es) of property owners and applicants.
 - B. Delineation of the buildings, structures, impervious surfaces, utilities, and other site improvements situated thereon or contemplated to be constructed thereon.
 - C. Delineation of all areas to be graded and limits of land disturbance, including the contouring of all areas to be graded.
-

-
- D. Size, species, location and condition of all Significant and Heritage Trees located on the property as well as on adjacent properties where the Critical Root Zones of the trees are within the proposed Construction Area. The size of Deciduous Trees must be recorded in DBH and the size of Coniferous Trees must be recorded both in DBH and approximate height.
 - E. Identification of all Dead, Diseased, Dying and Hazard Trees.
 - F. The Critical Root Zone of all Significant and Heritage Trees proposed to be preserved.
 - G. Identification of all Significant and Heritage Trees proposed to be removed within the Construction Area.
 - H. Identification of all Significant and Heritage Trees on all individual lots. The Developer must submit a list of all lot and block numbers identifying those lots.
 - I. Measures to protect Heritage and Significant Trees as outlined in Section 936.08.
 - J. Size, species, and location of all replacement trees to be planted on the property in accordance with the tree replacement requirements.
 - K. Calculations of the total amount of tree inches proposed to be removed, the allowed removal percentage, and tree replacement inches required and proposed.
 - L. Signature of the person preparing the plan and statement which includes acknowledgment of the fact the trees to be used as replacements are appropriate species with respect to survival of the replacement trees.

936.08 Tree Protection.

The following tree protection measures are required:

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

-
5. Transplanting of Significant Trees into a protected area for later moving into permanent location within the Construction Area.
 6. Safety pruning for people working within the construction limits and for the trees involved.
- C. **Construction Protection.** Three (3) years after construction has been completed on residential properties, and five (5) years after construction has been completed for commercial or institutional properties, the City Forester shall inspect trees on a project site for which a Tree Removal Permit has been issued to ensure the health of the trees. If the trees are determined to be dead, dying, or in general poor health because of the construction on the site, the same number of tree inches must be replaced on the site.

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

936.09 Tree Replacement.

- A. **Tree Replacement Formula.** Replacement of removed or disturbed trees in excess of the percentage allowed under Section 936.06 shall be according to the following ratios.
1. All Significant Trees shall be replaced at the ratio of one (1) caliper inch per one (1) inch of DBH removed.
 2. All Heritage Trees removed in connection with a project listed in Sections 936.06.A and 936.06.B shall be replaced at the ratio of two (2) caliper inches per one (1) inch of DBH removed. Heritage trees removed in connection with a project not listed in Sections 936.06.A and 936.06.B shall be replaced at a ratio of one (1) inch to one (1) inch DBH removed.
 3. The height of Coniferous Trees shall count towards the caliper inches of tree replacement or tree removal as follows:
 - a. A 4-6 foot tall coniferous tree shall be equivalent to 2 caliper inches of tree replacement. For every two-foot range in additional coniferous tree height, above six feet, one additional caliper inch shall be counted towards tree replacement (e.g., a 15 foot coniferous tree = 7 caliper inches of replacement).
- B. **Size, Types and Diversification of Replacement Trees.** A Tree Replacement plan must include a diversity of tree species that are suitable for the property given soil conditions, hydrology, topography, and tree pathogens. No more than twenty percent (20%) of the replacement trees planted may be of the same genus unless otherwise approved by the City Forester. If more than 20% of the same genus of trees are planted on the site, the tree inches of the same genus over 20% shall not be included in the total tree inch replacement calculations. The recommended tree replacement species shall be those found on the Hennepin County Recommended Tree List.
- 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 Plants List.
- E. **Tree Replacement Location.** Replacement trees must be located only on the property for which a Tree Replacement Permit has been issued unless the City Council approves tree replacement on neighboring properties with the consent of such property owner and findings that (i) all the options for planting trees on the project site have been exhausted and tree replacement on the site is impractical; and (ii) it will allow additional screening from the neighboring property.
- F. **Tree Replacement Reduction for Preserving Heritage Trees.** Heritage trees that are protected and saved during a construction process, that otherwise had a significant probability of removal or loss based on the construction project, and that are healthy after the construction process, all as determined by the City
-

Forester, may be used to reduce the total number of required tree replacement inches for the project associated with the construction. Such reduction will equate to the total DBH inches of the saved tree.

- G. **Other Replacement Tree Requirements.** Choice of replacement trees species and location of the trees should also take into account the following information:
1. **Soil Composition.** Comparisons should be made between soil conditions and the ecology of the proposed species to make sure they are compatible. This is particularly important for the existing and proposed soil composition for the root balls of spaded and B&B trees.
 2. **Spatial Requirements.** The potential height and crown spread of the proposed replacement trees should be known. Generally, half of the adult tree crown diameter is the amount of distance a tree should be planted from any aboveground objects.
- H. **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.
- I. **Fee-In-Lieu of Tree Replacement or Replacement Trees Planted in Public Areas.** The City recognizes that there may be instances where the total amount of tree replacement required under this section cannot occur on site. In those instances, the City may, at its option, accept a fee-in-lieu of tree replacement or allow the planting of replacement trees in public areas. Tree replacement is encouraged to happen on site as much as possible and fee in lieu-of-tree replacement should be used only when replacement on site is not feasible. The amount of fee-in-lieu of tree replacement will be determined annually by the City Council through the City fee schedule.

936.10 Past Tree Removal.

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

936.11 Financial Guarantee.

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

-
3. Second year inspection determining the installed tree is still healthy: 15 percent of the financial guarantee for that tree shall be released.
 4. Third year inspection determining the installed tree is still healthy: 20 percent of the financial guarantee for that tree shall be released.

936.12 Penalties.

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

918.03 Required Fencing, Screening and Landscaping.

- A. **Fencing and Screening.** Where any townhouse, quadraminium, manor home, multiple family or non-residential use (i.e., structure, parking or storage) abuts property zoned for residential use, the higher density residential or the non-residential use shall provide screening along the boundary of the residential property. Screening shall also be provided where a non-residential use is across the street from a residential zone, but not on that side of a non-residential use considered to be the front (as determined by the Zoning Administrator). All the fencing and screening specifically required by this Ordinance shall be subject to Section 916.05 and shall consist of either a fence or a green belt planting strip as provided for below.
1. A green belt planting strip shall consist of evergreen trees and/or deciduous trees and plants and shall be of sufficient width and density to provide an effective visual screen. This planting strip shall be designed to provide complete visual screening to a minimum height of six feet. Earth mounding or berms may be used but shall not be used to achieve more than three feet of the required screen. The planting plan and type of plantings shall require the approval of the City Council.
 2. A required screening fence shall be constructed of masonry, brick, wood or metal. Such fence shall provide a solid screening effect of six feet in height. The design and materials used in constructing a required screening fence shall be subject to the approval of the City Council. Fences in excess of height limitations established in Section 918.01 shall require approval pursuant to procedures noted.
- B. **Landscaping—New Residential Subdivisions, Semi-Public and All Income Producing Property Uses.** (Excluding residential structures containing less than four dwelling units.) Prior to approval of a building permit, all above referenced uses shall be subject to mandatory landscape plan and specification requirements. Said landscape plan shall be developed with an emphasis upon the boundary or perimeter of the proposed site at points adjoining other property and the immediate perimeter of the structure. All landscaping incorporated in said plan shall conform to the following standards and criteria:
1. All plants must be at least equal the following minimum size:

Shade Trees*	1-inch diameter
Half Trees (Flowering Crabs, Hawthorn, etc.)	6- to 7-foot high
Evergreen Trees	6- to 7-foot high
Tall Shrubs and Hedge Material (Evergreen or Deciduous)	3- to 4-foot high
Low Shrubs-Deciduous	18- to 24-inch
Evergreen	18- to 24-inch
Spreading Evergreens	18- to 24-inch

Type and mode are dependent upon time of planting season, availability, and site conditions (soils, climate, ground water, manmade irrigation, grading, etc.)

2. Spacing.
 - a) Plant material centers shall not be located closer than three feet from the fence line or property line and shall not be planted to conflict with public plantings based on the judgement of the Zoning Administrator.
 - b) Where plant materials are planted in two or more rows, plantings shall be staggered in rows unless otherwise approved by the Zoning Administrator.
-

-
- c) Where massing of plants or screening is intended, large deciduous shrubs shall not be planted more than four feet on center, and/or evergreen shrubs shall not be planted more than three feet on center.
 3. Species listed by the Minnesota Department of Agriculture (MDA) as “prohibited” or “restricted” shall not be included in any landscape plan.
 4. Species listed by the MDA as “regulated” may only be utilized according to their species-specific regulations.
 5. Design.
 - a) The landscape plan shall show site amenities, (i.e., composition of plant materials, and/or creative grading, decorative lighting, exterior sculpture, etc.) which are largely intended for aesthetic purposes.
 - b) All areas within the property lines (or beyond, if site grading extends beyond) shall be treated. All exterior areas not paved or designated as roads, parking, or storage must be planted into ornamental vegetation (lawns, ground covers, or shrubs) unless otherwise approved by the Zoning Administrator.
 - c) Turf slopes in excess of 2.1 are prohibited.
 - d) All ground areas under the building roof overhang must be treated with a decorative mulch and/or foundation planting.
 - e) All buildings must have an exterior water spigot to ensure that landscape maintenance can be accomplished.
 6. Landscape Guarantee. All new plants shall be guaranteed for two full years from the time planting has been completed. All plants shall be alive and in satisfactory growth at the end of the guarantee period or be replaced.
 7. Existing Trees. All existing trees are to be managed in accordance with the standards described in Chapter 936.
-



Staff Report
Wayzata Planning Commission
April 17, 2023

Project Name: Tree Preservation & Fencing/Screening Ordinance Updates
Request: Zoning Text Amendment
Applicant: City of Wayzata
Location of Request: City of Wayzata
Prepared by: Bennett Myhran, City Forester
Nick Kieser, Parks Planner

Development Application Introduction

In October 2022, the City Council approved zoning text amendments to Chapters 519, 710, and 936 to ensure protection, preservation, and enhancement of the natural environment of the community. Through enforcement of the new Ordinance, staff discovered that additional updates are needed to help with enforcement as intended in Chapter 936. Additional text amendments to Chapter 918 (Fencing/Screening) are also proposed to align with the updated language of Chapter 936.

Project Location

The Tree Preservation Ordinance (TPO) is applicable to all properties within the City of Wayzata and not specific to any particular Zoning District. Applicability of the requirements outlined in the TPO are dependent on the proposed plans or activities for a property.

Application Requests

As part of the submitted development application, the applicant is requesting approval of the following items:

- A. Zoning Text Amendment (§903): Staff proposes amendments to Chapter 936 - Tree Preservation Ordinance (TPO) and Chapter 918 – Fencing/Screening.

Public Hearing Notice

Notice of the public hearing on the Application was published in the *Sun Sailor* on April 6, 2023.

Proposed Changes

Staff has worked on approximately 13 Tree Removal Permits since January 24. From the management of those permits, staff has compiled a list of proposed edits to clarify certain sections of code to help enforce the code as intended. A list of the proposed changes is listed below:

Chapter 936 – Tree Preservation

- Add clarification in the Heritage tree definition that the tree must be a **healthy** tree to meet the definition.
 - *The existing definition suggests that the removal of dead, diseased, or hazardous Heritage-sized trees would be included in the tree replacement calculations.*
- Add a definition for the Structural Root Zone (SRZ) of a tree.
- Add a section that bans the preservation of trees with a compromised Structural Root Zone.
 - *A tree's Structural Root Zone is essential for its stability. Any disruption to the SRZ creates an immediate hazard which can lead to uprooting or other sudden failure. Any plan which includes such a conflict must be amended to either better accommodate the tree's preservation or remove and replace it, pending City Forester approval.*
- Update the need for a Tree Removal Permit to include any tree with a diameter of six inches or more, regardless of condition. The requirement currently applies only to Significant and Heritage trees which are defined as healthy trees.
 - *This update is essential for tracking tree pest and pathogen migration through Wayzata. The current requirement only applies to healthy trees, so trees which have succumbed to biotic stress (pest and/or pathogen stress) are undocumented. The permit fee for such trees will be waived.*
- Clarify the Past Tree Removal section to include any tree removal in the past two years in the current Tree Preservation Plan, regardless of the type of development permit being pursued.
 - *The TPO technically does not factor in past removals unless additional removals are being proposed at the time of application.*

Chapter 918 – Fencing/Screening

- Remove the minimums for tree and plant size planting to follow the language in Chapter 936.
 - *This provides consistency and clarity. Smaller tree/plant size also encourages better establishment and less transplant shock. There would be no change to how the replacement inches are calculated. For example, if smaller stock is selected for replacement, more of them would be needed to achieve the required inches.*

-
- Add language to prohibit or restrict plantings based on the Minnesota Department of Agriculture list.
 - Remove the list of suitable trees to follow the language in Chapter 936.
 - *Species compatibility changes too frequently to codify it. It would be more appropriate to cite a third party, reputable organization which is better-suited to maintain such a list.*
 - Change additional language to match Chapter 936.

The proposed changes to Chapter 936 are in response to staff's recent experience with the permitting process on various projects. Chapter 918 was not reviewed during the last zoning text amendment process, so the proposed changes would align Chapter 918 with the recent changes to Chapter 936, 710, and 519.

Staff Recommendation

Staff recommends approval of the Zoning Text Amendment for the proposed changes to Chapter 936 - Tree Preservation Ordinance and Chapter 918 – Fencing/Screening. Staff believes that the proposed changes will help to protect, preserve, and enhance the natural environment of the community, specifically the tree canopy. The proposed changes will also improve the current enforcement of the TPO with better knowledge of staff resources and more efficient staff systems.

Standards of Planning Commission Review of Application Requests Primary Questions to Consider

- Does this text amendment fit with the City's 2040 Comprehensive Plan?
- Do the proposed changes conform to the present and future land uses of the area?
- Do the proposed changes help protect, preserve, and enhance the natural environment of the community?

Action Steps

After considering the items outlined in this report, holding the public hearing on the application, and discussing the requests of the Application, the Planning Commission can should direct staff to prepare a draft *Planning Commission Report and Recommendation for review and adoption at the next Planning Commission meeting.*

Attachments

- Proposed Language for Chapter 936 – Tree Preservation Ordinance
- Proposed Language for Chapter 918 – Fencing/Screening

Applicable Code Provisions for Review

Staff has analyzed the facts provided by the applicant in comparison with the criteria for approval. While several criteria appear to be met, **staff has highlighted in bold** the criteria that may require additional discussion with the Planning Commission.

2040 Comprehensive Plan

Guiding Principles of the Comprehensive Plan

Charming

- **Fostering charm in a community known for its small-town character requires intentionality and purpose.** A stronger focus on design – sending developers back to the proverbial drawing table to bring a more tasteful proposal – is a check that would go a long way. City residents want to connect to the City’s shared spaces. City spaces can be plain, or they can be charming – it is just a question of thoughtfulness. **Visitors and residents connect to places that evoke a sense of belonging, and a sense of nostalgia.** Wayzata – by nature, as it is located on the shore of Lake Minnetonka – evokes these feelings. **The challenge for the City is to make charm an utmost priority not only in new developments but in every aspect of the City’s lifecycle.** Placing emphasis on the arts, for example, is something that allows passers-by and visitors to slow down and enjoy the City. Development should be small and intimate, creating room for “randomness.”

Vibrant Parks and City Spaces

- **Vibrant City parks and City spaces are essential to Wayzata’s future. Parks provide mental health benefits to residents, opportunities for physical activity, and bring the important nature connection to daily routines.** City spaces allow residents and visitors to come together, create a sense of belonging, and encourage walkability. Wayzata, through the upcoming robust Parks and Trails System Master Plan, can revive its park spaces and transform them into inter-generational centers with opportunities and spaces from young families to older generations. Connecting the parks and city spaces are also crucial for Wayzata’s vitality. While Wayzata has plenty of park land, some spaces feel forgotten. The Nature Center is the key example of a place that could be reinvented to further connect residents and visitors with nature, and provide opportunities for physical activity.
- Recreation opportunities can be further enhanced by improved Wayzata parks and recreation. The work currently being carried out through partnerships fostered by the Lake Effect Conservancy (with the YMCA, Wayzata Sailing School, Wayzata School District, Interfaith Outreach, and Science Museum of Minnesota) is a fantastic step in that direction, so the focus should be on enhancing those partnerships and centralizing them at the City level so as to enhance access and grow the number of programs offered.

Environmental Sustainability

- As a prosperous and renowned destination suburb, Wayzata has an opportunity to take the lead on sustainability goals and objectives. In the Vision Survey, 68 percent of respondents believe that Wayzata should ‘Aggressively pursue new sustainability actions and focus.’ The health of Lake Minnetonka’s ecosystem, a City free of visual and noise pollution, and **a City that cares about fostering a healthy, vibrant, and sustainable environment should be Wayzata’s priorities**. A process to streamline the permitting application of green energy sources such as residential solar systems and the encouragement of the use of green sources of energy in large developments was highlighted by stakeholders as a key step in achieving a more sustainable Wayzata. Wayzata could also reduce the number of City landscapes that have high consumption of water and instead opt for more sustainable options. The establishment and operation of a City of Wayzata commission on energy and environment creates an opportunity for Wayzata to determine its sustainability goals and take steps to achieve them. Stakeholders agreed on a balanced but progressive agenda in Wayzata’s sustainability efforts

Zoning Text Amendment (§903)

The Planning Commission shall consider 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.**

1 equipment at 900 Wayzata Boulevard E for review and adoption at the next Planning Commission
2 meeting. The motion carried unanimously.
3

4 **b) Consider Application for Zoning Text Amendments for Chapter 936 – Tree**
5 **Preservation Ordinance and Chapter 918 – Fencing/Screening**
6

7 Parks Planner Kieser and City Forester Bennett Myhran, on behalf of the City as applicant, gave
8 an overview of the proposed Zoning Text Amendments for Chapter 936 – Tree Preservation
9 Ordinance and Fencing/Screening - Chapter 918. He shared background, and reviewed the
10 rationale for the proposed changes. He noted that based on staff's implementation and
11 administration of recent changes to the Tree Preservation Ordinance, Staff recommends approval
12 of the amendments.
13

14 Commissioner Douglas asked about the definition of critical root zones, and if it applied to both
15 coniferous and deciduous trees.
16

17 City Forester Myhran stated that the critical and structural root zones apply to both types of trees,
18 and is a uniform formula regardless of species.
19

20 Commissioner Severson asked what the general feedback has been with the tree removal permit
21 applications that have come in.
22

23 City Forester Myhran stated that the feedback has been mixed, and noted that they have had to
24 make some tweaks to the application process. He explained that their hope is to make it as easy as
25 possible. He stated that his goal would be for it to take just 5 minutes of time to complete an
26 application, and noted that the City values the information that they are able to get from the permit
27 applications because it helps them maintain their own trees. He stated that they have gotten some
28 good, helpful feedback, and noted that overall people seem to be willing to participate, which is
29 encouraging.
30

31 There being no questions from the Commission for staff, Chair Stockton opened the public hearing
32 on the application at 7:44 pm.
33

34 Community Development Director Goellner stated there were no people that called in to the
35 meeting that have asked to speak at the public hearing, and Chair Stockton noted there was no one
36 at the meeting in person that wished to speak.
37

38 There being no one wishing to comment on the application, Chair Stockton closed the public
39 hearing at 7:45 pm.
40

41 Chair Stockton asked for the Commission to share their questions and feedback on the application.
42

43 Commissioner Severson stated that she thinks the proposed changes are reasonable.
44

1 Commissioner Schwalbe stated that she would agree, and feels the proposed steps are appropriate
2 for what the City is trying to do in the City with its canopy to preserve and protect the trees that
3 they have.

4
5 There being no further discussion, Chair Stockton asked for a motion on the application.

6
7 Commissioner Schwalbe made a motion, seconded by Commissioner Douglas, to direct staff to
8 prepare a draft Planning Commission Report and Recommendation with appropriate findings
9 reflecting a recommendation of approval for the Zoning Text Amendments to Chapter 936 Tree
10 Preservation Ordinance and Chapter 918 Fencing/Screening for review and adoption at the next
11 Planning Commission meeting. The motion carried unanimously.

12
13 **c) Consider Application for Conditional Use Permits for Municipal Solar at 600 Rice**
14 **Street East and 747 Mill Street East**

15
16 Parks Planner Kieser gave an overview of the City's application for Conditional Use Permits for
17 the planned Municipal Solar project for City buildings at 600 Rice Street East and 747 Mill Street
18 East. He reviewed zoning and land use for City Hall, Fire Station, and the Library buildings at
19 600 Rice Street East and the Municipal Grill and Bar/Wine and Spirits building at 747 Mill Street
20 East. He reviewed the applicable design district, discussion and recommendations from the Energy
21 and Environment Committee, project details, including cost of installation, and solar system
22 designs for the various buildings. He noted that there have been no public comments received on
23 this proposed project, and that staff recommends approval.

24
25 At the conclusion of Parks Planner Kieser's remarks, Chair Stockton asked if the Commission had
26 any questions for Staff.

27
28 Commissioner Douglas asked for details on the proposed design for the project at City Hall, and
29 asked about the mention in the packet materials of a transformer. She asked if a transformer would
30 be loud, and expressed concern about the neighbors across the street.

31
32 Parks Planner Kieser stated that staff has done some walk-throughs of the building with the
33 electrical engineers, and noted that pretty much all of the connections would be inside the building.
34 He stated that what will be outside are essentially 'turn-off' switches. He stated that there may be
35 other components that are placed outside, but they would be put where the existing electrical is
36 located, which is more or less hidden. He confirmed that transformers do not create a lot of noise.

37
38 Commissioner Schwalbe stated that she was a bit surprised when looking at the pictures of the
39 City of Morris Liquor Store because it has a pitch on it similar to The Muni. She stated that it
40 really stands out in the pictures. She stated that she does not have any issues with the panels on
41 flat surfaces, but The Muni is part of the Lake Street area that has a lot more people going past.
42 She suggested that the City install that part of the project last, and reiterated that she had not
43 expected it to be so dramatically visible.

44
45 Parks Planner Kieser stated that this idea started with the Energy and Environment Committee,
46 and their idea was to try to get as much traction with this as possible, and create the most energy