

**CITY OF WAYZATA**  
**HENNEPIN COUNTY, MINNESOTA**  
**ORDINANCE NO. 818**

**AN ORDINANCE AMENDING CITY CODE CHAPTERS RELATED TO  
TREE MANAGEMENT AND PRESERVATION**

**WHEREAS**, City planning staff has reviewed existing language of City Code, including the Zoning Ordinance, related to tree management and preservation, and recommends certain amendments to better protect, preserve, and enhance the City’s tree canopy and natural environment; and

**WHEREAS**, the City Council, pursuant to Resolution No.45-2022 (the “Resolution”) has adopted findings and taken action related to the foregoing.

**NOW THEREFORE, THE CITY OF WAYZATA ORDAINS:**

**Section 1. Amendments to Chapter 519 of City Code (Tree Removal and Treatment).** Chapter 519 of the Wayzata City Code (Tree Removal and Treatment) is hereby amended to read in its entirety as set forth on Attachment A of this Ordinance (~~struck~~ text deleted, underlined text added).

**Section 2. Amendments to Chapter 710 of City Code (Maintenance and Removal of Trees).** Chapter 710 of the Wayzata City Code (Maintenance and Removal of Trees) is hereby amended to read in its entirety as set forth on Attachment B of this Ordinance (~~struck~~ text deleted, underlined text added).

**Section 3. 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 C of this Ordinance (~~struck~~ text deleted, underlined text added).

**Section 4. Effective Date.** This Ordinance will become effective upon passage and publication.

Adopted by the City Council this 18th day of October, 2022.

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Johanna Mouton  
Mayor

ATTEST:

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Jeffrey Dahl  
City Manager

First Reading:  
Second Reading:  
Publication:

Attachment A  
Attachment B  
Attachment C

## **CHAPTER 519 TREE REMOVAL AND TREATMENT**

### **519.01 License Required.**

No person shall conduct as a business, the cutting, trimming, pruning, removal, spraying or other treatment of trees within the City without first having been issued a license therefor as provided in this Chapter.

### **519.02 License Fee.**

The annual license fee which shall be charged for licenses issued under this Chapter shall be as established by City Council resolution.

(Ord. 449 [1-7-1986])

### **519.03 Surety Bond Required.**

All persons licensed under this Chapter shall maintain and file with the City a bond in the amount and form approved by the City Manager payable to the City and executed by a surety company authorized to do business in the State of Minnesota. Said bond shall be drawn on a form furnished by the City and shall be conditioned to require that the licensee will in all respects well and faithfully perform all things undertaken by him for which a license is required hereunder, and it shall save the City, its property owners and residents harmless from all accidents and damages consequent thereto.

(7-21-81 Code; Ord. 449 [1-7-1985])

### **519.04 Required Insurance.**

All persons licensed under this Chapter shall maintain and file with the City public liability insurance coverage covering all operations of the licensee with minimum bodily injury limits of \$100,000.00 per person and \$300,000.00 per occurrence and with minimum property damage limits of \$50,000.00 per occurrence. Said insurance shall include the City as an additional party insured and shall provide that the coverage may be cancelled only after ten days' written notice to the City. If a licensee's coverage is cancelled and not replaced with coverage meeting the requirements of this Section, said License immediately shall be suspended until said coverage is provided. All persons licensed under this Chapter also shall maintain and file with the City a Certificate of Worker's Compensation Insurance, as such coverage is required by State Statute.

### **519.05 Chemical Treatment Requirements.**

All persons licensed under this Chapter who propose to use chemical substances in any activity related to treatment or disease control of trees shall file with the City evidence that the licensee or the employee of the licensee administering the treatment has been certified by the Minnesota Department of Agriculture as a "commercial pesticide applicator." Said certification shall include the knowledge of tree disease chemical treatment.

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## **CHAPTER 710 AUTHORITY AND DUTIES OF CITY FORESTER**

### **710.01. Purpose.**

The Wayzata City Council has determined the preservation of trees growing on public and private property are necessary to maintain the general welfare of the public and has established regulations for the appropriate preservations of trees in Chapter 936 of the Zoning Ordinance. In order to administer those regulations, and to maintain and enhance the quantity and quality of trees growing within the City, this Chapter is adopted to (1) Define the duties and responsibilities of the City Forester as the agent administering and enforcing regulations relating to the planning, maintenance and removal of trees within the City of Wayzata; (2) Provide for the pruning and removal of trees on private property that endanger public safety; (3) Provide for standards and specifications of all policy concerning trees on public property; and (4) Provide for standards and specifications for care protection policy concerning trees within construction areas.

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

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

- A. Duties. The City Forester shall be appointed by the City Manager to identify diseased and hazardous trees that threaten the health and safety of the public and coordinate all activities of the City relating to the control and prevention of tree pathogens. It shall be the duty of the City Forester and the City Manager and/or his/her designee to review identified Heritage and Significant Trees in any proposed subdivision or development project and to assist planners, developers, and architects in the development of a tree preservation plan for each construction or development project.

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

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

### **710.03. Pathogen Control Program.**

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

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

### **710.04. Nuisances Declared.**

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

- A. Any living or standing elm tree or part thereof infected to any degree with the Dutch Elm disease fungus (as defined by the Minnesota Department of Agriculture) or which harbors any of the elm bark beetles known by the Minnesota Department of Agriculture to transmit the disease.
- B. Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed or disposed of in a manner prescribed by the Commissioner of Agriculture.

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- C. Any living or standing oak tree or part thereof infected to any degree with the Oak Wilt disease fungus, as defined by the Minnesota Department of Agriculture.
  - D. Any infected oak tree or part thereof, including logs, branches, stumps, firewood or other oak material unless all bark material is removed and disposed of in a manner prescribed by the Commissioner of Agriculture.
  - E. Any ash tree infested with Emerald Ash Borer (EAB) as determined by the City Forester after considering Minnesota Department of Agriculture guidance.
  - F. Any infested ash tree or part thereof, including logs, branches, stumps, firewood or other ash material unless all bark material is removed and disposed of in a manner prescribed by the Commissioner of Agriculture.
  - G. Any living or standing tree or shrub or part thereof infected to any degree by any organism to be controlled as set forth and described by the Commissioner of Agriculture.
  - H. Any dead, dying, decaying or living tree, shrub or parts thereof that interferes with the public use of any public thoroughfare or right-of-way.

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

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

#### **710.05. Inspection and Investigation.**

The City Forester shall inspect all premises and places within the City as often as practicable to determine whether any nuisances as described in this Chapter exist thereon. The Forester shall investigate all reported incidents of diseased trees within the City. The Forester or duly authorized representative(s) may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned under this Chapter. Except for cases of emergencies or the imminent threat of personal or property damage, the City shall notify the property owner at least five days prior to the inspection through certified mail to the address listed on the Hennepin County tax records. The inspection may occur after five days even if the certified letter is undeliverable or returned. The City Forester may, upon finding conditions indicating disease infestation is suspected and unconfirmed by a field diagnosis, immediately send appropriate specimens or samples to the Commissioner of Agriculture for analysis or take such other steps for diagnosis as may be recommended by the Commissioner. Except as provided in Section 710.08, or in the case of a positive field diagnosis, no action to remove infected trees or wood shall be taken until positive diagnosis of the disease has been made.

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

#### **710.06. Abatement of Nuisances.**

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

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

#### **710.07. Abatement Procedure.**

Whenever the City Forester finds with reasonable certainty that an infestation defined in this Chapter exists in any tree or wood on any public or private property within the City, the City Forester shall proceed to abate said

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nuisance as follows:

- A. If the City Forester finds that the danger of infestation of other trees is not imminent the Forester shall notify in writing the person(s) owning or controlling the property upon which the nuisance is located that the nuisance must be abated within 21 days from the date of the mailing. If no action to abate the nuisance is taken within this period the City Forester then shall make a written report of findings to the City Council. The Council shall take action to abate the nuisance, and it may proceed to recover the costs of such abatement as provided in Section 710.08.
- B. If the City Forester finds that the danger of infestation of other trees is imminent the Forester shall notify in writing the person(s) owning or controlling the property upon which the nuisance is located that the nuisance must be abated within seven days from the date of the mailing, and shall report findings to the City Manager. If no action to abate the nuisance is taken within this period the Forester then shall make a written report of actions to the City Council, which may proceed to recover the costs of such abatement as provided in Section 710.09.
- C. If the City Forester finds that the danger of infestation of other trees is imminent the Forester shall notify in writing all persons owning or controlling property upon which is located trees in danger of becoming infested. Within this notice the City Forester shall state that action, if any, which should be taken to protect the trees in danger of becoming infested and the period within which such action must be taken. If no such action is taken within this period the City Forester then shall take appropriate action to protect these trees as an emergency measure and shall make a written report of this action to the City Council, which may proceed to recover the costs of such action as provided in Section 710.08.

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

### **710.08. Special Assessment Procedure.**

Upon receipt of a report from the City Forester required by Section 710.07, subsections a. through c., the City Council may pass a resolution to provide for recovering the costs of abatement of a nuisance and/or for recovering the costs of protecting threatened trees by a special assessment procedure. Before such a resolution may be approved, the City Manager shall notify all affected property owners by mail that such a procedure is under consideration prior to the meeting thereon. This notice shall state the time and place of the meeting, the abatement action proposed to be taken or already taken, the estimated or actual cost of such abatement and the proposed basis of assessing such cost. At this meeting all affected property owners shall have the right to be heard with reference to the proposed assessments and assessment procedure. The Council thereafter by resolution may approve such special assessments for the purposes specified herein.

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

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

### **710.9. Transporting Diseased Wood.**

The transporting of diseased wood out of the City shall be governed by current MDA quarantine notifications related to transportation of diseased and/or infested material and any other applicable State Statutes.

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

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**710.10. Interference Prohibited.**

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

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

**710.11. License Required.**

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

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

**710.12. Intentional or Deliberate Damage.**

It shall be unlawful for any person(s) to intentionally damage, destroy or adversely alter any living tree, deciduous or coniferous, on private land within the limits of the City of Wayzata in violation of this Section. Minn. Stat. §561.04 strictly prohibits intentional damage to trees on public property in any form and provides that whoever willfully and without lawful authority injures any tree, timber or shrub on City property is liable for treble the amount of damages which may be assessed therefore. The City Forester and other City Staff 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.

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

**710.13. Violation.**

Unless expressly provided otherwise, it shall be a misdemeanor for any person to violate any provision of the City Code including this Section, any rule or regulation adopted in pursuance of any such provision, or any order lawfully enforcing the City Code or this Section. The term "misdemeanor" shall be as defined in Minn. Stat. §609.02, Subd. 3.

It shall also be a misdemeanor for any person to attempt to commit a misdemeanor or to cause, aid, assist, counsel or advise another to commit misdemeanor. Any person who commits a misdemeanor, upon conviction, shall be subject to the penalties therefore established by State Statute. Unless expressly provided otherwise, each act in violation of the City Code, including this Chapter, shall constitute a separate offense, and each and every day that such a violation occurs or continues shall constitute a separate offense.

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

**710.14. Severability.**

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

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

(7-21-81 Code; Chapter repealed and replaced by Ord. 574 [2-21-1995]; Ord. 588 [2-27-1997]; Chapter repealed and replaced by Ord. 614 [5-27-1999]; Ord. xxxx [xx-xx-2016])



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## **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 ( $10 \times 1.5 = 15$ ).
- E. **"Deciduous Tree"** means a woody plant which has a defined crown, and which loses leaves annually.
- F. **"Diameter of Tree at Breast Height"** or **"DBH"** means the diameter of a tree as measured 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 Rapid-Growth Tree that is 30 inches or greater in DBH, a 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.

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- 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. **"Tree Inch(es)"** means the DBH of a tree or trees on a site.
- R. **"Tree Preservation Plan"** means the tree preservation plan established and described in this Chapter.
- S. **"Tree Preservation Zone"** means the tree preservation zone established and described in this Chapter.
- T. **"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.

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### 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 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 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

### 936.0 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

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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.

### 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.

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- 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.

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## 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.
  3. **Pathogen Problems.** Appropriate replacement choices shall also consider insect and disease problems that may be common with particular species in the part of the state in which the City of Wayzata is located.

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

### 936.10 Past Tree Removal.

Any trees removed on a property in the two years preceding the issuance of a Tree Removal Permit for such property shall be included in the tree removal/replacement calculations of the current 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.

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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.