



3800 Laverne Avenue North
Lake Elmo, MN 55042

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NOTICE OF MEETING

The City of Lake Elmo
Planning Commission will conduct a meeting on
Monday February 22, 2021
at 7:00 p.m.

AGENDA

Please note:

Due to the Corona Virus pandemic and the State of Emergency, the City will be the conducting Planning Commission meeting and public hearings telephonically or by other electronic means. The City Council Chambers will not be open to the public. The City will be broadcasting the meeting via our normal link on the City website - www.lakeelmo.org.

To access the meeting via GoToWebinar:

Use www.gotomeeting.com and select "join". Enter webinar ID 561-308-235

To access the meeting via telephone:

Call 1-562-247-8422, when prompted enter access code 774-540-418

1. Pledge of Allegiance
2. Approve Agenda
3. Approve Minutes
 - a. January 25, 2021
4. Public Hearings
 - a. **CODE AMENDMENTS:** The Planning Commission will be reviewing proposed changes to the City Subdivision Code and Zoning Code. The proposed change would add language to both the Subdivision and Zoning Codes listing the criteria for the City to determine if a preliminary plat or a final plat or a development or redevelopment could be deemed premature and thus denied by the City Council.

The Planning Commission will also be reviewing proposed changes to Section 153.11 and to Section 153.12 about variance standards and variance procedures in the City Subdivision Ordinance. The proposed changes will include revisions to the findings required by the City to approve variances related to subdivisions.
 - b. **CODE AMENDMENTS:** The Planning Commission will be reviewing proposed amendments to the City Tree Preservation Ordinance (Section 154.257) and the City Landscape Requirements (Section 154.258).
5. New/Unfinished Business

None

6. Communications/Updates

a. City Council Update

02-02-2021 Meeting – No Planning or Land Use items

02-16-2021 Meeting – V-LDR Zoning Code Text Amendment, Zoning Code Clean-up text amendments

b. Staff Updates

c. Upcoming PC Meetings:

1. March 8, 2021
2. March 22, 2021

7. Adjourn

***Note: Every effort will be made to accommodate person or persons that need special considerations to attend this meeting due to a health condition or disability. Please contact the Lake Elmo City Clerk if you are in need of special accommodations.



**City of Lake Elmo
Planning Commission Meeting
Minutes of January 25, 2021**

Interim Commission Chair Graen called to order the meeting of the Lake Elmo Planning Commission at 7:02 p.m.

COMMISSIONERS PRESENT Virtually: Risner, Graen, Adlinger, Weeks, Steil, Mueller

COMMISSIONERS ABSENT: none

STAFF PRESENT: Planning Director Roberts, Assistant City Administrator Jake Dickson

Pledge of Allegiance at 7:04 PM

Election of Officers – Chairperson and Vice Chairperson

M/S/P: Commissioner Risner nominated himself for Chairperson, Mueller seconded. **Vote: 6-0, motion carried unanimously.**

M/S/P: Commissioner Steil nominated himself for Vice Chairperson, Graen seconded. **Vote: 6-0, motion carried unanimously.**

Approve Agenda:

M/S/P: Graen/Steil move to approve the agenda. **Vote: 6-0, motion carried unanimously.**

Approve Minutes:

M/S/P: Mueller/Graen moved to approve the Planning Commission minutes of December 14th, 2020, **Vote: 6-0, motion carried unanimously.**

Public Hearings:

ZONING CODE TEXT AMENDMENT: The Planning Commission reviewed a proposed change to the allowed residential density range in V-LDR (Village Low Density Residential) zoning district. The proposed change would change the allowed residential density range from 1.5 – 2.49 units an acre to 1.5 to 3.00 units an acre. Staff is proposing this change to the zoning code to ensure the density range in the zoning code for V-LDR is consistent with the density range in the 2040 Comprehensive Plan for V-LDR.

Director Roberts introduced the proposed Zoning Code Text Amendment, and asked that the Planning Commission recommend approval or denial of the change from 1.5 – 2.49 units per acre to 1.5-3.0 units per acre.

Chairperson Risner opened the Public hearing opened at 7:25 PM.

No questions were asked by the public.

Lake Elmo Planning Commission Minutes; 1-25-2021

Public hearing closed at 7:26 PM.

M/S/P: Steil/Graen move to recommend approval of the proposed change to the text of the V-LDR zoning district that revises the allowed residential density range from 1.5 – 2.49 units per acre to 1.5-3.0 units per acre. **Vote: 6-0, motion carried unanimously.**

ZONING CODE TEXT AMENDMENTS: Zoning Code Clean Up

Director Roberts reviewed the proposed Zoning Code Text Amendments: Zoning Code Clean Up. He explained that staff had discovered several minor errors in the Zoning Code that the City should correct. The proposed changes will not affect policy or change any performance standards but rather will ensure the Zoning code is accurate in numbering and references.

There was some discussion whether storm water ponds were included in this code language. After some clarification, storm water pond is not considered a “body of water”. Proposed amendments to this proposed amendment are shown in blue.

Section 154.080 E.

Recommended amendment.

Lake and Stream Frontage Lots. All lots having frontage on a lake or stream shall be subject to the provisions of the shoreland management ordinance as well as the regulations provided by this chapter. ~~All Structures or improvements requiring a permit (except fences) on lots or adjacent to on unclassified naturally occurring~~ bodies of water ~~that are not classified or identified~~ in the City shoreland management ordinance shall ~~meet the~~ have a minimum setback of 25 feet from the Ordinary High Water Level (OHWL) ~~requirements for a General Development Lake~~, except as provided in the Shoreland management section. (Not for properties adjacent to storm water pond).

Chairperson Risner opened the public hearing for this proposed amendment at 7:58 PM.

No questions were asked by the public. The public hearing was closed at 7:58 PM.

M/S/P: Graen/Mueller move to recommend approval of the drafted zoning code amendments as presented with the addition of the “excluding fences and natural occurring” verbiage as presented by Director Roberts **Vote: 6-0, motion carried unanimously.**

New/Unfinished Business: 8:04 PM

None

Communications/Updates

- a. City Council Update: Director Roberts gave the Commission updates on the following items:

1-19-2021 Meeting – School District Bus terminal CUP, Schiltgen’s Farm Revised Concept PUD.

- b. Staff Updates: Director Roberts gave updates about activities in the City.

Lake Elmo Planning Commission Minutes; 1-25-2021

- c. Upcoming PC Meetings:
1. February 22, 2021
 2. March 8, 2021

Meeting adjourned at 8:15 pm.

Respectfully submitted,

Diane Wendt
Permit Technician

DRAFT



STAFF REPORT

DATE: February 22, 2021

Public Hearing

ITEM #:

TO: Planning Commission
FROM: Ken Roberts, Planning Director
AGENDA ITEM: **Lake Elmo Subdivision and Zoning Code Amendments**
REVIEWED BY: Ben Prchal, City Planner
Sarah Sonsalla, City Attorney

BACKGROUND:

City staff has been directed to prepare amendments to the City's Subdivision Ordinance (Chapter 153). The requested changes are to clarify and add language to the Subdivision code about premature subdivisions and development in the City.

In addition, there are some aspects of the subdivision and zoning ordinances the City could amend to clarify processes and to meet current City standards. As such, staff has included other changes to the Subdivision and Zoning Ordinances as part of this review.

ISSUE BEFORE THE PLANNING COMMISSION:

The Planning Commission is being asked to hold a public hearing and make a recommendation to City Council on proposed amendments to the City's subdivision and zoning ordinances.

REVIEW AND ANALYSIS:

Zoning and subdivision regulations allow cities to ensure that a new development or redevelopment meets the standards of the city for a safe, functional and enjoyable community.

Background Information and Proposed Changes

Premature Subdivision

The City's Subdivision ordinance establishes the process for the review of subdivisions (preliminary and final plat) applications. What is not clear in the current ordinance is what if any standards the City has to determine and possibly deny a subdivision if it is premature because of a lack of public facilities or other issues. The proposed code amendment clarifies existing language in the Subdivision Code (Section 153.02 (F) and adds language (Section 153.025) about the premature subdivision of property in Lake Elmo. This proposed language notes that any proposed subdivision deemed premature by the City may not be approved by the City Council. The proposed code language also includes a list of conditions the City may use to determine if a subdivision is premature.

Variance to the Subdivision Ordinance Standards

The Subdivision Ordinance has language and standards (Sections 153.11 and 153.12) for variance requests that specifically apply to Subdivisions. The City should update this language to clarify the standards for approving a variance to the Subdivision Code.

The subdivision code currently uses the phrase “unusual hardship” as a standard finding for approving a variance. This language is still used in the subdivision statute (Minnesota Statutes Section 462.358, subdivision 6). However, it is different from the “undue hardship” standard that was in and used in the zoning statute (Minnesota Statutes Section 462.358). The term “undue hardship” for zoning variances was amended by the Legislature to “practical difficulties.” Because the statute for subdivision variances uses the phrasing “unusual hardship”, it should stay in the City Code. However, the state statute does not define what an unusual hardship is. Therefore, the City can and should define this standard/expectation so that it can be applied appropriately for variance requests to the subdivision ordinance. Staff is recommending the City use “practical difficulties” as the standard for unusual hardship. Staff is also proposing some changes to the ordinance to reflect the requirements that are set forth in the 60 day statute. There are additional changes within sections 153.11 and 153.12 which have been recommended by the City Attorney.

Zoning Ordinance Changes

If the City wants to proceed with the proposed amendments to the Subdivision Ordinance about premature subdivisions, the City also should amend the Zoning Ordinance. The changes to the Zoning Ordinance would be to add language about premature development being prohibited (new Section 154.0045) and includes a reference to the Subdivision Ordinance. Adding this language to the Zoning Ordinance will help ensure the City would have the authority to determine almost any type of development or redevelopment as premature.

FISCAL IMPACT:

Staff does not foresee a negative fiscal impact with the proposed changes to the subdivision ordinance or to the zoning ordinance.

OPTIONS:

Recommend approval of the proposed changes to the subdivision and zoning ordinances.

Recommend approval of the proposed changes to the ordinances with changes to the proposed language.

Recommend denial of the proposed changes to the subdivision and zoning ordinances.

RECOMMENDATION:

Staff is recommending approval of the proposed changes to the Lake Elmo Subdivision and Zoning ordinances.

“Motion to recommend approval of the Subdivision and Zoning ordinance amendments as proposed by City staff.”

ATTACHMENTS

- Lake Elmo Subdivision Ordinance (Sections 153.01 – 153.025 and Sections 153.11 – 153.12)
- Lake Elmo Zoning Ordinance (Sections 154.001 – 154.006)

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-__

AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES BY AMENDING THE VARIOUS PORTIONS OF THE SUBDIVISION REGULATIONS TO INCLUDE PROVISIONS RELATING TO PREMATURE SUBDIVISION

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 153: Subdivision Regulations by amending various parts of Sections 153.01 through Section 153.09 by adding the underlined language and deleting the ~~strikethrough~~ language as follows:

§ 153.01 REGULATIONS ESTABLISHED.

No land shall be subdivided, nor shall any land be platted, in the City except as provided by this chapter.

§ 153.02 GENERALLY.

- (A) *Purpose.* The City adopts this chapter in order to provide for orderly, economic, and safe development of land, to provide the necessary urban services and facilities, and to promote the public health and safety of the City through the establishment of minimum regulations governing the subdivision of land. It is the intent of the City to protect the right of landowners to put their land to its highest and best use and protect each owner's right to full beneficial use of their land to accomplish enjoyment without detriment to the public interest.
- (B) *Intent.* The City establishes these regulations with the intent to:
- (1) implement the Comprehensive Plan;
 - (2) ensure that subdivisions are consistent with all applicable plans, laws, and regulations;
 - (3) provide for the orderly subdivision of land and to ensure proper legal descriptions and monumentation of subdivided land;
 - (4) ensure that adequate public infrastructure, facilities, and services are available concurrent with development;
 - (5) Conserve and protect the natural resources and scenic beauty of the City;

- (6) Require subdividers to furnish land, install infrastructure, and provide appropriate mitigation measures to ensure that development provides for all required improvements;
- (7) Promote a safe and effective transportation system including roadways, pedestrian pathways, and transit opportunities;
- (8) Prevent inappropriate subdivisions including premature subdivision; excess subdivision resulting in overcrowding of land and undue concentration of structures; partial or incomplete subdivision; or scattered or piecemeal subdivisions; and
- (9) Establish standard requirements, conditions, and procedures for the design and review of subdivisions.

~~(B)~~(C) *Scope.* The provisions of this chapter apply to any division of a tract of land into 2 or more parcels for the purpose of transfer of ownership, building development, or tax assessment purposes by platting, re-platting, registered land survey, conveyance, sale, contract for sale or any other means by which a beneficial interest in land is transferred except those divisions listed below:

- (1) where all the resulting parcels, tracts, lots, or interests will be 20 acres or larger in size and 500 feet in width for residential uses and five acres or larger in size for commercial and industrial uses;
- (2) creating cemetery lots; or
- (3) resulting from court orders.

~~(C)~~(D) *Approval necessary for acceptance of subdivision plats.* Before any plat or subdivision shall be recorded or be of any validity, it shall be referred to the Planning Commission and approved by the City Council as having fulfilled the requirements of this chapter.

~~(D)~~(E) *Building permits.* No building permits shall be issued for the construction of any building, structure, or improvement to any land or lot in a subdivision, as defined in this chapter, until all requirements of this chapter have been satisfied, with the following exceptions.

(1) Building permits may be issued for model homes after approval of the final plat by the City Council upon receipt of a signed development agreement. The issuance of building permits for model homes shall be in accordance with the signed development agreement.

(2) The developer shall agree in writing to indemnify and hold harmless the City for damages that may occur as a result of the model home construction prior to the required improvements being completed.

(3) No certificate of occupancy shall be issued by the City until all applicable requirements set forth by the development agreement have been met.

(4) Traffic and parking arrangements relating to model homes shall be subject to the City's review and approval.

~~(E)~~(F) *Conflicts.* Whenever there is a difference between minimum standards or dimensions required by this chapter or other ordinances of the City, the most restrictive standards of dimensions shall apply.

~~(F)~~(G) *Flood plain management.*

(1) No land shall be subdivided which is held unsuitable by the City Council for reason of flooding, inadequate storm water drainage, steep slopes, inadequate water supply, or inadequate sewage waste water treatment facilities. All lots within the flood plain shall contain a building site with a lowest floor elevation that is at least two feet or above the regulatory flood protection elevation. All subdivisions shall have water and sewage (waste water) disposal facilities that comply with the provisions of this chapter, and shall have road access both to the subdivision and to the individual building sites no lower than 2 feet below the regulatory flood protection elevation. (Also refer to Section 153.025, Premature Subdivisions, below).

(2) In the general flood plain district, applicants shall provide the information required in § 152.140. The City Council shall evaluate the subdivision in accordance with procedures established in this chapter and standards contained in § 152.08.

~~(G)~~(H) *Consistency with Comprehensive Plan and Zoning District.* Subdivision of property shall be in compliance with the City's Comprehensive Plan and zoning district in which the property is located.

§ 153.025 PREMATURE SUBDIVISION PROHIBITED.

Any plat or other subdivision of property may be denied by the City Council if it is deemed by the City Council to be premature for development pursuant to the criteria listed below.

(A) Any proposed plat or subdivision of property may be denied by the City Council if it is deemed by the City Council to be premature for development. The burden of proof shall be on the subdivider to demonstrate to the City Council that the proposed subdivision is not premature for development. The City may deem a subdivision premature if any of the following conditions exist:

(1) *Inconsistent with the Comprehensive Plan.* A proposed plat or subdivision may be deemed premature if the subdivision is inconsistent with the goals, purposes, policies, phasing, or other requirements of the Comprehensive Plan. An application for a Comprehensive Plan amendment may be made concurrently with an application for a plat or subdivision approval; however, a plat or subdivision application will not be considered for approval by the City Council until and unless any necessary Comprehensive Plan amendment is approved by the City Council.

(2) *Inconsistent with the City Capital Improvement Program.* A proposed plat or subdivision may be deemed premature if it is inconsistent with the City's Capital Improvement Program. A proposed plat or subdivision is inconsistent with the City's Capital Improvement Program if public improvements, facilities, or services such as recreational facilities or police and fire protection that must be provided at public's

expense that are necessary to accommodate the proposed plat or subdivision will not be able to be reasonably provided within two years of the date of the plat or subdivision application.

- (3) *Lack of Adequate Water Supply.* Unless the City has guided the site of the proposed plat or subdivision as rural by the Comprehensive Plan, a proposed plat or subdivision may be deemed premature if municipal water is not available to serve the proposed subdivision if it is developed to its maximum permissible density without causing and unreasonable depreciation of existing municipal water supplies. “Available” shall mean existing or readily extended and funded consistent with the phasing in the Comprehensive Plan, the Capital Improvement Program, and any relevant City ordinances, plans, and policies. If the site of the proposed plat or subdivision is guided as rural by the Comprehensive Plan, a proposed subdivision shall be deemed premature with respect to a lack of adequate water supply if a private well or wells cannot adequately or safely serve the proposed subdivision.
- (4) *Lack of Adequate Waste Disposal Systems.* Unless the City has guided the site of the proposed plat or subdivision as rural by the Comprehensive Plan, a proposed plat or subdivision may be deemed premature if municipal sanitary sewer is not available or is not adequate in size to serve the proposed subdivision if developed to its maximum permissible density as indicated in the Comprehensive Plan. “Available” shall mean existing or readily extended and funded consistent with the phasing in the Comprehensive Plan, the Capital Improvement Program, and any relevant City ordinances, plans, and policies. If the site of the proposed plat or subdivision is guided as rural by the Comprehensive Plan, a proposed subdivision may be deemed premature if a private subsurface sewage treatment system or systems cannot adequately serve the proposed subdivision.
- (5) *Lack of Adequate Streets.* A proposed plat or subdivision may be deemed premature if public streets to serve the proposed plat or subdivision are not available. “Available” shall mean existing or readily extended and funded consistent with the phasing in the Comprehensive Plan, the Capital Improvement Program, and any relevant City ordinances, plans, and policies. In addition, a proposed plat or subdivision may be deemed premature if the traffic volume generated by the proposed plat or subdivision would create a hazard to public safety and the general public welfare or the streets are inadequate for the intended uses such that the subdivision would create unacceptable levels of traffic congestion on existing or proposed streets as determined by the City Engineer.
- (6) *Lack of Adequate Drainage.* A proposed plat or subdivision may be deemed premature if municipal or private surface water management facilities are not available to meet minimum local, watershed, and state treatment requirements including downstream infrastructure to manage stormwater. “Available” shall mean existing or readily constructed and funded consistent with the phasing in the Comprehensive Plan, the Capital Improvement Program, and any relevant City ordinances, plans, and policies. In addition, a proposed plat or subdivision may be deemed premature in cases where flood plains, poor soils, or steep slopes exist in such a manner as to preclude adequate site drainage or treatment of surface water runoff, cause pollution of water sources, or damage from erosion would occur on downhill or downstream land.

(7) *Inconsistent or Not Compliant with State Environmental Statutes and Rules.* A proposed plat or subdivision may be deemed premature if it is not in compliance or is not consistent with the State's environmental statutes and rules, set forth in Minnesota Statutes Chapter 116D and Minnesota Rules Part 4410.

§ 153.03 DEFINITIONS.

Unless specifically defined in this chapter, common definitions, words, and phrases used in this chapter shall be interpreted so as to give them the same meaning as they have in common usage throughout this code and are found in § 11.01.

§ 153.04 REGISTERED LAND SURVEY.

No registered land survey of lands in the City shall be recorded with the Registrar of Titles until the registered land survey has been approved by the City. The approval shall be indicated by resolution endorsed on or attached to the registered land survey signed by the Mayor and City Clerk. No registered land survey shall be approved by the City or signed by the officers if the recording of the registered land survey will result in a subdivision in violation of any provision, regulation, or requirement of this chapter.

§ 153.05 CONVEYANCE BY METES AND BOUNDS AND OTHER UNAPPROVED DESCRIPTIONS.

(A) No conveyance of lands to which the regulations contained in this chapter are applicable shall be made and no conveyance of land to which the regulations contained in this chapter are applicable shall be filed or recorded, if the land is described in the conveyance by metes and bounds or by reference to an unapproved registered land survey made after 10-3-1968, or to an unapproved plat made after 10-3-1968.

(B) The foregoing provision does not apply to a conveyance if the land described:

- (1) Was a separate parcel of record prior to or on 10-3-1968, or as to lands within the jurisdictional boundaries of the Old Village prior to its consolidation with the Town of East Oakdale if the land was a separate parcel of record 6-4-1974;
- (2) Was the subject of a written agreement to convey, entered into prior to 10-3-1968;
- (3) Is a single parcel of land having not less than 5 20 acres and having a width of not less than 500 feet and its conveyance does not result in the division of a parcel into 2 or more lots or parcels any 1 of which is less than 20 acres in area or 500 feet in width; and/or
- (4) Is a single parcel of commercial or industrial land of not less than five acres and having a width of not less than 300 feet and its conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than five acres in area or 300 feet in width;

§ 153.06 LOT CONSOLIDATION/LOT LINE ADJUSTMENT.

- (A) *Purpose and Intent.* The lot consolidation/lot line adjustment process provides a simple administrative procedure for the consolidation of 2 or more lots into 1 parcel, or to adjust a common lot line affecting existing parcels. In areas that are well defined and land descriptions are simple, the City may permit the conveyance of land using metes and bounds descriptions or without the preparation and recording of a plat. In areas which are not well defined, or where lots are irregular in shape and/or are included in more than one plat, the City may require that lot consolidation/lot line adjustment occur through the major or minor subdivision platting requirements of this chapter.
- (B) *Criteria for Lot Line Adjustment/Lot Consolidation.* Lot line adjustments exempted from platting by Minnesota Statute 462.352, Subd. 12 and shall not require a plat or replat and may be administratively approved by City staff, provided all of the following are met:
- (1) Each resultant parcel equals or exceeds the minimum lot dimension requirements and public road frontage requirements for the zoning district in which the property is located or is made more conforming through the lot line adjustment;
 - (2) The lot line adjustment does not create additional lots.
 - (3) The lot line adjustment shall not cause any structure on the property to be made non-conforming or in violation of the Zoning Chapter or any other provisions of the City Code.
 - (4) All resultant parcels shall have frontage and access on an existing improved street or access to an existing improved street protected by a restrictive covenant approved by the City Attorney which includes the City as a beneficiary.
 - (5) The resulting parcels shall generally conform to the shape, character, and area of existing or anticipated land subdivisions in the surrounding areas.
 - (6) Any such lot line adjustment shall not require any public improvements.
 - (7) Any easements that become unnecessary as a result of the combination of parcels must be vacated. A request to vacate easements shall be made concurrently with the application for lot consolidation/lot line adjustment. Review of the easement vacation request, including any public hearings and City Council action, shall be completed before action may be taken on the application for lot consolidation/lot line adjustment.
 - (8) New easements shall be established as the City deems necessary.
- (C) *Subdivision of Property for Public Purpose.* Alternatively, the subdivision of property resulting from acquisition by governmental agencies for public improvements or uses may be processed in the same manner as a lot line adjustment or lot consolidation.
- (D) *Submittal Requirements.* Requests for lot line adjustments or lot consolidation shall be filed with the City on an official application form. The applicant's signatures shall be provided on the application form. If the applicant is not the fee owner of the property, the fee owner's signature shall also be provided on the application form, or the applicant shall provide separate written and

signed authorization for the application from the fee owner. Such application shall be accompanied by the following information. The application shall be considered as being officially submitted and complete when the applicant has complied with all the specified requirements. The applicant will be responsible for all expenses incurred in obtaining the required information.

- (1) A fee as set forth by the City's adopted fee schedule.
 - (2) Detailed written and graphic materials fully explaining the proposed lot line adjustment.
 - (3) A legal description of the affected parcels and legal descriptions for each of the resulting parcels; and, in regard to lot line adjustments, legal descriptions for the adjusted or consolidated parcels;
 - (4) A written description stating the reason for the request; and
 - (5) A land survey prepared by and signed by a registered land surveyor describing the lot line adjustment and showing all buildings, driveways, easements, setbacks, and other pertinent information including the legal descriptions herein required.
 - (6) A title search showing ownership of the property and any existing deed restrictions.
 - (7) Other information shall be provided as may be reasonably requested by the City staff.
- (E) *Review of lot line adjustment or lot consolidation.* A completed application shall be reviewed administratively by the Planning Department who shall make a written finding in regard to the provisions of division (B) above. The City's approval shall be conditioned upon recording of documents which effectuate the lot line adjustment or lot consolidation and any other conditions deemed necessary to ensure compliance with the Zoning Code. Unless a request for additional review time is requested by the City, action on the application shall be taken within 60 days after a complete application is submitted. Prior to the issuance of any development permits, and no later than 60 days after administrative review and approval, the applicant shall provide the City with recorded documents or recorded document numbers for the deeds of conveyance which effectuate the lot line adjustment or lot consolidation. Failure to provide the required verifications within the required time shall invalidate the City's approval.
- (F) *Certification of Taxes Paid.* Prior to approval of an application for a lot line adjustment or lot consolidation, the applicant shall provide certification to the City that there are no delinquent property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the lot line adjustment or lot consolidation application relates.

SECTION 153.065 LOT DIVISIONS.

Section 153.065 Lot Divisions.

- A. The City Planning Director may approve administratively the subdivision of one lot or parcel into two or three lots where no public infrastructure, easements or rights-of-way are

being dedicated. The following requirements must be met before the City may approve an administrative lot division:

1. The submittal of the required land use application and fee.
2. The submittal of proof of ownership.
3. The submittal of a current certificate of survey, prepared and signed by a Minnesota licensed land surveyor, depicting the following:
 - a. Graphic scale of the survey (engineering scale only, not less than 1 inch equals 50 feet).
 - b. North arrow.
 - c. Date of the survey.
 - d. Existing legal description of the parcel of land to be subdivided.
 - e. Existing parcel boundaries shown with survey measurement data matching the legal description of the parcel of land.
 - f. Area in square feet and in acres of the parcel of land to be subdivided.
 - g. Existing site improvements within the subject property and those within 50 feet of the boundaries of the parcel to be subdivided.
 - h. All encroachments along the outside boundary of the parcel of land to be subdivided.
 - i. All easements of record affecting the parcel of land to be subdivided.
 - j. Basins, lakes, rivers, streams, creeks, wetlands and other waterways bordering on or running through the parcel of land to be subdivided. The ordinary high water elevation and the 100-year flood elevation shall be shown where applicable.
 - k. The location, right-of-way widths and names of public streets or other public ways, showing type, width and condition of improvements, if any, that pass through and/or adjacent to the parcel of land being subdivided.
 - l. Location, right-of-way widths and names of any railroad, if any, that pass through or are adjacent to the parcel of land being subdivided.
 - m. The location, type and size of any public infrastructure (sanitary sewer, water, storm sewer) that is located on or adjacent to the parcel of land being subdivided.
 - n. Identify all gaps and overlaps of the property being subdivided.
 - o. The outside boundary of the property being subdivided must be clearly marked survey monumentation.
 - p. The boundary shown with survey measurement data and proposed legal description for each of the lots as they are proposed to be subdivided.
 - q. The boundary and legal description of any proposed easements on the property. The owner must provide a 10-foot-wide drainage and utility easement along all property lines. The City also may require a drainage and utility easement over wetlands, wetland buffers, stormwater basins, lakes, drainage channels and tributaries.
 - r. The City also may require the dedication of easements or right-of-way for public streets consistent with the City's Comprehensive Plan.
 - s. If the owner is proposing residential lots that would use on-site septic systems, then the owner must provide documentation that each lot would have enough area for a primary and secondary on-site septic system along with the proposed location of the houses, driveways and wells for each of those lots.
4. A lot division shall not result in the creation of more than three lots.

5. The Planning Director may approve or cause to be modified plans for a lot division. The Director must first determine, however, that the plans meet all eCity ordinances and policies and that the lot division proposal would not have an adverse impact on the subject property or surrounding properties. If the Director makes a negative determination about the proposed lot division or if the applicant wishes to appeal the decision, the case shall be sent to the Planning Commission for a review and recommendation and to the City Council for action.
6. The City may require a letter of credit as a condition of a lot divisions in order to guarantee the proper repair and patching of streets after the installation of or connection to utilities in the streets or in the public rights-of-way.
7. The City shall not approve more than three new lots from a parcel or tract in any single calendar year.
8. The owner must record the deeds for the lot division with Washington County within 180 days of City approval of a lot division, or the lot division shall be no longer valid.

§ 153.07 MINOR SUBDIVISIONS.

- (A) *Purpose and Intent.* The purpose of a minor subdivision process is to allow the City to waive certain procedures and requirements of a major subdivision. The purpose is to reduce the time and cost to the property owner for dividing land in locations and situations that are well defined and where no new public infrastructure is required. The minor subdivision process allows for concurrent review and approval of a preliminary and final plat.
- (B) *Criteria for Minor sSubdivision.* A minor subdivision is a division of land which results in no more than 4 parcels shown on the plat/survey:
- (1) Each resultant parcel meets all applicable requirements of the Zoning Code, including but not limited to density, lot size, lot width, and minimum frontage on a public road, unless a variance has been approved according to the procedures set forth in Section 153.11 of the City Code.
 - (2) No new public rights-of-way or streets shall be necessary for or created by the subdivision.
 - (3) Streets, utility easements, drainage easements or public park land or cash in lieu of land shall be dedicated as required by the City.
 - (4) All wetland areas and Minnesota Department of Natural Resources protected waters shall be protected with a conservation easement up to the 100-year flood level.
 - (5) The minor subdivision complies with all applicable requirements of the road authority, including access spacing and location criteria for sight distances if located

adjacent to a state or county highway, and/or of the watershed district(s) in which it is located.

(C) *Submittal Requirements.* Requests for minor subdivision shall be filed with the City on an official application form. The applicant's signatures shall be provided on the application form. If the applicant is not the fee owner of the property, the fee owner's signature shall also be provided on the application form, or the applicant shall provide separate written and signed authorization for the application from the fee owner. Such application shall be accompanied by the following information. The applicant shall submit a minimum of 4 large scale copies and 10 reduced scale (11" X 17") copies and electronic versions of all graphics. The application shall be considered as being officially submitted and complete when the applicant has complied with all the specified requirements. The applicant will be responsible for all expenses incurred in obtaining the required information.

- (1) An application fee as set forth by the City's adopted fee schedule
- (2) Detailed written and graphic materials fully explaining the proposed minor subdivision.
- (3) List of property owners located within 350 feet of the subject property in a format prescribed by the City.
- (4) A preliminary plat prepared by a registered land surveyor in the form required by M.S. Ch. 505, as it may be amended from time to time, and the name, address, and registration number of the surveyor, which includes:
 - a. Graphical scale not more than 1 inch equals 100 feet.
 - b. North point indication.
 - c. Original and proposed lot boundaries.
 - d. Topographic data at 2 foot contours.
 - e. Existing and resulting parcel legal descriptions.
 - f. Buildable area on each lot and proposed building pad.
 - g. The location of existing structures on the site.
 - h. Existing and proposed driveway locations.
 - i. Existing easement locations.
 - j. Existing parks, streets and utility easements.
 - k. Delineated wetlands and water bodies including ordinary high water elevations and floodplain boundaries as applicable.
 - l. Sewage treatment systems and/or well locations.
 - m. Location and size of existing sewers, water mains, wells, culverts, or other underground utilities within the tract and to a distance of 150-feet beyond the tract, the data as grades, invert elevations, and locations of catch basins, and manholes shall also be shown;
- (5) Drainage, grading and erosion control plans, if applicable.
- (6) Existing and proposed lowest floor elevations for each lot.

- (7) Soil testing for the installation of subsurface sewage treatment system, if applicable.
- (8) If driveways to a state or county highway are required, driveway permits or a letter of intent to approve said driveways from the applicable road authority.
- (9) Any additional information if deemed necessary and required by the City. The City may waive for good cause certain information requirements not pertinent to the particular minor subdivision request.

(D) *Review of Minor Subdivision.*

- (1) *Review by staff and other commissions or jurisdictions.* The City shall refer copies of the preliminary plat to the City Engineer, Planner, Attorney, the Watershed District and the appropriate county, state, or other public agencies for their review and comment. The City shall instruct the appropriate staff persons to prepare technical reports where appropriate, and to provide general assistance in preparing a recommendation on the action to the Planning Commission and Council.
- (2) *Public Hearing Set.* Upon receipt of a complete application, the City shall set a public hearing following proper hearing notification. The Planning Commission shall conduct the hearing, and report its findings and make a recommendation to Council. Notice of said hearing shall consist of a legal property description and a description of the request, which shall be published in the official newspaper at least 10 days prior to the hearing and written notification of said hearing shall be mailed at least 10 days prior to the hearing to all owners of land within 350 feet of the boundary of the property in question. Public hearings shall follow the hearing procedures outlined in Section 154.102. Failure of a property owner to receive said notice shall not invalidate any such proceedings as set forth within this Chapter.
- (3) The Planning Commission shall make a finding of fact and recommend such actions or conditions relating to the request as it deems necessary to carry out the intent and purpose of this Chapter.
- (4) The City Council shall not approve a minor subdivision until it has received a report and recommendation from the Planning Commission and the City staff, or until 60 days after the first regular Planning Commission meeting at which the request was considered.
- (5) Approval of a minor subdivision shall require passage of a resolution by a majority vote of a quorum of the City Council.
- (6) Prior to certification by the City of the approval of the minor subdivision, the applicant shall submit the final plat for signature, supply the easement documents

granting the City any easements required by the City using the City's standard form of easement and pay any required recording or other fees.

- (7) Whenever an application for a minor subdivision has been considered and denied by the City Council, a similar application for a minor subdivision affecting substantially the same property shall not be considered again by the Planning Commission or the City Council for at least 6 months from the date of its denial unless a decision to reconsider such matter is made by a majority vote of the entire City Council.
- (E) *Recording of the Minor Subdivision.* If the minor subdivision is approved by the Council, the subdivider shall record it with the County Recorder or Registrar of Titles within 180 days after the approval. If not recorded within 180 days, approval of the minor subdivision shall be considered void, unless a request for a time extension is submitted in writing and approved by the City Council. The subdivider shall, immediately upon recording, furnish the City with copies of the recorded documents which effectuate the minor subdivision. No building permits shall be issued for construction of any structure on any lot within the approved minor subdivision until the City has received evidence of the plat being recorded by the County.
- (F) *Financial Guarantee.* Following the approval of a minor subdivision as required by this Section and prior to the issuing of any building permits or the commencing of any work, the applicant may be required to submit a financial guarantee to the City to ensure the completion of any improvements as shown on the approved plans and as required as a condition of minor subdivision approval.
- (G) *Certification of Taxes Paid.* Prior to approval of an application for a minor subdivision, the applicant shall provide certification to the City that there are no delinquent property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the minor subdivision application relates.

§ 153.08 MAJOR SUBDIVISIONS – PRE-APPLICATION CONFERENCE.

(A) *Purpose and Intent.* In order to ensure that all applicants are informed of the procedural requirements and minimum standards of this chapter and the requirements or limitations imposed by other City ordinances or plans, prior to the development of a preliminary plat, applicants are required to attend a pre-application conference with City staff (including, but not limited to, the Planning Director and the City Engineer) to review and discuss the proposed subdivision.

1. **Prerequisite.** *Pre-Application Conference.* Before filing of an application for a major subdivision with the City, the applicant of the proposed major subdivision shall arrange for and attend a pre-application conference with the Planning Director, City Engineer and other City staff. The primary purpose of the pre-application conference shall be to provide the applicant with an opportunity to gather

information and obtain guidance as to the general suitability of his or her proposal for the area for which it is proposed and its conformity to the provisions of this section before incurring substantial expense in the preparation of plans, surveys and other data.

2. No application for a major subdivision will be accepted by the City unless an applicant's proposal is distinctly similar to one reviewed by City staff in the required pre application conference.

(B) *Submittal requirements.* Requests for pre-application conference and staff review of a major subdivision shall be filed with the City on an official application form. The applicant's signatures shall be provided on the application form. If the applicant is not the fee owner of the property, the fee owner's signature shall also be provided on the application form, or the applicant shall provide separate written and signed authorization for the application from the fee owner. Such application shall be accompanied by the following information. The applicant shall submit a minimum of 4 large scale copies and 10 reduced scale (11" X 17") copies and electronic versions of all graphics. The application shall be considered as being officially submitted and complete when the applicant has complied with all the specified requirements. The applicant will be responsible for all expenses incurred in obtaining the required information.

- (1) An application fee as set forth by the City's adopted fee schedule.
- (2) Detailed written and graphic materials fully explaining the proposed major subdivision.
- (3) List of property owners located within 350 feet of the subject property in a format prescribed by the City.
- (4) A scaled drawing which includes:
 - a. Locations of boundary lines in relation to a known section, quarter section, or quarter quarter section line comprising a legal description of the property.
 - b. Graphical scale not less than 1 inch equals 100 feet.
 - c. Data and north point.
 - d. Existing conditions.
 - i. Boundary line of proposed subdivision, clearly indicated;
 - ii. Existing zoning classification for land within and abutting the subdivision;
 - iii. A statement on the acreage and dimensions of the lots;
 - iv. Location widths and names of existing or previously platted streets or other public ways, showing type, width, and conditions of improvements, if any, railroad and utility rights-of-way, parks and other open spaces, permanent buildings and structures, easements in section

and corporate lines within the tract and to a distance of 150 feet beyond the tract;

- v. Location and size of existing sewers, water mains, wells, culverts, or other underground utilities within the tract and to a distance of 150 feet beyond the tract, the data as grades, invert elevations, and locations of catch basins, and manholes shall also be shown;
 - vi. Boundary lines of adjoining unsubdivided or subdivided land, within 150 feet, identified by name and ownership, including all contiguous land owned or controlled by the subdivider;
 - vii. Topographic data, including contours at vertical intervals of not more than 5 feet; water courses, marshes, rock outcrops, power transmission poles and lines and other significant features shall also be shown; National Geodetic Vertical Datum (N.G.V.D.) shall be used for all topographic mapping; ~~and~~
 - viii. The subdivider may be required to file a report prepared by a registered civil engineer or soil scientist on the feasibility of on-site sewer and water systems on each lot; the report shall include a soil borings analysis and a percolation test to verify conclusions;:
 - ix. Buildable area on each lot and proposed building pad;:
 - x. Existing and proposed driveway locations;:
 - xi. Existing parks, streets and easement locations;: and
 - xii. Delineated wetlands and water bodies including ordinary high water elevations and floodplain boundaries as applicable.
- e. Proposed design features.
- i. Layout of proposed streets showing right-of-way widths, center line grade, typical cross-sections, and proposed names of streets in conformance with all applicable City ordinances and policies; the name of any street used in the City or its environs shall not be used unless the proposed street is the logical extension of an already named street, in which event the same name shall be used. The names and number shall comply with the County Uniform Street Numbering System.
 - ii. Areas other than streets, pedestrian ways, utility easement, intended to be dedicated or reserved for public use, including the size of the areas in acres.
 - iii. Provision for surface water disposal, drainage, and flood control within the boundaries of the proposed property division consistent with ~~s~~Section 150.273 of the City Code, storm water management and erosion and sediment control

- f. *Supplementary information.* ~~i.~~ The supplementary information as shall reasonably be deemed necessary by City staff; including, but not limited to:
- ~~ii.~~ i. Proposed protective covenants;
 - ~~iii.~~ ii. Statement of the proposed use of lots stating type of residential buildings with number of proposed dwellings and type of business or industry, so as to review the effect of the development on traffic, fire hazards, and congestion of population;
 - ~~iv.~~ iii. If any zoning changes are contemplated, the proposed zoning plan for the areas, including dimensions, shall be shown. The proposed zoning plans shall be for information only and not vest any rights in the application for use other than residential;
 - ~~v.~~ iv. A statement showing the proposed density with the method of calculating said density also shown.
 - ~~vi.~~ v. Where the subdivider owns property adjacent to that which is being proposed for division, the City may require that the subdivider submit a sketch plan or ghost plat of the remainder of the property so as to show the possible relationship between the proposed division and a future subdivision. All subdivisions shall be reasonably consistent with the existing or potential adjacent subdivisions; and
 - ~~vii.~~ vi. Where structures are to be placed on large or excessively deep lots, which are subject to replat, the development subdivision plans shall indicate placement of structures so that lots may be further subdivided, in addition to a sketch plan that illustrates a way in which the lots can possibly be resubdivided.

(C) *Pre-application Plan Review.* The pre-application plan for the proposed subdivision shall be reviewed by City staff. The City staff review of the proposed subdivision plan is to provide the applicant with an opportunity to gather information and obtain guidance as to the general suitability of his or her proposal for the area for which it is proposed and its conformity to the provisions of this subchapter. The applicant shall not construe any of the information provided by City at this point in the review process as an approval or denial of the proposed subdivision but rather as information to guide the applicant through the next steps in the City review process for the applicant's proposal.

§ 153.09 PRELIMINARY MAJOR SUBDIVISIONS (PRELIMINARY PLAT).

(A) *Submittal requirements.* Requests for preliminary plat approval may be filed with the City on an official application form after the applicant has attended a pre-application conference with City staff and has received comments about the proposed subdivision from the City as outlined in Section 153.08 of this Chapter. The applicant's signatures shall be provided on the application form. If the applicant is not the fee owner of the property, the fee owner's signature shall also be provided on the application form, or the applicant shall provide separate written and signed authorization for the application from the fee owner.

The application shall be considered as being officially submitted and complete when the applicant has complied all the specified requirements and submitted all the information as outlined below.

SECTION 2. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Regulations by amending various parts of Sections 154.001 through Section 154.007 by adding the underlined language and deleting the ~~strikethrough~~ language as follows:

ZONING ORDINANCE – ARTICLE 1. GENERAL PROVISIONS

§ 154.001 TITLE.

This chapter shall be known, cited and referenced to as the City's zoning ordinance.

(Ord. 2012-062, passed 9-18-2012)

§ 154.002 PURPOSE.

This chapter is adopted for the purposes of:

- A. Protecting the public health, safety, comfort, convenience, and general welfare;
- B. Implementing the City of Lake Elmo Comprehensive Land Use Plan;
- C. Promoting orderly development of the residential, commercial, industrial, recreational and public areas;
- D. Conserving the natural and scenic beauty and attractiveness of the city;
- E. Conserving natural resources in the city;
- F. Minimizing environmental pollution; and

G. Conserving energy through the siting of buildings and encouragement of solar and earth-sheltered structures where appropriate.

(Ord. 2012-062, passed 9-18-2012)

§154.003 STATUTORY AUTHORIZATION.

This chapter is adopted pursuant to the authorization contained in Minnesota Statutes, Chapter 462, or successor statutes.

(Ord. 2012-062, passed 9-18-2012)

§154.004 JURISDICTION.

This chapter shall be applicable to all lands and waters within the corporate limits of Lake Elmo, Minnesota.

(Ord. 2012-062, passed 9-18-2012)

§154.0045 PREMATURE (9/23/17) SUBDIVISION PROHIBITED.

Any development, redevelopment, plat or other subdivision of property may be denied by the City Council if it is deemed by the City Council to be premature for development pursuant to the criteria listed LQHFWDRIWKEGLMRRUGLQH.

(A) Any proposed development, redevelopment, plat or subdivision of property may be denied by the City Council if it is deemed by the City Council to be premature for development. The burden of proof shall be on the applicant, property owner or subdivider to demonstrate to the City Council that the proposed development, redevelopment or subdivision is not premature for development or redevelopment.

§154.005 COMPLIANCE REQUIRED.

Except as in this chapter specifically provides, no structure shall be erected, converted, enlarged, reconstructed or altered, and no structure or land shall be used for any purpose in any manner which is not in conformity with this chapter.

(Ord. 2012-062, passed 9-18-2012) Penalty, see §154.999

§ 154.006 RULES OF CONSTRUCTION AND INTERPRETATION.

The following rules of construction and interpretation apply to this chapter:

- A. *Minimum Requirements.* In their interpretation and application, the provisions of this chapter shall be held to the minimum requirements for the promotion of the public health, safety and welfare.
- B. *Conflict.* Where the conditions imposed by any provision of this chapter are either more restrictive or less restrictive than comparable conditions imposed by any other law, chapter, statute, resolutions or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail.

(Ord. 2012-062, passed 9-18-2012)

§ 154.007 SEVERABILITY AND VALIDITY.

It is hereby declared to be the intention that the several provisions of this chapter are severable in accordance with the following:

- A. *Severability.* If any court of competent jurisdiction shall adjudge any provisions of this chapter to be invalid, such judgment shall not affect any other provisions of this chapter.
- B. *Validity.* If any court of competent jurisdiction shall adjudge invalid the application of any provision of this chapter to a particular property, building, or structure, such judgment shall not affect other property, buildings or structures.

SECTION 4. Effective Date. This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

SECTION 5. Adoption Date. This Ordinance 08-___ was adopted on this _____ day of ___ 2021, by a vote of ___ Ayes and ___ Nays.

LAKE ELMO CITY COUNCIL

Charles Cadenhead, Mayor

ATTEST:

Julie Johnson, City Clerk

This Ordinance 08-___ was published on the ___ day of _____, 2021

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-XXX

AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES BY
AMENDING SECTIONS 153.11 AND 153.12 OF THE SUBDIVISION REGULATIONS

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 153: Subdivision Regulations by adding the underlined language and removing the ~~stricken~~ language:

§ 153.11 VARIANCES; STANDARDS; PLATTING.

(A) *Purpose.* The City may grant a variance ~~A variance may be granted~~ from the minimum standards required by this chapter as they apply to a specific property where unusual hardship on the land exists, ~~but~~ Vvariances may be granted only upon the specific grounds set forth in this section. In granting any variance, the Planning Commission may recommend, and the Council shall prescribe, the conditions as it deems necessary and desirable to protect the public interests. In no case shall any of the procedural requirements of this chapter be waived nor shall a variance be deemed to permit any waiver or avoidance of the procedural requirements.

(B) *Planning Commission review.* No variance shall be granted until the matter has been considered by the Planning Commission. In making its recommendations and making the findings set forth in paragraph (C) below, the Planning Commission shall take into account the nature of the proposed use of land and the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision, and the probable effect of the proposed subdivision ~~upon~~ would have on traffic conditions in the vicinity of the proposed subdivision.

(C) *Findings.* A variance shall be granted only where the City Council finds the variance is in harmony with the general purposes and intent of this chapter and when the variance is consistent with the Comprehensive Plan. The applicant also must establish that there is an unusual hardship in complying with this chapter. "Unusual hardship" as used in connection with the granting of a variance means as follows:

(1) that the property owner proposes to use the property in a reasonable manner not permitted by this chapter;

(2) the plight of the property owner is due to circumstances unique to the property not created by the property owner; and

(3) the variance, if granted, will not alter the essential character of the locality.

~~(1) That there are special circumstances or conditions affecting the applicant's land that the strict application of the minimum standards of this chapter would deprive the applicant of the reasonable use of that land;~~

~~(2) That the granting of the variance will not be detrimental to the public welfare or injurious to other property; and~~

~~(3) That the variance required by reason of unusual hardship relating to the physical characteristics of the land.~~

§ 153.12 VARIANCE PROCEDURES.

(A) *Application.* Requests for a variance ~~to from~~ the City's subdivision regulations set forth in this chapter standards or an appeal shall be filed with the City on an official application form. The application shall be accompanied by a fee as established from time to time by resolution of the City Council. The application shall also be accompanied by detailed written and graphic materials necessary for the explanation of the request. The application also shall include all information required for variances set forth in Sections 154.109 (C) of the Zoning Code. The applicant shall submit a minimum of 4 large scale copies and 10 reduced scale (11" X 17") copies and electronic versions of all graphics.

(B) *Hearing.* The Planning Commission shall hold a public hearing on the variance request ~~in accordance with the standards set forth in the zoning code.~~

(C) *Appearance of the applicant before the Planning Commission.* The applicant or a representative of the applicant shall appear before the Planning Commission in order to answer questions concerning the proposed variance request.

(D) *Findings.* The Planning Commission shall make ~~its~~ the findings set forth in Section 154.11 (C) and make the considerations set forth in Section 154.11 (B) and make its recommendation to the City Council ~~the actions or conditions relating to the request as they deem necessary to carry out the intent.~~

(E) *Approval/denial.* Upon receiving the report and recommendation of the Planning Commission, the City Council shall ~~decide whether to~~ approve or deny the request for a variance. The City Council shall not ~~grant~~ approve or deny a variance until it has received the report and recommendation from the Planning Commission ~~or, unless no report and recommendation is received from the Planning Commission until and~~ 30 days have passed since after the application was ~~accepted deemed complete~~ by the City. The City Council shall ~~decide whether to~~ approve or deny the request for a variance ~~or an appeal~~ no later than 60 days after the ~~filing of the~~ application was deemed complete by the City unless a time extension is ~~permitted granted in~~ accordance with by Minnesota Statutes Section 15.99 State Law.

(F) *Written findings ~~and order~~.* The City Council shall make written findings of fact ~~and order~~ in granting or denying any application for a variance ~~or appeal~~. In granting any variance ~~or making any order related to a variance or appeal~~, the City Council shall impose any condition on its approval of the variance that it considers necessary in order to protect the public health, safety, or welfare.

(G) *Notification of decision.* The Planning Director or the City Clerk shall notify the applicant of the Council's decision in writing. If the City Council denies the variance, the notification must include a statement of the reasons for denial.

SECTION 2. Effective Date. This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

SECTION 3. Adoption Date. This Ordinance 08-XXX was adopted on this __ day of ____ 2021, by a vote of ____ Ayes and ____ Nays.

LAKE ELMO CITY COUNCIL

Charles Cadenhead, Mayor

ATTEST:

Julie Johnson, City Clerk

This Ordinance 08-XXX was published on the __ day of _____, 2021.



STAFF REPORT

DATE: February 22, 2021

Public Hearing

ITEM #:

TO: Planning Commission
FROM: Ken Roberts, Planning Director
AGENDA ITEM: **Lake Elmo Tree Preservation and Landscape Code Amendments**
REVIEWED BY: Ben Prchal, City Planner
Lucius Jonett, City Landscape Architect (Wenck and Associates)

BACKGROUND:

City staff has been directed to prepare amendments to the City's Tree Preservation ordinance (Section 154.257) and the City's Landscape ordinance (Section 154.258). The requested changes are to clarify many of the City standards and requirements about tree preservation and landscaping for construction, new development and redevelopment projects in Lake Elmo.

In addition, there are aspects of the City tree preservation and landscape ordinances that Lake Elmo could amend to clarify processes and to meet current City standards and practices. As such, staff has included several other changes to the tree preservation and landscape ordinances as part of this review.

REVIEW HISTORY:

On September 8, 2020, City staff presented information to the City Council about the City's tree preservation ordinance and tree trimming policy. After review and discussion of the existing City ordinances and practices, the City Council direct staff to prepare possible revisions for Council consideration to the City's tree preservation ordinance and the City's landscaping standards.

On October 26, 2020, the Planning Commission reviewed the first draft of the proposed amendments to the Tree Preservation and Landscape ordinances. The Commission asked staff several questions about the proposed changes and provided staff with a few comments and suggestions for changes to the draft ordinances.

ISSUE BEFORE THE PLANNING COMMISSION:

The Planning Commission is being asked to review and hold a public hearing about the draft updated ordinance language for tree preservation and landscape ordinances.

REVIEW AND ANALYSIS:

Zoning and environmental regulations (including tree preservation and landscaping ordinances) allow cities to ensure that new development or redevelopment meets the standards of the city for a safe, functional and enjoyable community. Importantly, environmental protection regulations can help the City preserve and enhance important natural resources and environmental features by regulating what changes or impacts the city will allow or not allow to the natural features on construction, new development and redevelopment sites. It is the goal of City staff to have ordinances that provide clear and reasonable development and design standards while protecting existing trees and ensuring the installation of quality landscaping in Lake Elmo.

Many of the proposed ordinance changes are to ensure the tree preservation ordinance and the landscape ordinance will be consistent with each other. This is important as the planting of new or replacement trees as may be required by the tree preservation ordinance become part of the landscape plan for a new development

or redevelopment site. Staff also is proposing to add language in the update to the tree preservation ordinance that outlines the situations when the Lake Elmo will not require a tree preservation plan.

Since the October 26, 2020 Planning Commission meeting, City staff has reviewed tree preservation and landscape ordinances from several area cities and have worked closely with the City's Landscape Architects at Wenck and Associates in developing the latest proposed tree preservation and landscape ordinance language. Their input and comments, as well as those from other staff persons, has been invaluable in the creation of the ordinance amendments the Planning Commission is now considering.

Background Information and Proposed Changes

Tree Preservation Ordinance

City staff recently reviewed the tree preservation ordinances from several other area cities (Ramsey, Shakopee, Oakdale, Rosemount, Roseville, Maplewood, Cottage Grove, Eden Prairie, Lakeville and Forest Lake) to learn the standards those cities use for tree preservation and how those cities implement those standards. There were several parts of those ordinances that were of particular interest in the City staff review. Those include the amount of allowable tree removal that does not require tree replacement (up to 30 percent in Lake Elmo), the tree replacement standards if required including the size and number of new trees, the warranty standards for new trees (2 years minimum in Lake Elmo) and if those ordinances had language for exceptions to meeting the minimum replacement standards on a development site (Lake Elmo has such language). For reference I have attached the Code language of those sections of the other City ordinances to this staff report.

Ordinance Review

City staff reviewed the tree preservation ordinances from the above listed cities to determine if the standards in the Lake Elmo Tree Preservation Ordinance were in keeping with the standards used by other cities in the Twin Cities area. In a very short summary, staff found the Lake Elmo tree preservation standards and practices were similar to those in the other cities reviewed by staff. The following is a summary of our findings:

Allowable Tree Removal Standards (how many trees or percentage of trees may be removed without replacement)

Lake Elmo – 30 percent

Other reviewed cities - 25 percent to up to 60 percent (primarily in commercial and industrial districts).

Sample Tree Replacement Standards

Lake Elmo – common species replaced with ¼ diameter inches removed, coniferous or evergreens replaced at ½ of diameter inches removed (based on height), hardwood deciduous species replaced with ½ diameter inches removed.

The other cities staff reviewed had a variety of replacement standards including using diameter inches removed as Lake Elmo does to requiring a certain of trees be planted based on the size and types removed (Oakdale and Forest Lake).

Warranty Requirements or Standards for replacement trees

Lake Elmo – two years from the date of project closure.

Other reviewed cities – 5 cities require a one year warranty and two cities (Shakopee and Roseville) require a two year warranty.

Exceptions and Reduced Mitigation for Exceptions

Lake Elmo – The current tree preservation ordinance has language about exceptions to the standards and the possibility of the City allowing reduced mitigation or tree replacement standards for a development. In such a case, the existing code allows the City to require a payment from the developer to the City, to implement woodland management practices or planting of replacement trees on City property or a combinations of these options.

City staff is aware of only one situation where City required payment from a developer for replacement trees that could not fit on a site. The City negotiated an agreement with the developers of Royal Golf in 2018 to pay \$500 per replacement tree that could not reasonably fit on their site. For 969 trees, the total required payment from the developer was to be \$484,500. (Please see below for more information about this).

Other reviewed cities: 7 cities allow the developer to pay the City a fee (either per tree or per caliper inch), 6 cities allow tree planting elsewhere (on City-owned property or on property in the city owned by the developer) and 2 cities allow for a combination of these mitigation methods.

As for the fees they charge, I have attached a table showing each of the 7 cities and their tree replacement fee with an example if a developer had to pay for 100 replacement trees or 100 replacement diameter inches in that City. The Lake Elmo City Council reviewed this fee during their Workshop meeting on February 9 and directed city staff to add a \$300 tree replacement fee to the City fee schedule.

Proposed Ordinance Amendments

The proposed changes to the Lake Elmo tree preservation ordinance (dated February 1, 2021) include adding definitions and adding language that clarifies when the city will require a tree preservation plan and when the city will not require a tree preservation plan. Staff is not proposing any changes to the type or size of trees that are used for determining the amount of tree replacement or those that a developer may remove or the amount of allowable tree removal on a new development or redevelopment site.

For clarity in tracking the proposed changes to the ordinance, I have highlighted some sections in **yellow** (the first set of proposed changes) and other sections in **green** (the most recent proposed changes). All proposed new language is underlined and all the language proposed for removal is shown with ~~strike through~~.

Staff also is proposing some clarifying language to Section E 2, Reduced Mitigation for Exceptions. It is important to note that this section of the Code allows the City to approve exceptions to the tree preservation standards. The Code now includes several options the City may approve if the City wishes to grant the request of the developer to have an exception to the City tree preservation standards. One of the relief or mitigation methods allows the City to require a developer or property owner to pay a fee to the City if they are unable or unwilling to meet all the tree preservation and/or replacement standards.

A recent example of the City using this provision of the City Code is the Royal Golf development. In 2018, the City received a request from the developer of Royal Golf to reduce the number of trees they would need to plant on their site. The following paragraphs are excerpts from the 2018 City staff report:

The Royal Golf Club at Lake Elmo Preliminary Landscape Plans included the need for 3800 trees within the entire Royal Golf Club at Lake Elmo Preliminary Plat per Tree Preservation and Landscape requirements. The original number of trees that were required to be planted within the development was approximately 4600, but because the area is heavily wooded and because the language within the

tree preservation ordinance requires a minimum of five trees to be planted for every one acre of land that is developed or disturbed, the City made some concessions, and an agreement was made to require that 3800 trees be planted within the development. The Developer and City have been working on coming to an agreement for trees required within the development, as both the Developer and City believe that the required number of trees within the development would cause tree overcrowding.

The Council discussed this request at the January 9, 2018 workshop and directed Staff to draft an amendment to the Royal Golf Club at Lake Elmo (development agreement) which will reduce the number of trees required to be planted within the development from 3800 to 2912 (the 888 to be planted within single family lots subtracted from the agreed-upon number of trees to be planted within the development). There was consensus that simply not requiring warranty on these trees would leave the City with no way to enforce the requirement that these trees be planted. This direction was given to Staff under the understanding the developer would be paying park dedication fees totaling \$484,500 (\$500 per 2.5 caliper inch tree X 969 trees to be reduced).

This is a large and extreme example of how the City may apply this provision of the City Code. There are probably few, if any, other development sites in Lake Elmo where a developer or property owner would not be able or willing to preserve the minimum number of trees on the site and/or be able to plant the minimum number of replacement trees on the property. It is staff's expectation that developers want to preserve trees on a site as their removal is an expense and by preserving as many trees as reasonably possible they are adding value to the property and preserving the natural amenity that are the trees.

Landscape Ordinance Review and Changes

Staff also is proposing several changes to the City landscape ordinance. These changes are to ensure the definitions and standards in the landscape ordinance are consistent with those in the tree preservation ordinance and include design standards and expectations that reflect a variety of land uses, development and redevelopment projects and current practices for landscaping in Lake Elmo. The major proposed changes to the landscape code include:

Adding a Purpose and Intent section

Adding Definitions

Adding more details for the submittal requirements for landscape plans (including a design narrative)

Updating the section about design considerations including revising the minimum size at planting, adding setbacks and standards for tree planting and several other design standards to be followed

Updating the section about the Landscaping of Setback Areas to include several design standards for when and where materials are planted

Added clarifying language to the screening standards about when, where and how screening may be accomplished

Added Section H (Redevelopment Compliance) to outline when the City will and will not require landscape plans for what types of construction or redevelopment projects

Added language in Section I (Maintenance and Installation of Materials) about irrigation systems, continuance maintenance of the landscaping and landscape material removal

For clarity in tracking the proposed changes to the ordinance, I have highlighted some sections in **yellow** (the first set of proposed changes) and other sections in **green** (the most recent proposed changes). All proposed new language is underlined and all the language proposed for removal is shown with ~~strike through~~.

FISCAL IMPACT:

Staff does not foresee a negative fiscal impact with the proposed changes to the tree preservation and landscape ordinances.

OPTIONS:

The Planning Commission may:

- Recommend approval of the proposed changes to the tree preservation and landscape ordinances.
- Recommend approval of the proposed changes to the ordinances with changes to the proposed language.
- Recommend denial of the proposed changes to the tree preservation and landscape ordinances.

RECOMMENDATION:

Staff is recommending approval of the proposed changes to the Lake Elmo Tree Preservation and Landscape ordinances.

“Motion to recommend approval of the Tree Preservation and Landscape Ordinance amendments as proposed by City staff.”

ATTACHMENTS

- Tree Preservation Ordinance Language Examples from other cities
- Table of Example Tree Replacement fees
- Lake Elmo Tree Preservation Ordinance (Section 154.257) with proposed changes
- Lake Elmo Landscape Ordinance (Section 154.258) with proposed changes

Tree Preservation Ordinance language examples from Other Cities

Examples of Allowable Tree Removal Standards

Ramsey - within residential developments, must keep at least 40 percent of the existing significant tree DBH (allows for up to 60 percent removal)

for business and employment development, must keep at least 30 percent of the existing significant tree DBH (allows for up to 70 percent removal)

Shakopee – for residential subdivisions, allow for up to 30 percent of the DBH to be removed without replacement (must keep 70 percent).

For commercial/industrial sites, up to 60 percent of the DBH may be removed without replacement (must keep 40 percent).

For a redevelopment lot, up to 30 percent of the DBH is allowed to be removed without replacement (must keep 70 percent).

Oakdale – Development plans should remove no more than 25 percent of the total number of significant trees from a site (without any replacement required).

Rosemount – 25 percent of the existing caliper inches of trees can be removed during development without obligation of replacement. Any removal beyond 25 percent will require replacement.

Roseville – Allowable Tree removal – up to 15 percent of the total DBH inches of all Heritage trees, up to 35 percent of the total DBH-inches of all significant trees and up to 35 percent of the total DBH inches of all common trees may be removed without tree replacement or restitution.

Cottage Grove – Allowable maximum percentage of DBH inches that may be removed without mitigation

Residential site with less than 10 units per acre – 35 percent

Residential site with more than 10 units per acre and Business/Commercial – 50 percent

Industrial sites – 60 percent

Hugo – None listed

Forest Lake – maximum percentage of woodland or significant DBH inches that may be removed without obligation for reforestation or restitution by land use or zoning:

Agriculture – 25 percent

Rural residential – 30 percent

Suburban residential (all types) – 50 percent

All other zoning districts – 60 percent

Sample Tree Replacement Standards

Ramsey – For every one significant tree inch that is removed in excess of the removal threshold, the developer shall plant 1.25 inches (diameter) of new trees OR provide the city with \$125 in restitution.

Shakopee – not clear – uses credits for trees planted as part of the City’s Landscaping requirements. If the number of replacement trees cannot be met on the site they require a cash payment to the City of \$400 per replacement tree or replacement trees may be planted in City owned or managed land or replacement trees may be planted on other property owned by the Applicant within the City.

Oakdale – Table in Section 22-06 (page 7)

<u>Size of damaged or removed tree</u>	<u>Number of replacement trees</u>
Coniferous -12’ to 24’ feet high	2
Coniferous – 24 feet or taller	4
Hardwood decid – 8”- 20 inch dia.	2
Hardwood decid. – greater than 20 inch dia.	4
Softwood deciduous 12-24 inch dia.	2
Softwood deciduous greater than 24 inch dia.	4

Required size for replacement trees – deciduous - not less than 2.5 inch diameter, coniferous – not less than 8 feet in height.

Note: the ordinance also says that if the site cannot accommodate the required replacement trees, those remaining to be planted shall be located on other property owned by the developer/builder located in the City or on property owned by the City. The city shall determine the location of the placement of trees on City property.

Rosemount – Tree replacement formula

Replacement of removed or disturbed trees in excess of the percentage allowed shall be according to the following guidelines;

For development that exceeds the percentage of allowable removal of significant trees, all significant tree shall be replaced at the ration of one-half (0.5) caliper inch per one (1) caliper inch removed.

For each Heritage tree removed by the developer, all heritage trees shall be replaced at the ration of one (1) caliper inch per one (1) caliper inch removed.

Roseville –

For deciduous trees, one caliper inch of replacement tree is required for every one DBH inch of required replacement.

For coniferous trees, a replacement tree 6-8 feet in height = 1 inch of required DBH replacement inches, for replacement trees 8-12 feet tall = 2 inches of required DBH replacement inches and for replacement trees 12 feet tall or greater = 3 inches of DBH replacement inches.

Cottage Grove – Mitigation and Tree Replacement Schedule

Mitigation – for any site where the allowed tree removal (in inches) exceeds the permitted threshold, the applicant shall mitigate the tree loss in one of the following ways:

Planting replacement trees on the development site according to the tree replacement plan;

Planting replacement trees on City property;

Paying the City a cash mitigation fee based on the diameter inches of required tree replacement. The cash fee in lieu of the required replacement inches shall be in accordance with the city’s fee schedule.

Tree Replacement Schedule –

- a. Quantity: qualifying tree inches removed beyond the permitted thresholds shall be replaced at a rate of 50 percent - or one (1) replacement caliper inch for every two (2) removed diameter inches.
- b. Size: Deciduous trees planted in mitigation of excessive tree loss shall have a minimum caliper of 2.5 inches and coniferous trees shall be a minimum of 6 feet tall. One new conifer tree at least six feet tall shall be credited as contributing two (2) caliper inches of the total replacement inches.
- c. Ornamental trees are not acceptable as replacement trees.

Forest Lake (very similar to Oakdale standards)

<u>Size of damaged or removed tree</u>	<u>Number of replacement trees</u>
Coniferous -12' to 24' feet high	2
Coniferous – 24 feet or taller	4
Hardwood decid – 8”- 20 inch dia.	2
Hardwood decid. – greater than 20 inch dia.	4
Softwood deciduous 12-24 inch dia.	2
Softwood deciduous greater than 24 inch dia.	4

Required size for replacement trees – deciduous - not less than 2.5 inch diameter, coniferous – not less than 6 feet in height.

Warranty Requirements or Standards (for replacement trees)

Shakopee –

For commercial/industrial sites and residential developers – 2 years

For builders of individual residential lots – 1 year

Oakdale –

One year after the date that the last replacement tree was planted. Any tree removed shall be replaced with a new healthy tree of the same size and species in place of the removed tree within eight months of the removal. Requires a security of 125 percent of the estimated cost to furnish and plant the replacement trees.

Rosemount -

One year from the date the improvements were completed. Requires a security of 110 percent of the value of the trees (and landscaping).

Roseville –

Minimum Two year guarantee with a financial guarantee for at least 125 percent of the cost to furnish and plant replacement trees. The City shall maintain the security for at least 2 years after the date the last replacement tree was planted.

Cottage Grove –

Warranty – Replacement trees - at least one year after the date of project closure. If not alive or healthy in that first year, must be removed and replaced by the applicant with a new, healthy tree meeting the same minimum size requirements. The City requires a cash escrow or an irrevocable letter of credit (a financial guarantee) of 150 percent of all the landscaping (including replacement trees).

Eden Prairie –

Warranty - Replacement trees that are not alive or healthy one year after the date the last replacement tree has been planted shall be removed and a new healthy tree of the same size and species shall be planted in its place. The City requires a financial security in the amount of 150 percent of the estimated cost to furnish and plant replacement trees.

Forest Lake –

Warranty – Replacement trees that are not alive or healthy one year after the date of project closure shall be removed and a new healthy tree of the same size and species shall be planted in its place within 8 months of removal. The City requires a letter of credit or a cash escrow in an amount equal to at least 125 percent of the approved landscaping costs (including the cost of replacement trees).

Exception Standards (when and how to allow reduced mitigation for tree replacement)

Ramsey –

If a development exceeds the removal threshold specified in the ordinance, the developer shall replant areas within the site, pay restitution or some combination thereof.

For every one significant tree inch removed in excess of the removal threshold, the developer shall replant 1.25 inches (diameter) of new trees or provide the City with \$125 in restitution.

Shakopee –

If the number of replacement trees cannot be met on site, the following is required:

A cash payment of \$400 per replacement tree shall be provide to the City for the planting of trees that are as close as possible to the project site; or

Trees may be planted on City owned or managed land as approved by the Director;
or

Replacement Trees may be planted on other properties owned by the Applicant in the City.

Oakdale –

If the site cannot accommodate the required replacement trees, those remaining to be planted shall be located on other property owned by the developer/builder located within the city or on property owned by the City. The city shall determine the location of the placement of the trees on City property.

Rosemount –

Fee-in-Lieu of tree Replacement or Replacement Trees Planted in Public Areas: the City recognizes there may be instances where the total amount of tree replacement required cannot occur on site or that there are some land uses that are not compatible with trees. 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 only be used when replacement cannot occur on site. The fee-in-lieu of tree replacement will be determined annually by the City Council through the fee schedule.

Roseville –

Replacement tree Locations. Required replacement shall be planted on the site being developed unless doing so is deemed to be impractical (i.e. due to a lack of space), inappropriate (available planting areas are not ideal for new plantings or would do little to enhance the site) or counterproductive to a property's intent (i.e. would entail too much screening for a retail business) as determined by the City Forester. When such a determination is made, the applicant shall comply with the replacement requirements in one of three ways in the following manner:

- a. As directed by the city, required replacement trees may be located on private property within 1000 feet of the subject development site with the consent of the property owners, on public improvement project sites that are not greater than 1000 feet from the development site, or on other public and private lands that are not greater than 1000 feet from the development site if such lands are deemed to be available, with priority given to locations near the affected area; OR
- b. The City may accept a cash-in-lieu tree replacement payment in accordance with the required fee listed in the city fee schedule; OR
- c. The City may approve a combination of tree replacement in accordance with A above and a payment consistent with b above to fulfill this requirement.

Maplewood –

After putting as many trees as feasible on the site, if the tree replacement requirement is still not met, the Community Development Director can approve tree replacement steps as outlined in the tree standards document for the project before the issuance of a grading or building permit.

Cottage Grove –

Mitigation

- a. For any development or site in which the number of qualifying inches removed exceeds the permitted removal threshold, the applicant shall mitigate the tree loss in one of the following ways:
 1. Planting replacement trees in appropriate areas within the development in accordance with the tree replacement schedule; OR
 2. Planting replacement trees on City property; Or
 3. Paying the City a cash mitigation fee, based on the diameter inches of required replacement in accordance with the tree replacement schedule. The cash fee in-lieu-of required replacement inches shall be in accordance with the City’s fee schedule.

Eden Prairie –

Payment. Alternatively, if the Permittee demonstrates to the satisfaction of the City Manager, that it is not practical or reasonable to plant all or some of the required replacement trees on the Land, the Permittee may request approval to make cash payment to the city to be used for planting of trees on land within the city. Cash payments shall be calculated as set forth in the adopted fee schedule.

Forest Lake –

Mitigation Procedures.

Trees or woodlands removed beyond the permitted thresholds as described in this Ordinance shall be mitigated by the applicant through either of the following methods as determined by the City:

- a. Replace the trees or woodlands in accordance with the tree replacement provisions outlined in this Ordinance: OR
- b. Pay to the city the sum per caliper inch calculated from the total amount of caliper inches of the required replacement trees in accordance with the tree provisions in this Ordinance. The fee per caliper inch shall be set forth in the City fee schedule.

	City	Fee	Notes	Trees needing replacement (100 trees or 100 inches)
Cities with replacement per tree.	Ramsey	\$125 per tree	Least expensive per tree	\$12,500
	Shakopee	\$400 per replacement tree	Most expensive per tree	\$40,000
	Rosemount	\$350 per replacement tree		\$35,000
	Roseville	In no instance shall a cash-in-lieu of payment exceed 10% of the Fair Market Value of the development site;	Not clear what the fee will be.	
Cities with replacement per inch.	Cottage Grove	\$150 per replacement inch. (See notes)	Qualifying tree inches removed beyond the permitted thresholds shall be replaced at a rate of fifty percent (50%), or one (1) replacement caliper inch for two (2) removed diameter inches.	\$7,500
	Eden Prairie	\$125 per caliper inch		\$12,500
	Forest Lake	\$75 per caliper inch	Lowest fee to pay per caliper inch.	\$7,500

Lake Elmo Tree ordinance language - proposed amendments - February 1, 2021 (With proposed additions underlined and deletions shown with ~~striketrough~~). Note: First set of proposed changes and additions highlighted in yellow. Second set of additions and changes shown in green. (with Wenck comments in red)

§ 154.250. PURPOSE.

The purpose of this section is to provide regulations of general applicability for property throughout the City that are intended to protect or enhance natural resources and processes, and minimize conflicts among land uses.

(Ord. 08-077, passed 5-07-2013)

§ 154.257 TREE PRESERVATION.

- A. Purpose. Within the City of Lake Elmo, trees and woodlands are considered a valuable asset to the community. The City places a priority on protecting this asset and finds that it is in the best interest to regulate the development and alteration of wooded areas within the community. All builders, developers and subdividers shall comply with all the provisions in the Zoning Code which address the preservation of existing significant trees. All builders, developers and subdividers are encouraged to preserve all healthy trees of significant value even if the trees do not meet the size requirements to be considered significant trees.
- B. Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Applicant: Any person or entity submitting an application to the City for approval of a land use permit including preliminary plat, final plat, conditional use permit, planned unit development, variance or grading permit for a site or property.

Builder: Any person or entity to which the City issues a building permit.

Building Permit: A Permit issued pursuant to Minnesota Statutes Chapter 326, the state Building Code.

Common Tree. Includes Ash, Aspen, Basswood, Catalpa, Elm, Hackberry, Locust, Poplar, Silver Maple, Willow and any other tree not defined as a hardwood deciduous tree or a coniferous/evergreen tree.

Coniferous/Evergreen Tree. A wood plant, which, at maturity, having foliage on the outermost portion of the branches year-round. Tamaracks are included as a coniferous tree species.

Construction Area: Any area in which construction activity has or is occurring. This may include the movement of earth, alteration in topography, soil compaction, disruption of vegetation, 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.

Construction activity. Any disturbance to the land that results in the movement of earth, the alteration in the topography or existing soil cover (both vegetative and non-vegetative) that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity may include clearing, grading, filling, excavating, building construction and landscaping.

Construction damage. Any action such as filling, scraping, trenching, or compacting the soil around trees or wounding trees in such a manner that it may result in the eventual death of the tree.

Critical Root Zone (CRZ). An imaginary circle surrounding the tree trunk with a radius distance of one (1) foot per one (1) inch of tree diameter. E.g. a twenty-inch diameter has a critical root zone with a radius of twenty (20) feet.

Deciduous Hardwood Tree. A tree that loses its foliage or leaves annually such as ~~includes~~ Birch, Cherry, Hickory, Ironwood, Hard Maples, Oak and Walnut.

Developer. Any person or entity that undertakes to improve a parcel of land, by platting for the purposes of establishing three (3) or more dwelling units, grading, installing utilities or constructing any building thereon. For purposes of these guidelines, a developer does not include a builder as defined herein.

Development. Any activity for which the City requires approval of a preliminary plat, final plat, building permit, demolition permit, conditional use permit, planned unit development, variance or grading permit.

Development Plan. A common plan for Development or sale where multiple separate and distinct construction activities or land alteration activities, including new development or redevelopment, may be taking place at different times, or different schedules, but under one (1) proposed plan. One (1) Development Plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.

Diameter Breast Height (DBH). The diameter of trees at breast height, measured 4 ½ feet (54 inches) above the ground.

Drip Line. The farthest distance away from the trunk of a tree that rain or dew will fall directly to the ground from the leaves or the branches of the tree.

Healthy Tree. A tree that is in average or better condition and vigor for the area as may be determined by the City's Landscape Architect, by a Forester or by a Nurseryman as licensed by the State of Minnesota. OR

Healthy Tree. A healthy tree has: (Preferred by Lucius)

1. A live top (live crown) that is greater than one-third (1/3) the total tree height.
2. Dead branches that make up less than fifteen percent (15 %) of the total crown.
3. Less than fifteen percent (15%) of the tree crown with missing branches.
4. Consistent growth of foliage throughout the live portion of the crown.
5. A tree trunk with no open wounds that are greater than one-third (1/3) the diameter of the tree, with no wounds in contact with the ground and no wounds that have soft, punky wood or other indication of decay.

Land Alteration. Any land disturbing or construction activity, including excavating, grading, digging, cutting, scraping, clearing, removal of trees, filling or other change or movement of earth that results in a change to existing topography, alters watershed boundaries and flow paths, or removes existing vegetation allowing for the potential erosion of sediments.

~~New Construction.~~ A land altering activity that creates impervious surface in an area where prior to the activity there was minimal or no impervious surface.

~~New Development.~~ A construction or land altering activity that creates imperious surface in an area where there was minimal or no impervious surface.

New Development. All construction or land altering activity that is not defined as **Redevelopment.**

Nuisance Tree. (1) Any living or standing tree or part thereof infected to any degree with a shade tree disease (See Shade Tree Disease Below) or shade tree pest; (2) Any logs, stumps, branches, firewood or other part of dead or dying tree(s) infected with a shade tree disease or shade tree pest unless properly treated; and (3) Any standing dead trees or limbs which may threaten human health or property. Also included are noxious or invasive trees such as **Amur Maple, Japanese Barberry, Russian Olive, Siberian Elm, buckthorn, box elder, and cottonwood.**

Ornamental Tree. A small tree, usually less than thirty (30) feet in height at maturity, often planted for ornamental characteristics such as flowers or attractive bark.

Owner. Any person having sufficient proprietary interest in the land for which the City may issue a permit or approval under this Section.

Property Owner. The owner of a buildable property or parcel who is proposing a development, redevelopment or land altering activity or is constructing or expanding a dwelling or a business on that property or parcel.

~~Redevelopment.~~ A construction or land altering activity that creates new or replaces existing impervious surface, buildings or structures on a parcel that is fully or partially occupied by buildings, structures and/or other impervious surfaces.

Shade Tree Disease. Dutch elm disease (*Ophiostoma ulmi* or *Ophiostoma novo-ulmi*), oak wilt (*Ceratocystis fagacearum*), or any other tree disease of epidemic nature.

Shade Tree Pest. **Emerald Ash Borer (*Agrilus plannipenis*), European elm bark beetle (*Scolytus multistriatus*), Native elm bark beetle (*Hylurgopinus rufipes*) or any other Shade tree pest with potential to cause widespread damage.**

Significant Tree. A healthy tree measuring a minimum of six (6) inches in diameter for hardwood deciduous trees, 19 ft. in height or eight (8) inches in diameter for coniferous/evergreen trees, or twelve (12) inches in diameter for common trees, as defined herein.

Site. The area of land within which Construction Activity, Development, Redevelopment or Land Alteration occurs or is to occur.

Specimen Tree. A healthy, deciduous hardwood tree measuring equal to or greater than thirty (30) inches in diameter breast height or a healthy coniferous/evergreen tree measuring equal to or greater than twenty-five (25) feet in height.

Tree. A large woody perennial plant normally with one main trunk and many branches that is usually 30 feet or more in height at maturity.

Tree Preservation Plan. A plan prepared by a certified landscape architect or forester indicating all of the significant trees in the proposed development or property. The Tree Preservation Plan includes a proposed site plan, a proposed grading plan including all custom graded lots, a tree inventory that includes the size, species, and location of all significant trees proposed to be saved and removed on the area of development, and the measures proposed to protect the significant and specimen trees that are to be saved. The developer shall have the tree preservation plan superimposed on the proposed grading plan.

Woodland Evaluation Report. A report prepared by a certified landscape architect, forester, or land surveyor indicating the general location, condition, and species of significant trees on a parcel planned for future development or grading activity. The report must demonstrate that there will be no impact to existing significant trees as part of the development or grading activity. Finally, the report must include the measures proposed to protect significant trees on the site.

C. Tree Preservation Standards for Developing Properties

1. Applicability.

a. A Tree Preservation Plan, or suitable alternatives as determined by the City, shall be submitted and approved by the City for the following activities:

i. New Development or redevelopment in Any Zoning District. A Tree Preservation Plan shall be required as part of any new development, site redevelopment, or subdivision application. When either full redevelopment of a site is proposed or an addition to an existing building that would increase total floor area on a commercial, industrial or mixed-use site by 25 percent or more, a tree preservation plan and a landscape plan for the entire site, demonstrating compliance with the requirements of this section and with Section 154.258, must be submitted to the City for approval.

ii. Any grading or excavation project that result in the movement of greater than 400 cubic yards of material per acre of site per §151.017.

iii. If the applicant is able to demonstrate that the proposed development, redevelopment, land alteration or major grading activity includes no impact to the significant trees on the site, then the applicant may be exempt from the requirement to submit a Tree Preservation Plan. It is the responsibility of the applicant to demonstrate that there are no impacts to significant trees through a Woodland Evaluation Report or some other form of tree survey or study.

The tree preservation plan shall reflect the designer's and the developer's best effort to determine the most feasible and practical layout of lots, buildings, parking lots, driveways, streets, storage, storm water management facilities and other physical features, so the fewest Significant and Specimen trees are destroyed or damaged.

b. A Tree Preservation Plan is not required for the following activities:

- i. This section does not apply to the issuance of a development approval for a single-family residence on an existing platted lot of record.
- ii. This section does not apply to the harvesting of trees. For purposes of this section, "harvesting" means cutting or clearing trees for purposes relating to forestry operations, as defined in §154.012. "Harvesting" does not include the clearing of land for purposes of development, even where the trees are sold for purposes of creating lumber for related purposes.

~~iii. This section does not apply to building or construction projects with a building addition that would increase total floor area on a commercial, industrial or mixed-use site by less than 25 percent. However, if the building or construction project would physically impact existing trees or landscaping, the owner or developer shall submit to the City for approval a modified landscape plan for the portion of the site with the proposed addition and associated site work demonstrating compliance with the requirements of Section 154.258 (Landscaping and Screening).~~

iv. This section also does not apply to the following:

Additions to single-family homes, general home improvements and the construction of accessory buildings (garages, sheds) on residential properties.

Home gardens or an individuals' home landscaping, installation, repairs and/or maintenance work.

Tree removal related to public improvement projects or repairs to existing streets, roadways, sewers, parks, storm water facilities and utility/infrastructure.

Emergency removal of trees to protect the public health and safety and/or to alleviate immediate dangers to life, limb, property or natural resources.

Tree removal related to public improvement projects to restore or enhance woodlands, savannas or prairies.

Removal of dead or dying trees, unless those trees were planted as part of tree replacement in which case the property owner shall replace such trees based on the City-approved plan for the property.

Removal of nonnative trees that the City deems as nuisance or as invasive species.

2. Tree Preservation Plan. All applicants **and/or developers** shall submit a tree preservation plan prepared by a certified forester or landscape architect in accordance with the provisions of this section. During the review of an application for a building permit, grading permit, **site plan approval, planned unit development, conditional use permit** or Preliminary Plat, the **City will** review the **project and** tree preservation plans **will be reviewed** according to the best **available** layout to preserve significant trees and that the developer and/or **the efforts of** the subdivider **used the best possible design** to mitigate damage to significant trees.
3. Tree Preservation Plan Requirements. The Tree Preservation Plan shall be a separate plan sheet(s) that includes the following information:
 - a. The name(s), certification(s), telephone number(s) and address(es) of the person(s) responsible for tree preservation during the course of the development project.
 - b. Tree Inventory. The Tree Preservation Plan must include a Tree Inventory through one of the following methods:
 - i. Tree Inventory Individual. An individual inventory including an identification system linked to metal field tags located four and one-half (4.5) feet from grade on all significant trees must be identified on a plan sheet in both graphic and tabular form.
 - ii. Tree Inventory Sampling. In cases of sites with large tracts of significant trees, the City may approve the use of a sampling inventory for all or portions of a site as an alternative to an individual inventory. The sampling inventory must include the methodology for sampling, identification ribbon around the perimeter of the sampling areas, and metal field tags located four and one-half (4.5) feet from grade on all significant trees in the sampling area. Within the sampling area, the quantity, size, species, health and location of all significant trees must be identified on a plan sheet in both graphic and tabular form. Based on sampling, total estimates and locations of healthy significant trees shall be provided.
 - iii. Tree Inventory Combination. With the approval of the City, sites that include both large tracts of significant trees and areas of individual significant trees may utilize a combination of the individual and sampling inventory methods.
 - c. Trees that were planted as part of a commercial business such as a tree farm or nursery do not need to be inventoried on an individual tree basis. A general description of the trees and an outer boundary of the planted area must be provided. The burden of proof shall be on the applicant to provide evidence to support the finding that the trees were planted as part of a commercial business.

- d. A listing of healthy significant trees inventoried in subsection (b) above. Dead, diseased, **nuisance** or dying trees do not need to be included in the totals.
 - e. A listing of the healthy significant trees removed, identified by the metal field tag or some other form of identification used in the tree inventory in subsection (b) above.
 - f. A listing of the healthy significant trees to remain, identified by the metal field tag or some other form of identification used in the tree inventory in subsection (b) above.
 - g. Outer boundary of all contiguous wooded areas, with a general description of trees not meeting the significant tree size threshold.
 - h. Locations of the proposed buildings, structures, or impervious surfaces.
 - i. Delineation of all areas to be graded and the limits of land alteration and disturbance.
 - j. Identification of all significant trees proposed to be removed within the construction area. These significant trees should be identified in both graphic and tabular form.
 - k. Measures to protect significant **and specimen** trees and the City standard tree protection detail.
 - l. Size, species, number and location of all replacement trees proposed to be planted on the property in accordance with the Mitigation Plan, if necessary.
 - m. Signature of the person(s) preparing the plan.
4. Implementation. All new construction areas, development and redevelopment sites shall be staked, as depicted in the approved Tree Preservation Plan, and the required tree protection fencing shall be installed around the critical root zone before land disturbance is to commence. The City has the right to inspect the site at any time for compliance with the plan. No encroachment, land disturbance, trenching, filling, compaction, or change in soil chemistry shall occur within the fenced areas protecting the critical root zone of the trees to be saved.
 5. Allowable Tree Removal. Up to thirty (30) percent of the diameter inches of significant trees on any parcel of land being developed, redeveloped, graded or proposed for land alteration or construction activity may be removed without replacement requirements. Replacement according to the Tree Replacement Schedule is required when removal exceeds more than thirty (30) percent of the total significant tree diameter inches. The following types of trees do not need to be included as part of the tally of tree removals:
 - a. Dead, diseased, nuisance or dying trees;
 - b. Trees that are transplanted from the site to another appropriate area within the city;

- c. Trees that were planted as part of a commercial business, such as a tree farm or nursery (subject to verification by the City); or
 - d. Trees that were planted by the current property owner. In making such a determination, the City shall consider consistency of the age of the trees, any patterns in the location of trees, historical aerial photography and evidence of intentional planting such as invoices, formal planting plans or cost sharing agreements.
6. Mitigation Plan.
- a. In any new development, redevelopment, new construction project or grading project where the allowable tree removal is exceeded, the applicant shall mitigate the tree loss by planting replacement trees in appropriate areas within the development in accordance with the Tree Replacement Schedule.
 - b. The form of mitigation to be provided by the applicant shall be determined by the City.
 - c. The planting of trees for mitigation on residential projects shall be in addition to any other landscape requirements of the City. **Lucius: I don't think this section is too onerous as is. It has only been an issue for Royal Golf who decided where and how to build their project. This section protects the heavily forested areas and the overall City tree density from being overly diminished. And it ensures there are more than just boulevard and outlot trees in the development. I could see an outcome where there are no trees on individual lots, unless homeowners plant them after the fact. It's up to City Council and Planning Commission to think about how they want the City's neighborhoods (and developments) to look like.**
 - d. All trees, with the exception of ornamental trees, planted as landscaping on commercial or mixed-use projects may be counted towards tree replacement requirements. **Lucius: I also agree with this section as is. These types of projects have more impervious and less green space for trees. So to require mitigation trees in addition to other landscape trees would be too difficult.**
7. Tree Replacement Calculations. Thirty (30) percent of the total diameter inches of significant trees on the site of new construction, new development or redevelopment may be removed without replacement. **Any percentage over 30** **The applicant or developer shall plant all required replacement trees shall be replaced on the site of the proposed construction, development or redevelopment.** The following calculation procedure must be used to determine tree replacement requirements:
- a. Tally the total number of diameter inches of all significant trees on the site.
 - b. A calculation must be provided which breaks out the number of inches removed for hardwood, evergreen/deciduous, and common trees. The 30% removal figure applies to each category individually and trees are replaced according to the Tree Replacement Schedule in subsection 8.

8. Tree Replacement Schedule. Tree removals over the allowable tree removal limit on the parcel or site of new construction, new development, grading or redevelopment shall be replaced according to the following schedule:
 - a. Common tree species shall be replaced with new trees at a rate of one-fourth (1/4) the diameter inches removed.
 - b. Coniferous/evergreen tree species shall be replaced with new coniferous or evergreen trees at a rate of one-half (1/2) the diameter inches removed. Since coniferous species are often sold by height rather than diameter inch, the following conversion formula can be used:

$$\text{Height of Replacement Coniferous Tree}/2 = \text{Diameter Inches of Credit}$$
 - c. Hardwood deciduous tree species shall be replaced with new hardwood deciduous trees at a rate of (1/2) the diameter inches removed.
 - d. Replacement Tree Size. Replacement trees must meet the minimum sizes listed in Section 154.258 B (Table 6-1). ~~be a minimum of one (1) inch in diameter.~~
9. Species Requirement. The City must approve all species used for tree replacement. Ornamental trees are not acceptable for use as replacement trees. (Lucius: This prevents oak trees from be replaced by crab apple trees. I think it makes sense.) Where ten or more replacement trees are required, not more than thirty (30) percent of the replacement trees shall be of the same species of tree. The planting of Native species are encouraged, and hardiness and salt tolerance of the plants should be considered where applicable.
10. Warranty Requirement. Any replacement tree which is not alive or healthy, as determined by the City, or which subsequently dies due to construction activity within two (2) years after the date of the initial landscape inspection and acceptance or the of project closure shall be removed by the applicant and replaced with a new healthy tree meeting the same minimum size requirement within eight (8) months of removal.
11. Protective Measures. The Tree Preservation Plan shall identify and require the following measures to be utilized to protect significant trees planned for preservation:
 - a. Before any grading, construction activity or land disturbance, the developer or contractor shall install ~~Installation of~~ snow fencing or polyethylene laminate safety netting placed at the drip line or at the perimeter of the critical root zone, whichever is greater, of significant trees, specimen trees and significant woodlands to be preserved. No grade change, construction activity, parking, or storage of materials shall occur within this fenced in area.
 - ~~b. Identification of any oak trees requiring pruning between April 15 and July 1. Any oak trees so pruned shall be required to have any cut areas sealed with an appropriate nontoxic tree wound sealant.~~
 - b. Oak trees cannot be wounded, trimmed, pruned or damaged in any way (roots, bark, branches, etc.) between the dates of March 15 and October 31.

Any oak trees so pruned or trimmed shall be required to have any cut areas sealed with an appropriate nontoxic tree wound sealant.

- c. Prevention of change in soil chemistry due to concrete washout and leakage or spillage of toxic materials, such as fuels or paints.
- d. Removal of any nuisance or dead trees located in areas to be preserved.
- e. **Installation of erosion control methods.**

12. Additional protective measures. The following tree protection measures may be required by the City to protect Significant and specimen trees that the applicant or developer intends to preserve according to the submitted tree preservation plan, and may be required by the City:

- a. Installation of retaining walls or tree wells to preserve trees.
- b. Placement of utilities in common trenches outside of the Drip Line of Significant and specimen trees, or use of tunneled installation.
- c. Use of tree root aeration, fertilization, and/or irrigation systems.
- d. Therapeutic pruning.

13. Compliance with the Tree Preservation Plan. The applicant shall implement the Tree Preservation Plan prior to and during any grading, land alteration or construction activities. The tree protection measures shall remain in place until all land disturbance and construction activity is terminated or until a request to remove the tree protection measures is made to, and approved by, the City.

- f. No significant trees shall be removed until a tree preservation plan is approved and except in accordance with the approved Tree Preservation Plan.

If an applicant, developer or contractor removes or damages Significant tree(s) intended to be preserved to the point that City staff believes the tree will not survive, the applicant or developer shall remit to the City a cash mitigation, calculated per Diameter inch of the removed/damaged tree in the amount set forth in the City fee schedule.

- g. The City shall have the right to inspect the development, redevelopment and/or building site in order to determine compliance with the approved Tree Preservation Plan. The City shall determine whether the Tree Preservation Plan has been met.
- h. Instances where (a) significant tree(s) is (are) removed due to new development, redevelopment, new construction or grading or were disturbed, which was not noted on the landscaping or tree removal plan will result in a one to one replacement penalty regardless if it is over the 30% allowance.

D. Tree protection standards for non-developing properties.

1. Undeveloped parcels.

- a. There are no City restrictions or permit requirements for the removal of dead trees.
- b. Landowners not developing their property may remove up to thirty (30) percent of the trees on their property, based on wooded area as of the date of approval of this ordinance, provided they give the City at least fourteen (14) calendar days' notice before removing any trees to allow for City review of the proposal.
- c. If more than thirty (30) percent of the trees on the property are to be removed for forest management purposes, the landowner must notify the City fourteen (14) days before the removals are to take place and supply the City with an approved forest management plan developed and approved by the Department of Natural Resources' regional forester.
- d. If, within a ten-year time period of receiving a tree removal permit the property is developed, the landowner, applicant or developer will be responsible for replacing the trees that were previously removed in accordance with Section 154.257 C 7, tree replacement calculations, and Section 154.257 C 8, tree replacement schedule.

(b) Unauthorized tree removal on undeveloped parcels.

- (1) The City may record a notice of tree replacement requirement against non-developing property if any of the following situations occur:
 - (i) A landowner removes more than thirty (30) percent of the trees on their property (on an aerial photo review basis) without supplying the City with an approved forest management plan developed and approved by the department of natural resources' regional forester; or
 - (ii) A landowner removes more than thirty (30) percent of the trees on their property (on an aerial photo review basis) without supplying the City with a tree inventory before the tree removals take place.
- (2) The City will calculate the potential future tree replacement requirement based on the area of trees removed. Baseline tree cover will be calculated from aerial photographs provided by Washington County or from other sources.
- (3) Tree replacement for trees removed as outlined in subsection (b) (1) above will be calculated by applying a formula of two (2) inches of replacement for every one hundred (100) square feet of trees removed.
- (4) If, within ten (10) years of the date of the tree removals the property is developed, the City will require the applicant or developer to plant the appropriate amount or number of replacement trees as part of the development plans.

(5) If more than ten (10) years have passed from the date of the tree removals, the City will not require a tree replacement fee or the planting of replacement trees as part of the consideration of development or construction plans for the same property.

~~(c) Platted residential lots.~~

~~(1) Owners of platted residential lots may remove up to one hundred (100) percent of the trees on the lot without replacement.~~

(d) Existing developed commercial, industrial and mixed use properties.

(1) Trees that are removed in a commercial, industrial or mixed use development must be replaced in accordance with the original Landscaping plan, unless the property owner or developer has obtained City approval for an alternative Landscaping scheme. If the original Landscaping plan is not available, trees identified by appropriate aerial photo will be assumed to be part of the original landscape plan.

(2) Trees that are removed that were part of a designated tree preservation area must be replaced in accordance with the tree replacement requirements outlined in Sections 154.257 C 7 and C8. The thirty (30) percent allowable tree removal limit does not apply in these situations.

D. E. Financial Security. In cases where mitigation or tree replacement is required, the City may require that a financial security, in a form acceptable to the City, be provided as part of a development agreement, site work agreement or applicable permit to ensure compliance and performance of the Mitigation Plan. The financial security will be released to the applicant upon verification by the City that the Mitigation Plan was followed, and that all replacement trees are planted and are healthy. in a reasonable state of health. The financial security may be used to replace any replacement trees that have become damaged, are not healthy or are diseased after planting.

E. F. Exceptions

1. *Exception Standards.* Notwithstanding the City's desire to accomplish tree preservation and protection goals, there may be instances where these goals are in conflict with other City objectives. These conflicts will most likely occur on small, heavily-wooded parcels. The City recognizes there may be instances where it is not practical or reasonable to have an applicant or developer plant the total amount of required tree replacement on the site of a development or redevelopment. The City encourages applicants and developers to have the required tree replacement occur on the site of the development or redevelopment as much as possible. The City should only approve the use of fee-in-lieu of tree replacement or other mitigation methods when all the required tree replacement cannot practically or reasonably occur on the project site.

Applicants and/or Developers may ask the City to approve for exceptions to the City tree preservation and replacement standards through the variance process as

~~indicated in 154.109.~~ The City Council may grant exceptions ~~may be granted if~~ all of the following conditions exist:

- a. It is not feasible to combine the subject parcel with adjacent parcels that could use the parcel as required green space;
 - b. Strict adherence to the Tree Preservation Ordinance would prevent reasonable development that is consistent with the Comprehensive Plan and desirable to the City on the parcel; and
 - c. The exception requested is the minimum needed to accomplish the desired development or redevelopment.
2. *Reduced Mitigation for Exceptions.* If the City approves an exception to the tree preservation standards is granted, relief from the requirements of the ordinance may take the form of reduced mitigation requirements, greater allowable tree removal, higher thresholds for determining significant trees, or any combination of the above. The City Council will determine which form of relief best balances the objectives of the City and tree preservation. The City Council may require payment to the City of mitigation of park dedication fees; the implementation of woodland management practices by the developer; or the planting of replacement trees on City property by the developer under direction of the Public Works Director; or a combination of these methods as a condition of the City approving relief or an exception from the tree preservation and planting requirements. ~~variance approval.~~

~~(Ord. 08-077, passed 5-07-2013)~~

§ 154.258 LANDSCAPE AND SCREENING REQUIREMENTS. (With proposed additions underlined and deletions shown with ~~strikethrough~~). (11-17-20 version highlighted in yellow) (Second set of additions and changes dated February 18, 2021 shown in green.)

Purpose and Intent. The City of Lake Elmo recognizes the health, safety, aesthetic, ecological and economic value of landscaping and screening. Landscaping improves the livability of residential neighborhoods, enhances the appearance and attraction of commercial areas, increases property values, improves the compatibility of adjacent uses, screens undesirable views and reduces air and noise pollution. The City establishes uniform standards of development and maintenance of landscaping to promote a reasonable balance between the right of individuals to develop, use and maintain their property in a manner they prefer while creating pleasant and attractive surroundings for residents to live, work, shop and recreate.

The City intends the provisions of this section to:

- (1) Add visual interest to open spaces and blank facades;
- (2) Protect the health, safety and general welfare of the City;
- (3) Soften dominant building mass;
- (4) Promote the reestablishment of vegetation in the city for aesthetics, health and wildlife reasons;
- (5) Provide definition for public walkways and open space areas;
- (6) Ensure significant tree canopy shading to reduce glare and heat build-up;
- (7) Improve the visual quality and continuity within and between developments;
- (8) Provide screening and mitigation of potential conflicts between activity areas and more passive areas;
- (9) Protect and improve property values;
- (10) Improve air quality and provide a buffer from air and noise pollution;
- (11) Ensure safe and aesthetic treatment of ponding areas;
- (12) Enhance the overall aesthetic conditions within the city;
- (13) Limit sight line obstructions and drainage conflicts;
- (14) Reduce the potential for criminal and illegal activities; and
- (15) Prevent conflicts with utilities.

Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Applicant: Any person or entity submitting an application to the City for approval of a land use permit including preliminary plat, final plat, conditional use permit, planned unit development, variance or grading permit for a site or property

Berm. An earthen mound designed to provide visual interest, screen undesirable view and/or decrease noise.

Builder: Any person or entity to which the City issues a building permit.

Building Permit: A Permit issued pursuant to Minnesota Statutes Chapter 326, the state Building Code.

Caliper. The diameter of a tree measured six inches above the ground for tree four inches in diameter or less and measured twelve inches above the ground for tree greater than four inches in diameter.

Coniferous/Evergreen Tree. A wood plant, which, at maturity, having foliage on the outermost portion of the branches year-round. Tamaracks are included as a coniferous tree species.

Construction activity. Any disturbance to the land that results in a change in the topography or existing soil cover (both vegetative and nonvegetative), that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity may include clearing, grading, filling, excavating, building construction and landscaping.

Construction Area. Construction Area: Any area in which construction activity has or is occurring. This may include the movement of earth, alteration in topography, soil compaction, disruption of vegetation, 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.

Construction damage. Any action such as filling, scraping, trenching, or compacting the soil around trees or wounding trees in such a manner that it may result in the eventual death of the tree.

Developer. Any person or entity that undertakes to improve a parcel of land, by platting for the purposes of establishing three (3) or more dwelling units, grading, installing utilities or constructing any building thereon. For purposes of these guidelines, a developer does not include a builder as defined herein.

Development. Any activity for which the City requires approval of a preliminary plat, final plat, building permit, demolition permit, conditional use permit, planned unit development, variance or grading permit.

Development Plan. A common plan for Development or sale where multiple separate and distinct construction activities or land alteration activities, including new development or redevelopment, may be taking place at different times, or different schedules, but under one (1) proposed plan. One (1) Development Plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.

Garden. A cultivated area dedicated to growing vegetables, fruits, flowers, ornamental grasses, shrubs and similar plants, planted and maintained in well-defined borders.

Landscape Plan. An integrated set of documents that may consist of both drawn and written materials whose purpose is to identify for a proposed development or redevelopment, the means of compliance with the landscaping and screening standards of the City Code.

Landscaping. Trees, shrubs, lawns, plants, turf covers, grasses and other natural and decorative site features including earth contouring, mounding and berms.

Land Altering Activity. Projects, permits or other activities or actions that result in ground disturbance or construction.

Long grass. Any grass that can reach a blade, stem or seed head height or length of at least one foot as a part of its intended normal growth and use and is not developed, sold or intended to be used as a grain or as manicured or semi-manicured lawn grass or ground cover that is normally intended to be maintained at a lower height by regular cutting.

Meadow Vegetation. Grasses and flowering broad-leaf plants, other than weeds, that are native to, or adapted to the State of Minnesota and are commonly found in meadow and prairie plant communities.

Mulch. A protective covering of materials placed around plants to control weeds and moderate evaporation of moisture or freezing. Examples of mulch include organic mulch such as wood chips, shredded hardwood and cocoa beans and inorganic mulch such as stones or rocks. The City does not consider materials creating an impermeable cover shall as mulch.

Native Plants. Plants including grasses and meadow vegetation, sedges (solid, triangular-stemmed plants resembling grasses) forbs (flowering broadleaf plants), trees and shrubs that are plant species native to or naturalized to the State of Minnesota, excluding prohibited exotic species defined by Minnesota Statutes.

Native Plant Landscape Areas. Areas where native plants are being or have been planted in a well-defined and maintained border. Native plant landscape areas do not include gardens.

Native Prairie. An area of landscaping containing a diversity of native flora species in associations typical of pre-settlement ecosystems.

Natural Areas. Undeveloped landscapes not changed, altered, moved, cultivated or planted by human or mechanical means and that do not contain turf grass.

Natural Soil. Soil that exists undisturbed in its natural state.

New Construction. A land altering activity that creates impervious surface in an area where prior to the activity there was minimal or no impervious surface.

New Development. A land altering activity that creates imperious surface in an area where there was minimal or no impervious surface.

New Development. All construction or land altering activity that is not defined as Redevelopment.

Owner. Any person having sufficient proprietary interest in the land for which the City may issue a permit or approval under this Section.

Property Owner. The owner of a buildable property or parcel who is proposing a development, redevelopment or land altering activity or is constructing or expanding a dwelling or a business on that property or parcel.

Planting Bed. A designed area including, but not limited to trees, shrubs, perennials and ground covers that is typically defined by landscape edging along turf boundaries and has a mulched surface.

Pollinator Friendly. Landscape design and materials that provide food and habitat for bees and other native insects.

Rain Gardens. Depressed or shallow landscape features areas in the landscape with moisture-loving perennial native plant materials including wildflowers, grasses, shrubs and trees designed

and constructed to provide natural filtration of water run-off and to help manage storm water run-off by allowing water to soak into the ground.

Redevelopment. A construction or land altering activity that creates new or replaces existing impervious surface, buildings or structures on a parcel that is fully or partially occupied by buildings, structures and/or other impervious surfaces.

Screening. A method of blocking direct visual access of a structure, building, feature or the use of a combination of methods including fencing, walls, berms, densely planted evergreen vegetation to block the direct visual access. Screening is usually at least five feet high but the City may require taller screening in cases where it determines the taller screening is necessary.

Shrub. A low, usually several stemmed woody plant.

Site. The area of land within which Construction Activity, Development, Redevelopment or Land Alteration occurs or is to occur.

Soil. The unconsolidated mineral and organic mineral material on the immediate surface of the earth.

Topsoil. The uppermost layer of soil, containing organic matter and micro-organisms.

Tree. A large woody perennial plant normally with one main trunk and many branches that is usually 30 feet or more in height at maturity.

Turf grass. Commercially available cultured grass varieties that are grown to create turf, including bluegrass, fescue and ryegrass blends commonly used in regularly cut lawn areas.

Xeriscaping. Landscaping with slow-growing, drought tolerant vegetation or other decorative features for the purpose of conserving water and reducing yard waste.

Landscape Plan Review and Approval

All new development and redevelopment sites shall be landscaped as provided in this section in order to control erosion and runoff, moderate extremes of temperature and provide shade, aid in energy conservation, preserve habitat, provide visual softening of, especially, urban development, and generally enhance the quality of the physical environment within the city.

The City requires landscaping for all new commercial and industrial development, mixed use and multiple family residential developments, for small lot single family development with private common grounds or berms and for redevelopment sites.

- A. ***Landscape Plan Required.*** The City requires the submittal of A detailed landscaping and screening plan for City review and approval with land use applications is required for all new commercial, industrial, institutional, mixed-use and multi-family housing development and for redevelopment sites, all planned unit developments, and all subdivisions, with the exception of minor subdivisions and lot divisions, as defined in Chapter 154. The City also requires the submittal and approval of a landscape plan for any application for additions or modifications to existing development that would significantly impact existing trees, landscaping or screening or when a developer or property owner proposes changes to an existing landscaping or screening plan as

approved by the City. The landscape and screening plan shall be prepared by a certified Minnesota licensed landscape architect and shall include the following:

1. The location, size, quantity, and species of all existing and proposed plant materials. The plans must be scalable drawings of not less than one inch equals 50 feet and shall show which plants are proposed to be removed and which plants are to be retained as part of the final landscaping. These plans shall include details of all proposed planting beds, all proposed landscaping materials including Latin name, common name, caliper/height/size and quantity of each plant.
2. A detailed natural land analysis including existing vegetation, soil types and slopes.
3. A site analysis that includes the boundary lines of the property with dimensions based upon a certified survey with the name and alignment of proposed and existing adjacent streets, roads trails and sidewalks, the location of a proposed utility easements and rights-of-way, the location of all public utilities, the location of existing and proposed buildings, existing and proposed topographic contours at two-foot contour intervals, spot elevations for all existing trees and plants to be retained, location of parking and drive areas, water bodies, sidewalks and trails.
4. All manmade features.
5. Methods for protecting existing trees and other landscape material, consistent with §154.257.
6. Structural and ground cover materials.
7. Provisions for irrigation (with sprinkler system details) and other water supplies.
8. Details (including location height and materials) and cross sections of all required and proposed screening, retaining walls and berms.
9. Special planting instructions.
10. City standard plan notes and drawings.
11. Above and below ground Utilities, easements, light and power poles and fixtures, sidewalks, trails and driveways shall also be clearly shown on the plans.
12. Reserved.
13. Location, width and height of all berms and retaining walls.
14. Location and methods of screening to be installed on the site.
15. Areas planned for snow storage. These locations shall only be turf grass areas and shall not be medians nor areas with plantings, shrubs or trees.
16. A design narrative that includes text and/or graphics that provide detail on the design concept employed and key features of the landscape design. The narrative should address, but not be limited to, the relationship of the pattern and species of plants to buildings and other structures on the site, the relationship of the proposed design with surrounding properties a description of special purpose plantings such as screening, erosion control and the proposed methods of attaining year-round seasonal interest in the landscaping.

The City will review the landscape and screening plans in conjunction with other project plans (site plan, grading plan, utility plans, etc.). The City may set conditions of approval that apply specifically to the landscape and screening plan. **The City may require additional landscaping as necessary to provide adequate screening or to provide quality landscape treatment of a site.**

B. *Design Considerations.* The following design concepts and requirements shall be considered when developing a landscape plan.

1. To the maximum extent possible, the landscape plan shall incorporate existing trees and other vegetation on the site.
2. Landscaped areas should be of adequate size to allow proper plant growth, protect plantings from vehicular and pedestrian traffic, and provide adequate areas for plant maintenance and for snow storage. Snow storage areas shall not include medians and shall not have shrubs or trees planted in those areas.
3. A variety of trees and shrubs should be used to provide visual interest year round. No more than fifty percent (50%) of the required number of trees and shrubs may consist of any one species. A minimum of twenty-five percent (25%) of the required number of trees shall be deciduous shade trees, and a minimum of twenty-five percent (25%) shall be coniferous trees. Ornamental trees may be used when applied towards landscaping requirements. However, the number of ornamental trees shall not exceed fifteen (15%) of the required amount of trees.
4. Final slopes greater than 3:1 will not be permitted without special treatment such as terracing, retaining walls, or special ground covers.
5. All plant materials, except trees planted per the Tree Replacement Schedule (Section 154.257 C8), shall meet the following minimum size standards in Table 6-1. Trees planted per the Tree Replacement Schedule shall meet the minimum requirements outlined in Section 154.257 (C) (8) (d.).

Table 6-1. Minimum Size Standards for Landscape Materials

Plant Type	Minimum size at planting
Trees:	
Evergreen	6 feet in height
Deciduous – shade	<u>2.0</u> 2.5 inches caliper, measured 6 inches from base
Deciduous - ornamental	<u>1.5</u> 2 inches caliper, measured 6 inches from base
Shrubs:	
Evergreen	# 5 container*
Deciduous	# 5 container*
Shrubs used for screening (evergreen or deciduous)	# 5 container*

* Approximately 5 gallons. See American Standards for Nursery Stock, ANSI 260.1-2004 for exact specifications.

~~* This table and its requirements do not apply to the tree replacement schedule.~~

6. As an alternative to the minimum standards for landscape materials, a landscape plan prepared by a Minnesota licensed landscape architect ~~qualified professional~~ certifying that said plan will meet the intent of this Section may be submitted.

7. ~~As a general rule, trees should~~ Planting plans must consider the location of underground utilities and storm water drainage systems. All trees and shrubs shall be planted ten feet in locations such that the plantings will not cause conflicts with away from all utilities including water lines and mains and sewer stubs, sanitary and storm sewer lines, curbs, trails, sidewalks, pavement edges, property lines, centerlines of drainage swales and easements. (Refer to the setback standards listed in Section C 1 for more details). unless approved by the The City's Landscape Architect or the City Engineer may approve a reduced planting setback on a case by case basis. Tree trunks shall not be placed in drainage or utility easements.

8. Developers, designers and Landscape Architects preparing plans for new development or redevelopment sites in Lake Elmo also should refer to the latest version of the following design standards for guidance when preparing project plans:

- a. City of Lake Elmo Engineering Design Standards.
- b. City of Lake Elmo Landscape and Irrigation Standards.
- c. 5th Street Landscape design standards.
- d. Village Parkway design standards.
- e. Hudson Boulevard Engineering Design Standards.
- f. Lake Elmo Landscape Development calculator.

9. All designated yard areas on a development or redevelopment site in the urban zoning districts shall be sodded. Yard areas on development or redevelopment site on properties in the rural residential or agricultural zoning districts may be seeded.

10. All tree and plant materials shall be appropriate for the hardiness zone and the physical characteristics of the site.

11. Plant materials should be located so that no impacts will occur to overhead or underground utilities, traffic flow or circulation and maintenance access.

C. Landscaping of Setback Areas. All required setbacks not occupied by buildings, parking, paths, driveways, trails or plazas shall be landscaped with turf grass, native grass, trees, shrubs, vines, perennial flowering plants, and surrounding pervious ground cover. The landscaping in setback areas and along the site perimeter of a site should be designed to add visual interest, contribute to visual quality and continuity within and between sites and provide a transitional area between different uses and help define the property boundary.

1. A minimum of one (1) tree shall be planted for every fifty (50) feet of street frontage, lake shore or stream frontage, or fraction thereof.
 - a. Trees adjacent to streets shall be planted within the front yard and may be arranged in a cluster or placed at regular intervals to best complement existing landscape design patterns in the area.

b. The spacing of trees shall be appropriate to the type of tree species.

- c. Tree planting locations must take into account the width of the lot and boulevard and the location of utilities, easements, driveways, trails and sidewalks. On lots with a street or driveway frontage of less than 50 feet, the

City may approve alternative locations for tree planting if the designer can show the proposed improvements will make tree planting in the boulevard of that lot impractical due to required setbacks from improvements and the amount of space available for tree planting. This placement alternative for tree planting does not reduce the total number of trees that must be planted with a development or redevelopment project.

- d. Ornamental trees shall be placed at least 10 feet from utilities, sidewalks, trails, driveways and buildings. The City prohibits the planting of ornamental trees in the public boulevard.
 - e. Over story trees shall be placed at least:
 - 1. Five feet from the back of curb when there is a sidewalk or trail;
 - 2. Eight feet from the back of curb when there is no sidewalk or trail;
 - 3. Ten feet from utilities and driveways; and
 - 4. Fifteen feet from buildings.
 - f. Coniferous or evergreen trees shall be placed at least 10 feet from easements, sidewalks and trails and at least 20 feet from utilities, driveways and buildings. The City prohibits the planting of coniferous or evergreen trees in the public boulevard.
 - g. Salt tolerance and root structure ~~should~~ must be considered when selecting tree species adjacent to streets, driveways, trails, sidewalks and parking areas. The developer shall use plant materials that demonstrate adaptability to harsh conditions including salt spray, storm water run-off and reflective pavements glare and heat.
 - h. Where property abuts a lake or stream, trees shall be planted at intervals of no more than fifty (50) feet along the shoreline, except where natural vegetation is sufficient to meet this requirement.
 - i. Areas to have turf grass shall have at minimum of six inches of topsoil spread evenly on those areas prior to the contractor sodding or seeding those areas. The top soil shall be free of debris such as large rocks and fragments of wood.
2. In addition to the requirements of C.1 above, a minimum of five (5) trees shall be planted for every one (1) acre of land that is disturbed by development activity. Such trees may be used for parking lot landscaping or screening as specified in subsections D and E below.

D. *Interior Parking Lot Landscaping.* The purpose of interior parking lot landscaping is to minimize the expansive appearance of parking lots by visually breaking up large areas of paving and provide shaded parking areas. Landscaping shall consist of planting islands, medians and borders, comprising the required planting area specified under item (1) below.

- 1. At least five (5) percent of the interior area of parking lots with more than thirty (30) spaces shall be devoted to landscape planting areas. Areas may consist of islands or corner planting beds. Parking lot landscape islands should include an 18-inch area clear of trees, shrubs or perennials along each curb edge.

2. Shade trees shall be provided within the interior of parking lots (in islands or corner planting beds) in accordance with the following table:

Table 6-2. Minimum Required Tree Planting for Parking Lots

Number of Parking Spaces	Minimum Required Tree Planting
0 – 30	None required
31 - 100	1 tree per 10 spaces or fraction thereof
101+	1 tree per 15 spaces or fraction thereof

E. *Perimeter Parking Lot Landscaping.* Parking areas shall be screened from public streets and sidewalks, public open space, and adjacent residential properties to reduce the visual impact of the parking surfaces, to mitigate glare from headlights, improve the aesthetic quality of users of the site, adjacent site roadways, trails and sidewalks. The perimeter of parking areas shall be screened as follows:

1. With the exception of properties located in the VMX zoning district, a landscaped frontage strip at least five (5) feet wide shall be provided between parking areas and public streets, sidewalks, or paths. If a parking area contains over one hundred (100) spaces, the frontage strip shall be increased to eight (8) feet in width.
 - a. Within the frontage strip, screening shall consist of either a masonry wall, fence, berm, or hedge or combination that forms a screen a minimum of three and one-half (3.5) and a maximum of four (4) feet in height, and not less than fifty percent (50%) opaque on a year-round basis. When shrubs are used to provide the screen, such shrubs must be at least two feet tall at planting and expected to grow to at least 3.5 feet tall at maturity.
 - b. Trees shall be planted at a minimum of one deciduous tree per fifty (50) linear feet within the frontage strip.
 - c. The City may waive parking lot screening requirements in circumstances where perimeter screening is provided or where the elevation of the parking area relative to the elevation of the street and sidewalk or trail would make the screening ineffectual as determined by the City’s Landscape Architect or Planning Director.

~~2.~~ Alongside and rear property lines abutting residential properties or districts, screening shall be provided that meets the standards for screening listed in Section F below. consisting of either a masonry wall, fence or berm in combination with landscape material that forms a screen a minimum of four (4) feet in height, a maximum of six (6) feet in height and not less than ninety percent (90%) opaque on a year round basis. Landscape material shall include trees, planted at a minimum of one deciduous or coniferous tree per forty (40) linear feet along the property line.

F. *Screening.* Screening shall be used to provide visual and noise separation of intensive uses from less intensive uses or to provide a buffer between incompatible land uses. Where screening is required in the City Code between uses or districts, it shall consist of sufficient landscape materials and/or either a wall or fence that is architecturally

compatible with the principal building, or a berm ~~a masonry wall or fence~~ in combination with landscape material that forms a screen at least six (6) feet in height above grade, and not less than ninety percent (90%) opaque on a year-round basis. If the developer or contractor uses evergreen or coniferous trees as part or all of the screening, the trees shall be planted in two staggered rows with the trunks of the trees in each row spaced at a maximum of 12 feet. Landscape material shall include trees, planted at a minimum of one deciduous or coniferous tree per forty (40) linear feet along the property line. Additional landscape material such as shade trees or trellises may be required to partially screen views from above. Chain link fencing interwoven with slats shall not be allowed as a method of screening. Landscaping materials used for screening shall be healthy specimens of hardy species appropriate for the purpose. All screening devices, materials and methods shall be included on the project site and/or landscaping plans.

G. *Special Design Features.* The City permits the use of xeriscaping, rain gardens, native plant materials, pollinator-friendly plants and long grasses in appropriate locations. To allow the use of these special design features the City acknowledges a degree of flexibility to City standards may be necessary to adjust to unique situations.

H. *Redevelopment Compliance.*

~~(1) Redevelopment or large addition. When either full redevelopment of a site is proposed or an addition to an existing building that would increase total floor area on a commercial, industrial or mixed-use site by 25% or more, a landscape plan for the entire site, demonstrating compliance with the requirements of this section, must be submitted to the City for approval.~~

~~(2) Small addition. When a construction project or building addition would increase total floor area on a commercial, industrial or mixed-use site by less than 25%, but would physically impact existing trees or landscaping, the owner or developer shall submit a modified landscape plan for the portion of the site with the proposed addition and associated site work demonstrating compliance with the requirements of this Section to the City for approval.~~

(3) Constrained Sites. The City recognizes that highly constrained redevelopment sites may have difficulty meeting the requirements of Section 154.258. Given the City wants to encourage rather than impede redevelopment, owners or developers of a highly constrained redevelopment sites may seek relief from City tree preservation and/or landscape standards. When considering granting exceptions or flexibility to required tree preservation and/or landscape standards, the City shall:

- a. Balance the public interest in promoting redevelopment with the public interest in preserving trees and providing landscaping; and
- b. Consider whether the reduced tree preservation or landscaping levels are balanced by alternative methods of providing visual interest to the site including but not limited to sculpture, public art or higher quality landscape materials.

- (4) The City Council may grant exceptions or flexibility to the required landscape standards on a constrained redevelopment site if all of the following conditions exist:
 - a. It is not feasible to combine the subject parcel with adjacent parcels that could use the parcel as required green space;
 - b. Strict adherence to the Tree Preservation Ordinance and/or landscape standards would prevent reasonable development or redevelopment that is consistent with the Comprehensive Plan and desirable to the City on the parcel; and
 - c. The exception requested is the minimum needed to accomplish the desired development or redevelopment.

I. *Maintenance and Installation of Materials.* Installation and maintenance of all landscape materials shall comply with the following standards:

1. All landscape materials shall be installed to current industry standards.
2. Irrigation or other water supply adequate to support the specified plant materials shall be provided.
 - a. All automatic lawn and irrigation system controllers must be U. S. EPA WaterSense certified.
 - b. All automatic lawn and irrigation systems shall have furnished and installed technology such as a rain sensor/detection device that inhibits or prevents the operation of the irrigation system during periods of rain or sufficient moisture.
 - c. The furnished and installed technology inhibiting or preventing the operation of irrigation systems when it rains shall be maintained in operating condition and replaced as necessary to keep the system operational.
 - d. The irrigation system shall not spray water on streets or driveways, and shall be designed and operated to minimize water spray on sidewalks, trails or other impervious surfaces.
3. All required landscaping and screening features shall be kept free of refuse and debris.
4. All landscape materials shall be guaranteed for two (2) years. Any landscape material that dies or becomes diseased before the end of the second (2nd) year after installation shall be replaced by the developer.
5. ~~Continuing maintenance and replacement of landscape materials shall be the responsibility of the property owner beyond two years of initial installation.~~
6. It shall be the responsibility of the current private property owner to maintain the approved landscaping and screening plan in an attractive and well-kept condition beyond two years of the initial installation. Maintenance shall include the replacement of dead or damaged plant material at the next appropriate planting

period with new materials in conformance with the approved landscape plan and applicable City Code standards; the furnishing and installation of mulch; weeding; mowing of grass, cleaning of litter; or any other action deemed necessary by the City to insure that the requirements of this ordinance are met. Any action that reduces the canopy cover and/or landscaping below the minimum that is required by the City shall require in-kind replacement.

7. Landscaping and screening shall not interfere with clear view or site triangles at street intersections.
8. Property owners shall prune and trim trees and shrubs located on private property so they will not obstruct pedestrian sidewalk traffic nor obstruct the view of any traffic sign, lights, street or intersection. Overhanging portions of trees and shrubs shall be pruned or trimmed to maintain a minimum clearance of eight feet over sidewalks, trails and ditches and 20 feet over all streets and driveways.
9. No landscaped areas shall be used for the parking of vehicles or the storage or display of materials, supplies or merchandise.

J. Warranty Requirement.

Any replacement tree that is not alive or healthy, as determined by the City, or which subsequently dies due to construction activity within two (2) years after the date of initial acceptance by the City project closure shall be removed by the applicant and replaced with a new healthy tree meeting the same minimum size requirement at the next appropriate planting period or within eight (8) months of removal.

2. During City landscape inspections, any required landscape material that is not installed per the City-approved plans or per City details, alive, or healthy, as determined by the City, or which subsequently dies within two (2) years after the date of initial acceptance by the City, shall be removed by the applicant and replaced with a new healthy plant meeting the same minimum size requirement at the next appropriate planting period or within eight (8) months of removal.

- c. *Financial Security.* The City will require the applicant, developer or contractor to provide the City that a financial security, in a form acceptable to the City, be provided as part of a development agreement, a site improvement agreement or applicable permit to ensure compliance and performance of the City-approved Landscape Plan. The City will release the financial security will be released to the applicant or developer upon verification by the City that the developer or contractor followed the Landscape Plan was followed, and that all landscape materials are planted and in a reasonable state of health. The financial security may be used to replace any landscape materials that have become damaged or diseased after planting. The City must retain Adequate security must be retained to ensure the performance, growth and health of the landscape materials for at least two years after the contractor has completed the installations of all required landscape materials as verified by the City. have been completed.

~~(Ord. 08-087, passed 8-20-2013)~~

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