

<b>Topic:</b>	Natural Resource Protection & Conservation
<b>Resource Type:</b>	Regulations
<b>State:</b>	Minnesota
<b>Jurisdiction Type:</b>	Municipal
<b>Municipality:</b>	City of Apple Valley
<b>Year (adopted, written, etc.):</b>	1997-2002
<b>Community Type – applicable to:</b>	Urban; Suburban
<b>Title:</b>	City of Apple Valley Natural Resources Management Ordinance
<b>Document Last Updated in Database:</b>	April 17, 2017

### ***Abstract***

This broad natural resource management ordinance attempts to “protect, preserve, and enhance the natural resources and environment.” It forces the collection of data on the parcel in question and mandates low impact and best practices which preserve water quality, wetlands, trees, and reduce soil erosion among other issues.

### ***Resource***

#### **TITLE XV: LAND USAGE CHAPTER 152: NATURAL RESOURCES MANAGEMENT GENERAL PROVISIONS**

##### **§ 152.01 FINDINGS AND PURPOSE STATEMENT.**

(A) The City Council finds it is in the best interest of the city to protect, preserve and enhance the natural resources and environment of the community and to encourage a resourceful and prudent approach to the development and alteration of land.

(B) In the interest of achieving these objectives, the city has established the comprehensive natural resources management regulations herein to promote the furtherance of the following:

- (1) Protection and preservation of the city’s natural resources;
- (2) Orderly development of land to minimize tree and land habitat loss;
- (3) Minimization of the impacts to water bodies, trees and wooded areas resulting from development during the construction phase and from the conditions created by its completion;

(4) Establishment of standards for water quality and tree preservation and the mitigation of environmental impacts resulting from tree removal and water pollutants;

(5) Creative land use and environmentally compatible site design which preserves trees and minimizes tree removal during development; and

(6) Enforcement of natural resources management standards to promote and protect the public health, safety and welfare of the community.

#### § 152.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**APPLICANT.** Any person or entity who is required to submit and implement a city-approved natural resources management plan under this chapter.

**CALIPER INCHES.** The length of a straight line measured through the trunk of a tree 12 inches above the ground.

**CANOPY OF A TREE.** The horizontal extension of a tree's branches in all directions from its trunk.

**CRITICAL ROOT ZONE OF A TREE.** The area under a tree which is at and within the drip line of a tree's canopy or a distance of one and one-half feet from the trunk for each inch of the diameter of the tree, measured at breast height, whichever is greater.

**DIAMETER.** A tree's trunk as measured 4½ feet above the ground, wherever this term is used in reference to the measurement of a tree.

**DRIP LINE OF A TREE.** An imaginary vertical line which extends from the outermost branches of a tree's canopy to the ground.

**INDIVIDUAL LOT DEVELOPMENT.** The grading of individually platted lots for the purposes of new building construction.

**LAND or PARCEL OF LAND OF SUBJECT PROPERTY or SUBJECT PROPERTY.** An entire lot or parcel, as defined by the zoning regulations of this code, on or within the boundaries of which a project subject to the requirements of this chapter is occurring, has occurred or is to occur.

#### **LAND DISTURBING ACTIVITY.**

(1) Any excavating, grading, clearing, filling or other earth change which may result in:

- (a) The movement of more than 350 cubic yards of earth;
- (b) Any alteration of land by more than one foot from the existing contour of the ground on any contiguous 450 square feet of ground;
- (c) Any cutting, removal, destroying or loss of 10% or more of the significant trees of any land; or
- (d) Any other activity that changes the existing or natural contour of the land which changes drainage.

(2) For purposes of this chapter, excavation or grading for agricultural purposes on agriculturally zoned property shall not constitute land disturbing activity provided the activity is no closer than 15 feet from any delineated edge of any water body.

**LOSS OF SIGNIFICANT TREES.** The loss of a significant healthy tree as a result of:

- (1) Land disturbing activity, whether temporary or permanent, affecting 50% or more of a significant tree's critical root zone, but no more than 30% of a significant oak tree's critical root zone;
- (2) Utility construction (such as sewer, water, storm sewer, gas, electric, telephone and cable TV and trenching) resulting in the cutting of 50% or more of a significant tree's roots within the critical root zone, but no more than 30% of a significant oak tree's critical root zone;
- (3) Mechanical injury to the trunk of a significant tree causing critical loss of the bark, which may result in tree decline; or
- (4) Compaction to 90% of proctor to a depth of six inches, or more, of 50% or more of the surface of the soil within a significant tree's critical root zone, provided no more than 30% of the surface of the soil within a significant oak tree's critical root zone.

**NATURAL RESOURCES MANAGEMENT PLAN.** Required general information, an erosion and sedimentation control component, tree preservation component and drainage and grading component.

**NEW BUILDING CONSTRUCTION.** The construction of any principle building or structure upon a parcel of land or platted lot.

**NEW DEVELOPMENT.** The process whereby improvement to an entire site occurs in one continuous process or in more than one distinct phase, including but not limited to the following activities: initial site grading, installation of utilities, construction of public streets, construction or grading of drainage ways, other grading or filling of any area within the site, grading of building pad areas; utility hookups; construction of buildings, parking

lots, driveways, storage areas, recreation areas or private streets and any other construction or land disturbing activity within the subject property or site.

**PROJECT APPLICATION.** The applicant's submission of all required documentation for approval of any building permit, grading or excavation permit, or any other construction or land disturbing activity requiring the submission of an application as required in this code.

**PROJECT MANAGER.** The applicant or the applicant's duly authorized representative who has been conferred the duties by the applicant to implement, complete and manage the project to which the approved natural resources management plan applies under this chapter.

**SIGNIFICANT TREE.** Any healthy deciduous tree measuring eight inches or greater in diameter, or any coniferous tree measuring six inches or greater in diameter.

**WATER BODY (BODIES).** Any natural or man-made wetland, drainage or storm water area, stream or lake.

**WETLAND.** Any area with surface or sub-surface hydrology, having hydric soils or hydrophytic vegetation or as defined in the Minnesota Wetland Conservation Act.

**WETLAND BUFFER ZONE.** The area between a line delineating the wetland edge and a line parallel to and upland 15 feet from the wetland edge.

**WETLAND EDGE.** The line delineating the outer edge of a wetland which is established by using the Federal Manual of Identifying and Delineating Jurisdictional Wetlands, dated January 10, 1989 and jointly published by the U.S. Environmental Protection Agency, the U.S. Fish & Wildlife Service, the U.S. Army Corp of Engineers and the U.S. Soil Conservation Services and approved by the city.

(Ord. 633, passed 10-9-97; Am. Ord. 712, passed 4-25-02)

## **PERMITS AND PLANS**

### **§ 152.15 NATURAL RESOURCES MANAGEMENT PERMIT.**

(A) Permit required. A natural resources management permit shall be required before any land disturbing activity in connection with any of the following:

- (1) New development in any zoning district;
- (2) New building construction in any zoning district;

(3) Any project which requires a building permit and will result in the expansion of any existing building or impervious surface unless the city determines that no natural resources, such as trees or water bodies, will be directly affected by the project; or

(4) Any land disturbing activity or project, other than commercial excavation, that directly or indirectly affects natural resources, such as near slopes, trees or water bodies.

(B) Permit application. The application for the permit shall be made in writing to the city on such form as the city may, from time to time, designate and shall include such information as the city shall require.

(C) Review of approval of permit application.

(1) Projects of five or more acres. Projects of five or more acres and all subdivisions shall be submitted to and approved by the City Council. Projects on platted lots of less than five acres shall be approved administratively by city staff, unless city staff presents it to the City Council for its review and approval.

(2) Permit and plan approval.

(a) Submittal. Any application for a natural resources management permit shall be submitted to the city, along with the natural resources management plan and required fees, at least 15 business days prior to the city's consideration of the application. The following requirements shall be met:

1. The land disturbing activity for which the permit is sought shall be in connection with (a) new development; (b) building or structure construction; or (c) landscaping on an improved individual single-family lot, for which a site plan shall be submitted and approved by the city;

2. The plan shall be consistent with any approved subdivision grading plan;

3. The plan shall be consistent with the city's overall stormwater management plan;

4. The plan shall not adversely impact neighboring properties;

5. The plan shall not irreparably adversely impact natural resources upon the subject property;

6. The plan shall meet the requirements of this chapter; and

7. The plan shall provide for and include any of the following requirements if the city determines that the project mandates all, or a combination thereof, of the following requirements for the protection of public safety, health and welfare:

a. Properly fence any slope of 3:1 or greater that is adjacent to a project property line and which is deemed hazardous or dangerous by the city;

b. Slope the banks, fill, level off any depression or mound or otherwise place in such condition at any time so as not to be dangerous because of sliding or caving banks; and so as to minimize or stop erosion or dust during or after the grading operation;

c. Properly drain, fill, or level off any graded or ungraded area so as to make the same safe and healthful; and

d. Operate construction and grading equipment only between the hours of 6:30 a.m. and 5:30 p.m., Monday through Friday.

(b) Approval. Upon finding that the above requirements have been met, the city will issue a permit in accordance with the provisions of this chapter.

(D) Expiration of permit and plan. Any natural resources management permit issued pursuant to the requirements of this chapter shall expire two years from the date of issuance if significant progress of the work covered by such permit is not accomplished, unless an extension of the permit is requested by the applicant and approved by the city.

(E) Revocation of permit. Failure to comply with the approved terms and conditions of a natural resources management plan shall be grounds for revocation of the natural resources management permit by the City Council, following a public hearing. Written notification of said public hearing shall be mailed at least ten days prior to said hearing to the current holder of the permit. Such notice should outline the violation(s) considered by the city to be grounds for revocation and inform the current holder of the permit of the opportunity to be heard at such public hearing.

(F) Building permit in lieu of. When a building permit is issued, as required in this code, the building permit may be in lieu of the natural resources management permit required hereunder, provided the applicant complies with all other regulations herein, including but not limited to submission of and compliance with a natural resource management plan.

(Ord. 633, passed 10-9-97)

#### § 152.16 NATURAL RESOURCES MANAGEMENT PLAN; ADDITIONAL REQUIREMENTS.

(A) No permit shall be issued unless a natural resources management plan, NRMP, is submitted to and approved by the city. All NRMP's shall include the following:

(1) General information.

(a) Delineation of the subject property and the location of existing and proposed buildings, structures and impervious surfaces on the subject property;

(b) Description of the construction or land disturbing activity to be performed on subject property and proposed project schedule;

(c) Identification of all water bodies located on and within 500 feet of the subject property's boundaries;

(d) Identification of all wetland buffer zones for any existing or proposed water body;

(e) Topographical data, including contours at vertical intervals of not more than two feet, except that contour lines shall be no more than 100 feet apart;

(f) Temporary benchmarks shall be established within the boundaries of the project area. Descriptions, reference ties and elevations of the benchmarks shall be furnished to the City Engineer. All elevations, topography and vertical control data shall be tied to sea level datum, 1929 general adjustments; and

(g) The location and size of all existing sanitary sewer, water or storm, sewer, trunks, laterals or services on or adjacent to the property.

(2) Erosion and sedimentation control component (ESCC). As part of the NRMP:

(a) All applicants shall submit an ESCC, which shall consist of the following:

1. Delineation of all areas to be graded or excavated, and the limits of land disturbing activities;

2. Identification of measures to be utilized to control erosion and sedimentation within and from the subject property during the project activity as required herein;

3. Identification of all permanent erosion control measures and a completion schedule;

4. Identification of the location of dirt or soil storage or stock pile areas to be utilized on the subject property; and

5. Identification of all measures to be utilized to protect water bodies and wetland buffer zones;

(b) The ESCC shall identify and require the "best management practices" for temporary erosion and sedimentation control as recommended by the Minnesota Pollution Control Agency in its publication Protecting Water Quality in Urban Areas, (2000), and as amended, including but not limited to:

1. Perimeter erosion control devices, including but not limited to, silt fencing and staked hay bales;

2. Storm drain inlet protection devices;

3. Rock construction entrance;
4. Tree drip line or critical root zone perimeter protection for trees;
5. Removal of all debris, dirt and soil from impervious ground surfaces, including abutting public or private roadways and sidewalks, in connection with the subject property; and
6. Any other erosion and sedimentation control device as deemed necessary by the city.

(3) Tree preservation component, TPC. As part of the NRMP:

(a) All applicants shall submit a TPC, which shall consist of the following:

1. An accurate inventory of significant trees on the subject property, including identification of the size, species, condition and location of each significant tree. On large wooded sites, forest measuring methods may be used to determine the total diameter inches of trees outside the area of the proposed land disturbing activity;
2. Identification of all significant trees proposed to be removed or that will be lost as a result of the land disturbing activity;
3. Identification of the number, type and size of significant trees required to be replaced or for which tree loss mitigation is required herein;
4. Identification of the number, type, size and location of the required replacement trees as required herein;
5. Identification of the number, type, size and location of significant trees to be preserved; and
6. Identification of measures to be utilized to protect and preserve the significant trees proposed to be preserved.

(b) The TPC shall identify and require the following tree protective measures:

1. Protective fencing around the outer edge of the critical root zone of all significant trees to prevent erosion, trenching, stockpiling, soil compaction or any other root damaging activity within the critical root zone of the trees; and
2. Pruning paint applied to any damaged bark or branch of any oak tree at any time between and including April 15 and July 1.

(4) Drainage and grading component, DGC. As part of the NRMP, all applicants shall submit a DGC, which shall consist of the following:

(a) Identification of proposed contour grading on the site at vertical intervals of not more than two feet;

(b) The estimated time required to complete the work and the amount of material to be moved on the site and the amount to be removed from the site;

(c) A map showing the stages or limits of grading together with the existing or proposed finished elevations based on sea level readings;

(d) Identification of proposed building bench elevations and direction of flow of surface water within each lot;

(e) Methods of controlling dust;

(f) Submission of grading and engineering specifications and reports in accordance with Uniform Building Code Chapter 33 and Appendix Chapter 33;

(g) Submission of preliminary plans or program for water supply, sewage disposal, drainage and flood control;

(h) Soil borings, if required by the City Engineer; and

(i) Drainage and grading design requirements shall be as follows.

1. No land shall be developed and no use shall be permitted that results in water run-off causing flooding or erosion on adjacent property. The run off shall be properly channeled into a storm drain, watercourse, ponding area or other suitable facility; and

2. A drainage plan for all new commercial, industrial, multiple residential and institutional developments shall provide for a 3.6 inch rainfall in 24 hours as calculated in accordance with the modeling SCSTR-20 methodology and compliance with any applicable governmental entity's watershed management plan requirements.

(B) In addition to all other plan requirements in this chapter, any applicant conducting land disturbing activity that disturbs five or more acres of total land area shall comply with the following additional requirements:

(1) The property owner shall apply for and be issued a National Pollution Discharge Elimination System (NPDES) general storm water permit from the Minnesota Pollution Control Agency (MPCA); and

(2) The property owner shall submit to the city an approved copy of the erosion and sedimentation control plan as required for the NPDES by the MPCA.

(Ord. 633, passed 10-9-97; Am. Ord. 712, passed 4-25-02)

#### § 152.17 APPEALS OF DECISIONS.

The applicant may appeal any requirement, decision or determination by the city in connection with any provision of this chapter pursuant to the procedures as set forth in the zoning regulations regarding Board of Appeals and Adjustments.

(Ord. 633, passed 10-9-97)

#### § 152.18 EXEMPTIONS.

The provisions of this chapter shall not apply to public utility and right-of-way maintenance projects.

(Ord. 633, passed 10-9-97)

#### § 152.19 COMPLIANCE WITH PLAN.

(A) Compliance required. The applicant shall implement and comply with the Natural Resources Management Plan (NRMP) prior to and during any construction or land disturbing activity under the permit to which this chapter applies. All erosion and sedimentation control and tree preservation measures required under the plan shall be installed and remain in place until all grading and construction activity is completed or until a written request for removal of the protection measures is made to and approved by the city. No construction or land disturbing activity to which this chapter applies or removal of any significant trees may occur until the NRMP is approved by the city and except in accordance with the approved NRMP. Failure to comply with the approved terms and conditions of an NRMP shall constitute a violation of this code.

(B) Determination of compliance. The city shall have the right to enter and inspect the subject property in order to determine compliance with the approved NRMP. The city shall have the right to order the suspension of any grading or construction activity on the subject property until compliance with the NRMP has occurred.

(C) Finding of noncompliance. Upon a finding of noncompliance, the city shall use the following procedure with respect to notification and corrective measures:

(1) The city shall personally serve upon the project manager, or other responsible person, and by certified U.S. mail upon the property owner, if different than the project manager, a written notification of the violation of the approved NRMP.

(2) If remedial work is not completed and compliance with the Plan has not occurred within 48 hours of service of the violation notification, the city may complete remedial or corrective work and any costs incurred in connection with taking remedial action or installing corrective measures may be recovered from the applicant's performance security bond. In the alternative, the city may revoke any construction

related permit and order the termination of all construction activity on the subject property until the subject site is in compliance with the NTRMP.

(Ord. 633, passed 10-9-97)

#### § 152.20 EMERGENCY CORRECTIVE ACTIONS.

In the event circumstances exist such that noncompliance poses an immediate danger to the public health, safety and welfare, as determined by the city, the city may take emergency corrective action to prevent any danger. The city shall take reasonable action to contact and direct the owner of the subject property to take any necessary action. Any costs incurred by the city in connection with any emergency action may be recovered from the applicant's performance security.

(Ord. 633, passed 10-9-97)

#### § 152.21 CONFLICT WITH OTHER LAWS.

If the requirements of this chapter are in conflict with any other law, the stricter requirements shall be enforced.

(Ord. 633, passed 10-9-97)

#### § 152.22 FINAL "AS-BUILT" GRADE PLAN.

Upon completion of the construction or grading activity of any subdivision project, any project of five or more acres or any project approved through City Council action, an "as-built" grading plan shall be required. The "as-built" grading plan shall depict the actual field grade conditions of the subject property and depict any changes from the original grading plan submitted to and approved by the city. If building permits are requested prior to completion of the "as-built" grading plan, "as-built" grading plans shall be required for the individual lots associated with those building permits. All "as-built" grading plans shall be certified by a registered civil engineer and submitted to the city in a format as required by the city.

(Ord. 633, passed 10-9-97)

#### § 152.23 TREE PRESERVATION REQUIREMENTS.

(A) Tree removal and replacement. Removal or loss of significant trees shall be in accordance with the city-approved tree preservation component of the natural resources management plan. All significant trees on the property, as identified in the Tree Preservation Component of the NRMP Plan, shall be tagged with the coordinating number as stated in the Plan before any project work begins and shall remain tagged until completion of the project. Tree removal and replacement shall be as follows:

(1) For individual lot development for commercial, industrial and institutional, use 10% of the total number of diameter inches of significant trees removed must be replaced with caliper inches within the subject lot. Trees replaced under this requirement may be used to satisfy part of the landscape requirement for the lot.

(2) For individual lot development for residential use, when tree removal that occurs within the building footprint, impervious surface areas (such as driveways and sidewalks), or within 20 feet of foundation walls and:

(a) Exceeds six significant trees, replacement shall consist of a maximum of 12 caliper inches, located on the subject lot; or

(b) Consists of six significant trees or less, replacement shall consist of a minimum of two caliper inches for every significant tree removed, located on the subject lot.

(3) When tree removal occurs more than 20 feet outside the foundation walls, replacement shall be a minimum of two caliper inches for every significant tree removed, located on the subject lot.

(4) For all projects not covered by subsections (1), (2) and (3) above including, but not limited to, subdivision grading, 10% of the total number of diameter inches of significant trees removed must be replaced with caliper inches within the subdivision. Trees replaced under this requirement may be used to satisfy part of any landscape plan requirements under this code.

(B) Size, types, diversification of replacement trees. No more than one-third of the replacement trees shall be of the same species of tree, without approval of the city. Box elder, poplar, willow and silver maple are not permitted as replacement trees. Replacement trees must be no less than the following sizes:

(1) Deciduous trees shall be no less than two caliper inches; and

(2) Coniferous trees shall be no less than six feet high.

(C) Time to perform. Replacement trees shall be planted prior to the expiration of the permit or within 30 days of completion of all construction on the property, whichever first occurs, unless otherwise approved by the city for reasons of time of planting season. The applicant shall inform the city when all replacement trees have been planted in order that the city may inspect the subject property for compliance with the tree preservation component.

(D) Quality of replacement trees. Replacement trees shall be healthy stock, free of insects and disease and meet the guidelines set by the American Standards of Nursery Stock.

(E) Violation of Natural Resources Management Plan-Tree Preservation Component. The applicant shall comply with the following requirements if any loss of any significant tree, as defined herein, occurs in violation of the city-approved tree preservation component of the Natural Resources Management Plan for the subject property:

(1) Replace the diameter inches of the significant tree lost with equal caliper inches in accordance with division (B) of this section; and

(2) Any loss of a significant oak tree shall be replaced by an oak tree and the location of the replacement oak tree shall be determined by the city.

(F) The applicant shall comply with the foregoing requirements upon a 30-day written notice by the city of the loss of a significant tree in violation of the city-approved tree preservation component of the Natural Resources Management Plan.

(Ord. 633, passed 10-9-97; Am. Ord. 712, passed 4-25-02)

#### § 152.24 FEES.

Fees associated with this chapter are as stated in the appendix to Chapter 35.

(Ord. 633, passed 10-9-97)

#### § 152.25 SECURITY.

(A) Security required. The applicant shall provide security for the performance of its obligations pursuant to this chapter. The security shall be in a form required by the city, including, letter of credit, cash or escrow deposit and all in a form and substance that shall save the city free and harmless from all suits or claims for damages resulting from the negligent grading, removal, placement or storage of rock, sand, gravel, dirt, clay or other like material within the city. This security, running to the city, shall be conditioned to pay the city the cost and expense of bringing the subject property into compliance with the approved natural resources management plan, and/or the cost and expense of repairing any highways, streets or other public ways within the city, made necessary by the special burden resulting from the hauling and transporting thereon by the applicant in the removal or placement of rock, dirt, sand, gravel, clay or other like material. This chapter shall not apply to an applicant who is performing new construction or any project activities, which this chapter regulates, on an individual lot or parcel zoned R-1, R-2, R-3 or R-5 which is not in connection with a new development. This exemption shall not apply if it is determined that there is a strong potential for environmental degradation.

(B) Amount of security. The amount of security shall be 125% of the estimated cost to accomplish compliance with the approved natural resources management plan or \$2,000, whichever is greater, in addition to any other security performance required by any other regulations in this code. The estimated cost shall be subject to approval by the city.

(C) Release of security. The security shall be retained for at least one year after the completion of the project. The city may release the security at that time unless the city, upon inspection, finds the project is not in compliance with all requirements of the approved natural resources management plan. If noncompliance is found, the city may retain that portion of the security equal to the cost of bringing the project into compliance with the approved natural resources management plan.

(D) City remedy. If compliance with the approved natural resources management plan is not accomplished within the allowable time period, the city may bring the project into compliance by use of the security.

(E) Exemptions. The city shall be exempt from the requirements of this section.

(Ord. 633, passed 10-9-97)

## **FORESTRY**

### **§ 152.40 CITY FORESTER POSITION CREATED; DUTIES.**

(A) Position created. The city's Public Works Director shall be the Forester. The powers and duties as set forth in this chapter are hereby conferred upon the Forester or his or her duly authorized agent.

(B) Duties. It is the duty of the City Forester to coordinate, under the direction and control of the Council, all activities of the city relating to the control and prevention of tree diseases, including but not limited to, Dutch elm and oak wilt diseases. The Forester shall recommend to the Council the details of a program for the control of tree diseases and perform the duties incidental to a program adopted by the Council, and perform other duties as provided by this chapter.

(Ord. 633, passed 10-9-97)

### **§ 152.41 FORESTRY PROGRAM.**

The forestry program shall provide for inspection of trees on public and private property for the purposes of enforcement of applicable sections of this code.

(Ord. 633, passed 10-9-97)

### **§ 152.42 MAINTENANCE AND REMOVAL OF TREES.**

(A) Duties. The city shall have the right to maintain and/or remove trees while performing maintenance duties within any public right-of-way or easement. Maintenance duties shall include, but are not limited to, sidewalk, path, utility and street maintenance and/or repair. The city shall notify property owners adjacent to trees that may be impacted by the performing of maintenance duties. In cases of emergency maintenance

within a public right-of-way or easement, the city shall attempt to contact adjacent property owners when trees may have to be maintained and/or removed, but shall also consider the general health, safety and welfare of the community with respect to hazards that may exist.

(B) Charges for services. The city may charge the abutting property owner or legal possessor the cost incurred by the city for maintenance and/or removal of trees located within any right-of-way or easement. Any charges not paid within 30 days of the due date stated on the city's invoice shall be deemed delinquent and subject to collection as a special assessment to be collected in accordance with M.S. § 429.101.

(Ord. 633, passed 10-9-97)

#### § 152.43 TREE WORK LICENSE.

(A) License required. It shall be unlawful for any person to conduct as a business the cutting, trimming, pruning, removal, spraying or otherwise treating of trees in the city without first having secured a license from the city to conduct the business.

(B) Application; fee and expiration.

(1) Application for a license shall be made at the office of the City Clerk.

(2) The application for a license shall be made on a form approved by the city.

(3) The annual fee for the license shall be in the amount specified in the appendix to Chapter 35.

(4) All licenses issued under the provisions of this chapter shall expire on December 31 following the date of issue.

(C) Liability insurance. No license or renewal shall be granted, nor be effective, until the applicant files with the City Clerk proof of a public liability insurance policy covering all operations of the applicant hereunder for the sum of at least \$300,000 combined single limit coverage. The policy shall provide that it may not be canceled by the insurer, except after ten days written notice to the city, and if the insurance is so canceled and the licensee fails to replace the same with another policy conforming to the provisions of this section, the license shall be automatically suspended until the insurance shall have been replaced.

(D) Conformance required. All contractors licensed under the requirements of this section shall conform with the abatement methods as prescribed by this chapter, as they relate to Dutch elm and oak wilt diseases.

(E) Revocation of license. Failure to comply with any part of the tree treating license shall be grounds for revocation of the license by the City Council, following a public hearing. Written notice of the public hearing shall be mailed at least ten days prior to the hearing to

the current holder of the license. The notice should outline the violation(s) considered by the city to be grounds for revocation and inform the current holder of the license of the opportunity to be heard at the public hearing.

(F) Chemical treatment requirements. Applicants who propose to use chemical substances in any activity related to treatment or disease control of trees shall file with the City Clerk proof that the applicant or employee of the applicant administering treatment has been certified by the Agronomy Division of the state department of agriculture as a "commercial pesticide applicator." Certification shall include knowledge of tree disease chemical treatment.

(Ord. 633, passed 10-9-97)

#### § 152.44 MINIMUM HEIGHT OF TREE LIMBS.

All limbs of trees or portions of limbs which overhang public streets, sidewalks or paths and are less than ten feet above the surface of any public sidewalk or path or are 13 feet above the surface of any public street constitute a nuisance and are prohibited. When limbs of a tree overhang both a public sidewalk and a public street, they shall be trimmed to a height of 13 feet above the surface of the street. This section shall not apply to any tree to which pruning or trimming would endanger the tree's health as determined by the city, unless a public nuisance exists.

(Ord. 633, passed 10-9-97)

#### § 152.45 SHADE TREE DISEASE REGULATION.

(A) Declaration of policy. The Council has determined that the health of elm and oak trees within the municipal limits are threatened by fatal diseases known as Dutch elm and oak wilt. It has further been determined that the loss of elm and oak trees growing upon public and private property would substantially depreciate the value of property within the city and may impair the health, safety and general welfare of the public. It is declared to be the intention of the Council to control the spread of these diseases, and this section is enacted for that purpose.

(B) Disease control program; coordinator. It is the intention of the Council to conduct a program of plant pest control pursuant to the authority granted by M.S. § 18.0231, as amended. This program is directed specifically at the control and elimination of the Dutch elm disease fungus, elm bark beetles and oak wilt fungus and is undertaken at the recommendation of the State Commissioner of Agriculture. The City Forester shall act as coordinator between the Commissioner of agriculture and the Council in the conduct of this program.

(C) Nuisance declared. The following shall constitute a public nuisance:

(1) Any living or standing elm tree or part thereof infected to any degree with the Dutch elm disease fungus *Ophiostoma Ulmi* or which harbors any of the elm bark beetles *Scolytus Multistriatus* (Eichh.) or *Hyluigopinus Rufipes* (Marsh);

(2) Any living or standing oak tree or part thereof infected to any degree with the oak wilt fungus *Ceratocystis Fagacearum*; or

(3) Any dead elm or oak tree or part thereof, including logs, branches, stumps, firewood or other elm or oak material from which the bark has not been removed or sprayed with an effective elm bark beetle insecticide or oak wilt fungus deterrent.

(D) Inspection and investigation.

(1) Annual inspection. The City Forester shall inspect all premises within the city annually or as often as practicable to determine whether any condition exists which is in violation of this chapter. The Forester shall investigate all repeated incidents of tree disease.

(2) Entry on private premises. The Forester may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned.

(3) Diagnosis. In determining tree disease, the Forester shall use current technical procedures.

(E) Nuisance abatement methods. In abating any public nuisance as defined in this section, the Forester shall cause the infected tree or wood to be sprayed, removed or otherwise effectively treated so as to destroy and prevent the spread of Dutch elm disease fungus, elm bark beetles, oak wilt fungus or other regulated tree disease. Any abatement shall be carried out in the following manner:

(1) In trees infected with Dutch elm disease that have the potential to spread the disease, any portion of the tree larger than two inches in diameter shall have the bark removed, chipped or covered with at least four mil plastic making a tight seal to the ground until the bark falls off.

(2) Pre-sporulating wood, infected with oak wilt fungus, that is larger than two inches in diameter shall be cut into three foot sections prior to October 1 of the current year. After October 1, the wood must have the bark removed, chipped or covered with at least four mil plastic making a tight seal to the ground until the bark falls off.

(3) Other current technical procedures which are accepted by the agencies as the Minnesota Department of Agriculture, the Minnesota Department of Natural Resources or the University of Minnesota may be utilized with city approval.

(F) Procedure for removal of infected trees and wood. Whenever the Forester finds that infestation exists in any tree or wood in any public or private place in the city, the Forester shall proceed as follows:

(1) If the Forester finds that danger or infestation or spread of tree disease is imminent, the Forester may order any treatment or tree removal determined to be necessary to abate the nuisance.

(2) In all other cases, prior to any treatment or removal, the Forester shall cause written notice of proposed actions to be sent by regular mail or personally delivered to the occupant or the owner of the premises. Failure to give notice shall not invalidate the city's actions. The Forester may order any treatment or tree removal determined necessary to abate the nuisance.

(G) Payment for abatement. Any costs incurred by the city in connection with the city's abatement of any diseased tree as permitted in this section shall be the responsibility of the property owner. The city may charge the property owner or legal possessor the cost incurred by the city in connection with the abatement of any diseased tree. Any charges not paid by the property owner or legal possessor within 30 days of the due date stated on the city's invoice shall be deemed delinquent and subject to collection as a special assessment which shall be collected in accordance with M.S. § 429.101.

(H) Transporting of infected elm or oak wood. It is unlawful for any person to transport within the city any infected, bark bearing elm or oak wood determined to be a nuisance by the Forester. The Forester shall grant permission for the transportation of the wood only when the purpose of this chapter is served.

(I) Unlawful acts. It is unlawful for any person to permit any public nuisance, as defined in this section, to remain on any premises owned or controlled by the person within the city. The nuisances may be abated in the manner prescribed by this chapter.

(Ord. 633, passed 10-9-97; Am. Ord. 712, passed 4-25-02) Penalty, see § 10.99

## **WATER QUALITY**

### **§ 152.55 STORM WATER REGULATIONS.**

All construction, land-disturbing activity and development shall comply with any governmental entity's applicable watershed management plan and the city's storm water management plan.

(Ord. 633, passed 10-9-97; Am. Ord. 712, passed 4-25-02)

### **§ 152.56 WETLAND CONSERVATION REGULATIONS.**

Except as otherwise provided in this code, the Minnesota Wetland Conservation statutes and regulations (commonly referred to collectively as the Minnesota Wetland Conservation Act), as amended through Laws 2000, are hereby incorporated herein and adopted by reference, including the penalty provisions thereof.

(Ord. 633, passed 10-9-97)

§ 152.57 WETLAND PROTECTIVE BUFFER ZONE.

(A) Scope of application. This section shall apply to any property included within any plat for which an application therefor was filed on or after the effective date of this section. This section shall not apply to any of the following:

(1) Structures located within a wetland buffer zone on the effective date of this section or the remodeling, reconstruction or replacement of the structures provided that it does not take up additional land within the wetland buffer zone;

(2) The construction or maintenance of public drainage facilities or temporary erosion control improvements;

(3) The construction or maintenance of public utilities, provided there is no other practical alternate location; or

(4) The construction or maintenance of public or private trails provided the trail surface is not of impervious materials and the buffer zone is expanded, where possible, in area equal to the width of the trail corridor, including disturbed areas.

(B) Wetland buffer zone required. On all public and private property which abuts any water body, a wetland buffer zone shall be preserved or established and maintained in accordance with the following requirements:

(1) When a natural resources management plan is required, all proposed buffer zones shall be shown on the plan;

(2) Any buffer zone that is to be preserved or established shall have approved erosion control measures installed and inspected prior to any land disturbing activity;

(3) Any buffer zone that is to be preserved in a natural condition shall have the natural plant growth inspected and approved by the city prior to any land disturbing activity;

(4) Any buffer zone that is to be established during any land disturbing activity shall have proposed plantings approved by the city;

(5) Erosion control measures shall be maintained until land disturbing activities are complete and removal is approved by the city;

(6) When platting, the plat must show the wetland edge as approved by the city;

(7) Buffer zones shall be maintained in a natural condition indefinitely;

(8) The owner or occupant of any property abutting any wetlands shall not conduct or permit any of the following activities within the wetland or wetland buffer zone:

(a) Vegetation alteration, including clear-cutting unless approved in writing by the city;

(b) Topographic alteration, including but not limited to grading, filling, excavation and extractions;

(c) Construction, placement or installation of any structure; and

(d) Dumping or disposing of any material foreign to the natural state of the wetland;

(9) Land disturbing activity that is proposed outside of any established wetland buffer zone which may impact the buffer zone and/or wetland, shall be approved by the city before the activity begins.

(C) Wetland buffer zone identified. The setback line of the wetland buffer zone shall be identified by permanent markers, which have been approved by the city, at each lot line, but in no case more than 300 feet apart. All markers shall be correctly installed prior to the issuance of any natural resources permit.

(Ord. 633, passed 10-9-97; Am. Ord. 712, passed 4-25-02)

PERMITS AND PLANS