

ORDINANCE NO. 2006-

AN ORDINANCE ESTABLISHING NEW PLAT FINDINGS, RESIDENTIAL LOT WIDTH STANDARDS, BUILDING HEIGHT STANDARDS AND RESIDENTIAL TREE PRESERVATION STANDARDS THEREBY AMENDING CHAPTERS 16 AND 19 OF THE CITY CODE

The City Council of the City of Bloomington, Minnesota ordains:

Section 1. That Chapter 16 of the City Code is hereby amended by deleting those words that are contained in brackets [] and adding those words that are underlined, to read as follows:

CHAPTER 16

LAND DEVELOPMENT AND PLATTING

ARTICLE I. SUBDIVISION REGULATIONS

SEC. 16.05.01. SUBDIVISION REVIEW PROCESS.

- (e) [~~In the case of all plattings, the Planning Commission or the Administrative Subdivision Review Committee, whichever is applicable, shall recommend denial of, and the City Council shall deny, approval of a preliminary or final plat if it makes any of the following findings:~~
- ~~(1) That the proposed subdivision is in conflict with applicable general and specific plans.~~
 - ~~(2) That the design or improvement of the proposed subdivision is in conflict with applicable development plans.~~
 - ~~(3) That the physical characteristics of the site, including but not limited to topography, vegetation, susceptibility to erosion and siltation, susceptibility to flooding, water storage, and retention, are such that the site is not suitable for the type of development or use contemplated.~~
 - ~~(4) That the site is not physically suitable for the proposed density of development.~~
 - ~~(5) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage.~~
 - ~~(6) That the design of the subdivision or the type of improvements will be detrimental to the health, safety, or general welfare of the public.~~
 - ~~(7) That the design of the subdivision or the type of improvements will conflict with easements of record or to easements established by judgment of a court.]~~

A preliminary or final plat must be denied if the Issuing Authority makes any of the following findings:

- (1) The plat is in conflict with the Comprehensive Plan;
- (2) The plat is in conflict with any applicable general or area plan;
- (3) The plat does not conform with City Code standards and other applicable laws and regulations;
- (4) The plat creates conflicts with existing easements;
- (5) There is inadequate public infrastructure (roads, utilities, storm water system, emergency services, schools, etc.) to support the additional development potential created by the plat.
- (6) The plat has not been designed to mitigate potential negative impacts upon the environment including but not limited to topography; steep slopes; trees; vegetation; naturally occurring lakes, ponds, rivers and streams; susceptibility of the site to erosion and sedimentation; drainage; susceptibility of the site to flooding; and stormwater storage needs.
- (7) The plat will be detrimental to the public health, safety or general welfare.

Section 2. That Chapter 19 of the City Code is hereby amended by deleting those words that are contained in brackets [] and adding those words that are underlined, to read as follows:

CHAPTER 19

ZONING

ARTICLE I. GENERAL PROVISIONS

Division B. Definitions

SEC. 19.03. DEFINITIONS.

The following words and terms when used in this Chapter shall have the following meanings unless the context clearly indicates otherwise:

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

Lot width – ~~[The horizontal distance between the side lot lines of a lot measured within the lot boundaries and at the minimum required front setback line.]~~ The distance between the side lot lines of a lot measured, unless otherwise specified, along the shortest straight line that both a) touches the minimum required front setback line and b) at no point is closer to the front lot line than the minimum required front setback line.

ARTICLE III. ZONING DISTRICT MAP, ZONING DISTRICTS AND DISTRICT USES

SEC. 19.27.01. LARGE LOT SINGLE FAMILY RESIDENTIAL DISTRICT RS-1.

(d) **Dimensional Requirements –**

(1) Dimensional Requirements: Single Family Dwellings

- | | | |
|------|--------------------|--|
| A. | Minimum lot area: | 33,000 square feet |
| B. | Minimum lot width: | 80 feet <u>or as required in Section 19.42 (h), whichever is greater</u> |
| C. | Minimum Setbacks: | |
| i. | Front: | 30 feet <u>or as required in Section 19.42 (a), whichever is greater</u> |
| ii. | Side: | 10 feet |
| iii. | Rear: | 30 feet |

- iv. Side or rear adjacent to street: 30 feet or as required in Section 19.42 (a), whichever is greater
- D. Maximum structure height: Regulated pursuant to Section 19.47 of this Code.
- (2) Dimensional Requirements: Two-Family Dwellings
 - A. Minimum lot area: 27,000 square feet
 - B. Minimum lot width: 120 feet
 - C. Minimum setbacks:
 - i. Front: 30 feet or as required in Section 19.42 (a), whichever is greater
 - ii. Side:
 - (1) One-story structure: 10 feet
 - (2) Two-story structure: 15 feet
 - (3) Attached garage: 5 feet
 - iii. Rear: 30 feet
 - iv. Side or rear adjacent to street: 30 feet or as required in Section 19.42 (a), whichever is greater
 - D. Maximum structure height: Regulated pursuant to Section 19.47 of this Code.
- (3) Setback Requirements: Private Garages.
 - A. Front: 30 feet or as required in Section 19.42 (a), whichever is greater
 - B. Side: 5 feet
 - C. Rear: 10 feet
 - D. Side or rear adjacent to street: 30 feet or as required in Section 19.42 (a), whichever is greater
- (4) Dimensional Requirements: Non-Residential Uses.
 - A. Minimum lot width: 100 feet
 - B. Minimum setbacks:
 - i. Front: 50 feet
 - ii. Side: 25 feet
 - iii. Rear: 30 feet
 - iv. Side or rear adjacent to street: 50 feet
 - C. Additional Setback: In no event shall any setback for a non-residential use in the RS-1 District be less than the height of the structure.
 - D. Maximum Height: Regulated pursuant to Section 19.47 of this Code.

ARTICLE IV. DISTRICT REGULATIONS

SEC. 19.41. MINIMUM DISTRICT REQUIREMENTS.

(a) Single-family residences

(1) Dimensional Requirements:

	DISTRICT	
	R-1A	R-1
Lot width, <u>non-corner lots</u> ***	100 feet <u>or as required in Section 19.42 (h),</u>	80 feet <u>or as required in Section 19.42 (h), whichever</u>

	<u>whichever is greater</u>	<u>is greater</u>
Lot area	1-1/2 acres	11,000 sq. feet
<u>Lot width, corner lots***</u>	<u>120 feet</u>	<u>120 feet</u>
Floor area	1,700 sq. feet	1,040 sq. feet
Principal Structure		
Front-yard setback	75 feet	30 feet <u>or as required in Section 19.42 (a), whichever is greater</u>
Side-yard setback	30 feet	10 feet
Side adjoining street	75 feet	30 feet
Rear-yard setback	75 feet	30 feet
Garages*		
Front-yard setback	75 feet	30 feet <u>or as required in Section 19.42 (a), whichever is greater</u>
Side-yard setback	5 feet*	5 feet**
Side adjoining street	75 feet	30 feet
Rear-yard setback	5 feet*	5 feet**

*No portion of any principal structure attached to a garage shall be closer to any lot line than the minimum distance required for any principal structure in the zoning district. Any garage which is connected to sanitary sewer or water shall satisfy the setback requirements of the principal structure in the zoning district.

**Where the height of a side wall exceeds nine (9) feet from the floor of the garage to the top of the side wall, the side and rear setbacks of the garage shall be increased a two feet for every foot, or portion thereof, of height over nine (9) feet.

*** Single and two-family residential lots approved by the City after August 31, 2006 must meet minimum lot width requirements over the first 50 feet of the lot beyond the required front setback line.

(2) Exceptions to Dimensional Requirements

- (A) Except where otherwise restricted by Section 19.42, the provisions of this Section may be modified and superseded under the procedure set forth in Section 19.62.01 only upon approval of a Conditional Use Permit for a Neighborhood Unit Development.

(b) Two-family and multiple-family residences -

(3) Setbacks.

(A) Yards:

Along public streets	
Fourplexes	40 feet
Larger buildings	50 feet
Other yards	30 feet

The required setback shall be increased one foot for each foot of height of the structure over ~~[25 feet notwithstanding Section 19.47 of this Code.]~~ 30 feet in height as determined in Section 19.47 (b) (3).

(B) Parking Lot Setbacks:

From street	20 feet
From interior property line	10 feet

- (C) Garages for two-family dwellings in Single-Family (R-1, R-1A, RS-1) zoning districts shall satisfy the requirements for single-family dwellings in the zoning district. Garages for multiple-family dwellings may be placed not closer than five feet from a side or rear lot line, except where party walls are proposed.

- (4) Minimum Row House Unit or Lot Width. 16 feet
Minimum Two-Family Lot Width. 100 feet or as required in Section 19.42 (h), whichever is greater

- (5) Except for garages, the side-yard setback shall in no event be less than five feet less than the height of the structure as determined in Section 19.47 (b) (3).

SEC. 19.42. EXCEPTIONS AND ADDITIONS TO SETBACK AND LOT WIDTH REQUIREMENTS.

- (a) Where nearby structures in existence on October 7, 1974 have a greater front-yard setback than that required, the minimum front setback of a new structure shall conform to the prevailing setback in the immediate vicinity. The Issuing Authority shall determine the necessary front-yard setback in such cases; however, in no case shall the Issuing Authority require a setback greater than 65 feet except where an industrial district is adjacent to a residential district.

- (h) Lot width for single and two-family residential lots approved by the City after August 31, 2006 must meet or exceed 80 percent of the median lot width of existing lots wholly or partially within 500 feet of the perimeter of the proposed subdivision. In calculating the median lot width, the following lots are excluded:
- (1) lots that are not single or two-family residential lots;
 - (2) lots within the proposed subdivision;
 - (3) corner lots;
 - (4) flag lots;
 - (5) lots approved through the Neighborhood Unit Development (NUD) process;
 - (6) lots that are not within 500 feet of the proposed subdivision when measured along existing or proposed public streets; and
 - (7) for the purposes of calculating single family residential lot width, two-family lots are excluded.
- In no event is lot width for single and two-family residential lots required by Section 19.42 (h) to exceed 120 feet. For the purposes of Section 19.42 (h), lot width is the distance between the side lot lines of a lot measured along the shortest straight line that both a) touches a line 30 feet back from the front lot line and b) at no point is closer to the front lot line than 30 feet. For the purposes of Section 19.42 (h), in cases where horizontally attached two-family residential structures occupy two adjoining lots, lot width is determined by adding together the width of each lot. Notwithstanding the requirements of Section 19.42 (h), two-family residential lots legally created prior to August 31, 2006 may be subdivided in accordance with Section 19.41 (b) (6).

SEC. 19.47. HEIGHT.

- (a) **Purpose** - The purpose of Section 19.47 is to regulate the height of structures in order to maintain the character and scale of the predominant single-family residential development in the City of Bloomington.
- (b) **Definitions** -
- (1) **Protected residential property** - any property within the City that meets all of the following requirements:
 - (A) The property is zoned R-1, R-1A, or RS-1 and the property may or may not also have a Planned Development (PD) Overlay classification;
 - (B) The property is guided by the Comprehensive Plan for Low-Density Residential, Medium-Density Residential, or High-Density Residential; and
 - (C) The property is used residentially or subdivided for residential use.
 - (2) **Designated residential property** - any property within the City that meets all of the following requirements:
 - (A) The property is zoned for residential use and the property may or may not also have a Planned Development (PD) Overlay classification;
 - (B) The property is guided by the Comprehensive Plan for Low-Density Residential, Medium-Density Residential, or High-Density Residential; and
 - (C) The property is used residentially or subdivided for residential use.
 - ~~(3) **Structure height** -~~
 - ~~(A) Building - the height of buildings shall be determined using 2 methods and both methods must comply with the restrictions of Section 19.47(c) of the City Code.~~
 - ~~(i) the number of stories shall be determined by counting the total number of above-grade, habitable floors in the building and shall not include walk-out basements, attics, or underground parking;~~

(ii) ~~the height of buildings shall be determined by measuring the vertical distance from the lowest exterior grade of the building to the ceiling of the highest habitable story of the building. Habitable stories with sloped ceilings shall be measured to the base of the slope.~~

(B) ~~Parking structures – the height of parking structures shall be determined by measuring the vertical distance from the lowest exterior grade of the parking structure to the highest point of the permanent structure.~~

(C) ~~Towers – the height of towers shall be determined by measuring the vertical distance from the tower's point of contact with the ground or rooftop to the highest point of the tower, including all antennas or other attachments. When towers are mounted upon other structures, the combined height of the structure and tower must meet the height restrictions of Section 19.47.~~

(D) ~~Other structures – the height of all other structures shall be determined by measuring the vertical distance from the lowest exterior grade of the structure to the highest point of any part of the structure.~~

(E) ~~The final determination of height shall be made by the Issuing Authority in accordance with the guidelines of Section 19.47(b)(2)(A), (B), and (C) of the City Code.]~~

(3) Structure, building and tower height – the height of structures, buildings and towers shall be determined by measuring the vertical distance from the lowest existing ground elevation prior to construction that is immediately adjacent to the structure, building or tower to the highest point on any part of the structure, building or tower, including rooftop equipment, antennas and lightning rods.

(4) Building stories - the number of stories shall be determined by counting the total number of above-ground, habitable floors in the building, not including walk-out basements, attics, or underground parking.

(c) **Height Limitations -**

(1) Buildings and Structures Other Than Towers.

(A) In all single-family residential zoning districts (R-1, R-1A, RS-1), the following height limitations apply: [the maximum height of any building shall be 2 stories and the maximum height of any structure, including buildings, shall be 30 feet;]

(i) buildings must not exceed two stories in height;

(ii) at the 5 foot side setback line, building height must not exceed 19 feet;

(iii) for portions of buildings between the 5 foot side setback line and the 20 foot side setback line, building height may increase at a 1:1 ratio to side setback (for example, at 10 feet from the side lot line, building height is limited to 24 feet, see Figure 19.47 (f) (1));

(iv) beyond the 20 foot side setback line, building height must not exceed 40 feet;

(v) flat roofed buildings must not exceed 30 feet in height at any point on a site; and

(vi) structures other than buildings must not exceed 30 feet in height.

(B) In all other zoning districts, the maximum height of any building or structure, excluding towers, shall be as follows:

Distance of Building or Structure from the Property Lines of any Protected Residential Property

	0-30 feet	31-300 feet	301-600 feet	over 600 feet
Maximum Height:	2 stories/30 ft.	3 stories/40 ft.	80 ft.	no limit

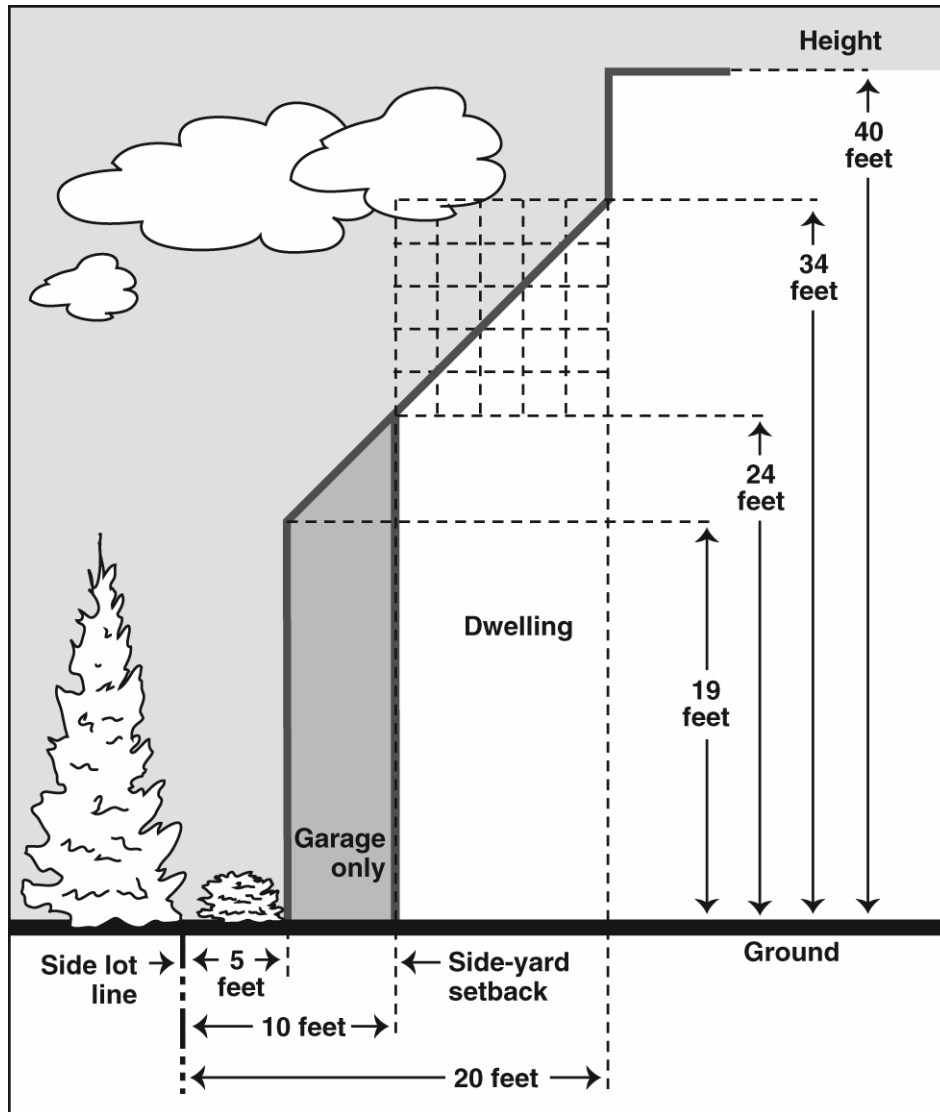
(2) Towers.

(A) In all designated residential property the maximum height of any tower, including all antennas and other attachments, shall be 30 feet;

(B) In all residential zoning districts other than designated residential property, the maximum height of any tower, including all antennas and other attachments, shall not exceed one foot for each four feet the tower is setback from designated residential property up to a maximum height of 75 feet.

(C) In all non-residential zoning districts, the maximum height of any tower, including all antennas and other attachments, shall not exceed one foot for each two feet the tower is setback from designated residential property up to a maximum height of 75 feet in non-industrial zoning districts and 100 feet in industrial zoning districts.

- (3) In addition to the height limitations noted in 19.47(c)(1) and (2), no new structure shall be constructed or established; no existing structure shall be altered, changed, rebuilt, repaired, or replaced; and no tree shall be allowed to grow or be altered, repaired or replaced, or replanted in anyway so as to project above any Airspace Surface as shown on MSP Zoning Map Airspace Zones-Plate A-19, A-20, A-21, A-22, A-25, A-26, A-27 and A-28 of the 2004 MSP Zoning Ordinance.
- (d) **Applicability -**
- (1) In all zoning districts, the maximum height of any structure, building, or portion thereof, other than towers, 600 feet or greater from any protected residential property shall not be governed by Section 19.47 of this Code. The height of antenna mounting structures in the public right-of-way shall be governed by Chapter 17, Article IV of the Code rather than by Section 19.47.
- (2) **Exceptions -** The requirements of Section 19.47 of this Code shall apply to all structures and developments otherwise permitted under this Code except:
- (A) planned developments, when approved as part of a preliminary and final development plan pursuant to Section 19.38.01 of this Code.
- (B) public utility structures, including but not limited to water towers, antennas, lights and signals, power and telephone poles, public safety radio towers, and poles supporting emergency warning devices. When a public utility structure is extended or replaced to accommodate the colocation of a commercial wireless telecommunication service facility, such extension shall comply with the requirements of this Section.
- (C) church sanctuaries, steeples and bell towers.
- (D) multi-user towers may exceed the height limitations of Section 19.47 by up to 20 feet.
- (E) in accordance with the Federal Communications Commission's preemptive ruling PRB1, towers erected for the primary purpose of supporting amateur radio antennas may exceed 30 feet in height provided that a determination is made by the Planning Manager that the proposed tower height is technically necessary to successfully engage in amateur radio communications.
- (F) Residential chimneys, up to 4 feet in width or depth, may exceed the height limitations of Section 19.47 by up to 2 feet.
- (e) **Noncompliance -** Noncompliance of characteristics of structures and site development created by the application of Section 19.47 of this Code shall not in any manner limit the legal use of the property, nor in any manner limit the repair, maintenance, or reconstruction of a noncomplying characteristic or feature; however, in no instance shall the degree of noncompliance be increased except as otherwise permitted by this Code.
- (f) **Graphic Illustration.**
- (1) Building Height Limits in the R-1, R-1A, and RS-1 Zoning Districts.



ARTICLE V. PERFORMANCE STANDARDS

SEC. 19.53. [RESERVED.] TREE PRESERVATION.

(a) **Purpose.** The City Council recognizes that preservation and replanting of trees is important on new single-family residential development sites in order to maintain a healthy and desirable community. The City Council also recognizes that a certain amount of tree loss is an inevitable consequence of the residential development process. The City Council finds that these tree preservation regulations help to establish a balance between an individual's rights to develop his or her property and the needs of the community to protect the natural environment. The purpose of these tree preservation regulations includes, but is not limited to:

- (1) prevention of soil erosion and sedimentation;
- (2) improved air quality;
- (3) reduced noise pollution;
- (4) energy conservation through windbreaks and shading;
- (5) control of the urban heat island effect;
- (6) increased property values;

- (7) protection of privacy by maintaining and establishing buffers between conflicting land uses;
- (8) enhanced aesthetics; and
- (9) providing habitat for wildlife.

(b) **Applicability.** The regulations contained in this section shall apply to all proposed single and two-family residential lots for which a plat application was received after August 31, 2006, with the exception of plats that create only lot line adjustments and do not alter the number of lots. The regulations continue to apply for a period of two years after the date the plat was recorded with Hennepin County.

(c) **Definitions.** The following definitions supplement those in Section 19.03 and apply only to Section 19.53 of this Code.

Critical Root Zone - The area within a radius surrounding the Tree Trunk of one foot per one inch DBH of tree diameter. For example, a 20 inch DBH tree has a critical root zone with a radius of 20 feet.

DBH - Diameter at Breast Height. The diameter of a tree measured 4.5 feet above grade level.

Disturbance Zones - That part of a site disturbed by tree clearing, grading, trenching or any other construction activities.

Healthy Tree - Any Significant Tree except those deemed diseased by a certified forester, arborist or the City Forester.

Significant Tree - Any healthy deciduous hardwood tree (except Willow, Boxelder, Aspen, Silver Maple and multiple stem Cottonwood) measuring 12 inches DBH or greater (or six inches DBH or greater in the case of Oak, Sugar Maple, Ironwood and Hickory) and any healthy coniferous tree (except multiple stem White Cedar) measuring eight inches DBH or greater.

Tree Trunk - The stem portion of a tree from the ground to the first branch thereof.

(d) **Removal Threshold.**

- (1) Removal or disturbance of Significant Trees on lots or proposed lots in the R-1, R1-A and RS-1 Zoning Districts beyond 50 percent of the total inches DBH of Significant Trees on the lot or proposed lot requires reforestation as specified in this Section. The following trees are not counted toward the calculation of Significant Trees:
 - (A) trees within existing or proposed conservation and protective easements;
 - (B) trees within 100 year floodplains;
 - (C) trees within wetlands;
 - (D) trees on slopes greater than 25%; and
 - (E) trees deemed diseased by a certified forester.
- (2) Significant Trees within existing conservation and other protective easements, floodplains, wetlands, or on slopes greater than 25% must be preserved and may only be removed upon issuance of a permit from the City Forester.

(e) **Reforestation Requirement.**

- (1) When reforestation is required, the landowner is required to prepare a Reforestation Plan and must mitigate the loss of Significant Trees by planting 1.25 caliper inches of replacement trees for each inch DBH of Significant Trees removed beyond the removal threshold.

(f) **Tree Preservation Standards.** To receive credit for preserving existing Significant Trees, Significant Trees must be protected from direct and indirect root damage and trunk and crown disturbance. The following preservation standards apply:

- (1) Construction activities including parking, material storage, dirt stockpiling, concrete washout and other similar activities must not occur within the Critical Root Zone of any Significant Tree to be preserved.
- (2) There shall be no changes to the grade within the Critical Root Zone of any Significant Tree to be preserved.

- (3) A reasonable effort must be made to have utility line trenches and similar uses avoid the Critical Root Zone of any Significant Tree to be preserved. Due to certain site conditions, where disturbance is unavoidable, the City Forester may approve underground tunneling or directional boring of utilities within the Critical Root Zone of any Significant Tree to be preserved. Trenching, when approved by the City Forester, must be used only as the last alternative and root pruning equipment specifically designed for that purpose must be used. Pruned roots must be sealed with nontoxic wound sealant.
- (4) Prior to issuance of building or grading permits, protective fencing must be installed around the limits of the Disturbance Zone or around the Critical Root Zone of Significant Trees to be preserved. Such fences must be at least four feet high and must consist of orange polyethylene safety fencing. Fencing must remain in place until construction is completed or other landscaping has been installed and the City Forester has approved the removal of the fencing.
- (5) Owners pruning oak trees between April 15 and July 1 must apply an appropriate nontoxic tree wound sealant to any cut areas.

(g) **Tree Survey and Tree Preservation Plans.** All plat applications that would create one or more new parcels in the R-1, R-1A and RS-1 Zoning Districts must include both a tree survey and a tree preservation plan. Tree survey and tree preservation plans must be prepared and signed by a registered surveyor and must include the following information:

- (1) Location, diameter, and species of all Significant Trees on the site as well as Significant Trees within 10 feet of the site that will be impacted by the development.
- (2) Plans must be at the same scale as the plat plans and must show the proposed lots, existing and proposed structures, driveways, retaining walls and other construction, existing and proposed utilities, existing topography and proposed grading, existing and proposed easements, slopes over 25 percent, wetlands, conservation or restrictive easements, 100 year floodplains and setbacks.
- (3) Plans must identify which Significant Trees are:
 - (A) to be protected, preserved, and undisturbed;
 - (B) to be removed or disturbed, and
 - (C) not counted in the calculation as discussed in Section 19.53 (d) (1).
- (4) Plans must identify proposed Disturbance Zones by cross-hatching or gray colored shading on the plan and must identify areas of clearing, grading, trenching and similar activities.
- (5) Plans must identify the location of the Critical Root Zone of any Significant Trees to be saved within 30 feet of proposed Disturbance Zone.
- (6) Plans must identify the location and dimensions of building pads, construction zones for each lot and proposed street layout and grading contours of the site.
- (7) Plans must identify the proposed locations and details of tree protection fencing or other tree protection measures to be installed for all Significant Trees to be preserved.
- (8) Signature and registration number of the registered surveyor preparing the plan.
- (9) Calculation of total Significant Tree inches DBH proposed to be removed or disturbed on the site (excluding exempt tree inches) divided by the total Significant Tree inches DBH on the site (excluding exempt tree inches); showing the net percentage of removal/disturbance.
- (10) Plans must identify the location of trees proposed to meet reforestation requirements.

(h) **Reforestation Plan.** All plat applications that would create one or more new parcels in the R-1, R-1A and RS-1 Zoning Districts must include a reforestation plan if the amount of Significant Tree caliper inches to be removed or disturbed as shown on the tree survey and tree preservation plans exceeds the removal threshold. The reforestation plan must be prepared and signed by a registered landscape architect or forester and must comply with the following criteria:

- (1) The plan must indicate the location and caliper inches or height of all trees to be planted.
- (2) No more than one half of the trees to be planted may be from any one species.
- (3) Trees are encouraged to be of similar species as found on the site.
- (4) No more than fifteen percent of the required tree inches may be of ornamental species.
- (5) The minimum planting size for deciduous trees is two and one half caliper inches.
- (6) The minimum planting size for coniferous trees is six feet in height.
- (7) Trees must be planted a minimum of fifteen feet apart from one another and from existing trees, except where approved by City Forester.
- (8) Trees to be planted must be from certified nursery stock as defined and controlled by Minnesota Statutes Sections 18.44 through 18.61, the Plant Pest Act.

- (9) The plan must include a planting schedule with a tree key, botanical and common tree names, the quantity and size of each tree species to be planted, the total caliper inches of trees to be added and the anticipated heights and spread at maturity.
- (10) Unless approved by the City Engineer, trees must not be planted within 15 feet of City curb and gutter or sidewalk, must not be planted in a Clear View Triangle and must not be planted in a public utility easement.

(i) Authority of the City Forester.

- (1) The tree survey, tree preservation plan and any related reforestation plan must be reviewed and evaluated by the City Forester.
- (2) The City Forester shall have the authority to approve, deny, condition or reject as incomplete a tree survey, tree preservation plan and reforestation plan.
- (3) A tree preservation plan and reforestation plan may be amended after it has been approved. The City Forester shall have authority to approve amendments, except that a change resulting in removal of more than ten percent of the Significant Tree inches DBH that were shown as preserved on an approved tree preservation plan shall require further review by the City Council. As part of any amendment to a tree preservation plan, the required reforestation shall be increased or reduced accordingly. Requests for amendments must be submitted prior to removal of any trees shown as preserved on an approved plan.
- (4) The City Forester shall have the authority to establish surety rates.

- (j) Surety.** When a reforestation plan is required, a reforestation surety must be submitted prior to issuance of a grading permit, or building permit if no grading permit is required, to ensure that proposed trees shown on a reforestation plan are installed as proposed and survive through at least one full growing season. The reforestation surety must equal or exceed the total required reforestation caliper inches multiplied by the average value per caliper inch of trees as determined by the City Forester. The minimum surety amount is one thousand dollars. The surety must be maintained at the calculated level until one year passes from the time of tree planting and the City has inspected the site for conformance to the plan and authorized a reduction or release. The surety may consist of a bond, an irrevocable letter of credit, cash deposit or other instrument which provides an equal performance guarantee to the City.

(k) Inspection and Enforcement of the Tree Preservation Plan.

- (1) Field Staking and Pre-grading Inspection. When a tree preservation plan is required, all sites must be staked and fenced for tree preservation pursuant to the approved tree preservation plan prior to removal of any trees and prior to issuance of a grading permit, or prior to commencement of any grading operations if no grading permit is required, or prior to issuance of a building permit if no grading operations are required. A copy of the approved tree preservation plan must be submitted with an application for a grading permit or with an application for a building permit if no grading permit is required. Upon staking of the site and installation of the tree protection fencing, but prior to issuance of any permits or commencement of any grading operations, the subdivider must contact the City Forester to schedule an inspection of the staking and fence installation on the site. No permits may be issued, nor may any grading or grubbing operations commence without first receiving authorization by the City Forester. Tree protection fencing must remain in place until after the permanent Certificate of Occupancy is issued for the building on the site.
- (2) Post Grading Inspection. Upon completion of the preliminary site grading operations, but prior to any further issuance of permits upon the site, the subdivider (or builder if different than the subdivider) must contact the City Forester to schedule a second inspection of the site to verify the preservation of trees as shown on the approved tree preservation plan.
- (3) Final Inspection. Prior to issuance of a Certificate of Occupancy, the subdivider (or builder if different than the subdivider) must contact the City Forester to schedule a final tree preservation inspection to verify the preservation of Significant Trees and the planting of any reforestation trees as shown on the approved tree preservation plan.

(l) **Violations.** Violation of any provision of this Section shall be a misdemeanor. Provisions of this Section may be enforced by injunction or other appropriate civil remedy. In the case of a violation of the provisions of this Section, additional permits or Certificates of Occupancy must not be issued for the lot or lots that have violations until the violation is mitigated through reforestation or other appropriate measures.

Passed and adopted this _____ day of _____, 2006.

Mayor

ATTEST:

Secretary to the Council

APPROVED:

City Attorney