

**City of Woodbury  
Washington County, Minnesota**

**Ordinance No. 1989**

**An Ordinance of the City of Woodbury, Washington County, Minnesota Providing that the City Code be Amended by Amending Chapter 27, Environmental Management – Division 4 – Protection of Woodlands – Section 27-38 – Purpose – Section 27-39 – Definitions – Section 27-40 – Tree Protection Standards for Developing Properties – Section 27-41 Tree Protection for Nondeveloping Properties – Section 27-42 – Exceptions.**

The City Council of the City of Woodbury, Washington County, Minnesota does ordain:

**Section One. Amendment that Chapter 27 – Environmental Management, Division 4 – Protection of Woodlands, Section 27-38 - Purpose be amended to delete the same in its entirety and substitute the following therefore:**

**Sec. 27-38. – Purpose**

The purpose of this division is to identify trees that are to be saved when development or land disturbing activity is occurring in wooded areas. It is the City's intent to protect, preserve, and enhance the natural environment of Woodbury and to encourage a resourceful and prudent approach to the development of wooded areas. In the interest of achieving these objectives, the City has established tree preservation regulations to promote the following:

- (a) Protection and preservation of the environment and natural beauty of the City.
- (b) Assurance of orderly development within wooded areas to minimize tree and habitat loss.
- (c) Evaluation of the impacts to trees and wooded areas resulting from development.
- (d) Establishment of minimum standards for tree preservation and the mitigation of environmental impacts resulting from tree removal.

**Section Two. Amendment that Chapter 27 – Environmental Management, Division 4 – Protection of Woodlands, Section 27-39 - Definitions be amended to delete the same in its entirety and substitute the following therefore:**

**Sec. 27-39. – Definitions**

*City* is the City of Woodbury.

*Common tree* includes Aspen, Box Elder, Cottonwood, Elm, Poplar, and Willow.

*Coniferous tree* is a woody plant bearing seeds and cones, having foliage on the outermost portion of the branches throughout the year. Tamaracks are included as a Coniferous tree species.

*Construction activity* is 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 damage* is 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) is an imaginary circle surrounding the tree trunk with a radius distance of one (1) foot per one (1) inch of tree Diameter (measured 4.5 ft above the ground) from the trunk outwards and twenty-four (24) inches in depth. e.g. a twenty-inch diameter tree has a critical root zone with a radius of twenty (20) feet out from the trunk (not including the trunk) and twenty-four (24) inches deep.

*Deciduous tree* is a woody plant with a defined crown, and which sheds leaves annually.

*Density* is the number of dwelling units per net acre of land.

*Diameter* means the diameter of the main stem of the tree at a point four and one-half (4.5) feet above the ground.

*Drip line* is 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.

*Hardwood Deciduous tree* includes any Deciduous tree with the exception of those defined as Common trees (Aspen, Box Elder, Cottonwood, Elm, Poplar and Willow). These species are subject to the replacement requirements of section 27-40, and section 27-41.

*Landscaping* means plantings such as trees, perennials, grass and shrubs.

*Lot* is a parcel of land. Where a lot is adjacent to a street or road with a curb and gutter the lot shall include the right-of-way between the property and the curb.

*Nuisance tree* is:

- (1) Any living or standing tree or part thereof infected over fifty percent with a Shade tree disease 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 under the direction of the City forester-tree inspector.
- (3) Any standing dead trees or limbs which may threaten human health or property.

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

*Shade tree pest* is Emerald Ash Borer (*Agrilus plannipennis*), 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* is a healthy tree measuring a minimum of six (6) inches in Diameter for Hardwood Deciduous trees, six (6) inches in Diameter or twelve (12) feet in height for Coniferous trees, or twelve (12) inches in Diameter for Common trees, as defined herein. These species are subject to the replacement requirements of section 27-40, and section 27-41.

*Specimen tree* is a healthy Hardwood Deciduous tree, measuring equal to or greater than thirty (30) inches in Diameter or a healthy Coniferous tree measuring twenty (20) feet in height. These species are subject to the replacement requirements of section 27-40, and section 27-41.

*Significant woodland* is 10,000 square feet or more of undisturbed woodland, predominantly composed of Significant and/or Specimen Hardwood and/or Coniferous trees.

*Tree preservation plan* is a plan prepared by a certified forester, registered landscape architect, International Society of Arboriculture (ISA) Certified Arborist, or a Registered Consultant Arborist (RCA), which clearly shows the species, location, size and health of trees on a site to be preserved, and what measures will be taken to preserve them through the end of construction. The plan will also include details on the species, location, size and health of trees to be removed, in addition to calculations to determine the number of replacement trees required.

**Section Three. Amendment that Chapter 27 – Environmental Management – Division 4 – Protection of Woodlands, Section 27-40 – Tree protection standards for developing properties be amended to delete the same in its entirety and substitute the following therefore:**

**Sec. 27-40. – Tree protection standards for developing properties.**

- (a) *Tree preservation plan.* A tree preservation plan shall be submitted to and approved by the City, and implemented in accordance therewith in connection with any of the following:
- (1) New development in any zoning district.
  - (2) New building construction in any zoning district.
  - (3) Expansion of any existing commercial, industrial or institutional building or impervious surface by ten percent or greater, where an approved tree preservation plan is not on file with the City.
  - (4) Any project for which a City land disturbance permit is required.
  - (5) Removal of any healthy Specimen tree on any parcel.
  - (6) Removal of more than thirty (30) percent of the Diameter inches of the Significant trees on any parcel.

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

- (b) *Tree preservation plan requirements.* All applicants shall submit a tree preservation plan prepared in accordance with the provisions of this subdivision. The tree preservation plan shall be a separate plan sheet(s) that includes the following information:
- (1) The name(s), telephone number(s), and address(es) of the person(s) responsible for tree preservation during the course of the development project.
  - (2) A tree inventory, indicating the size, species, general health, and location of all existing Significant and Specimen trees located within the area to be developed or within the parcel of record. All Significant and Specimen trees must be tagged in the field for reference on the tree preservation plan. These Significant and Specimen trees should be identified on the plan sheet in both graphic and tabular form.
  - (3) 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.

- (4) A listing of the total Diameter inches of healthy Significant and Specimen trees inventoried in subsection (2) above. Dead, diseased, or dying trees do not need to be included in the totals.
  - (5) A listing of the total Diameter inches of healthy Significant and Specimen trees removed, total Diameter inches of healthy Hardwood deciduous trees removed, total Diameter inches of healthy Coniferous trees removed, and total Diameter inches of Common trees removed.
  - (6) Outer boundary of all contiguous wooded areas, with a general description of trees not meeting the Significant tree size threshold.
  - (7) Locations of the proposed buildings, structures, or impervious surfaces.
  - (8) Delineation of all areas to be graded and limits of land disturbance.
  - (9) Identification of all Significant and Specimen trees proposed to be removed within the construction area. These trees should be identified in both graphic and tabular form.
  - (10) Measures to protect Significant and Specimen trees.
  - (11) Size, species, number and location of all replacement trees proposed to be planted on the property in accordance with the tree replacement schedule.
  - (12) Signature of the certified forester, licensed landscape architect, International Society of Arboriculture (ISA) Certified Arborist, or a Registered Consultant Arborist (RCA) preparing the plan.
- (c) *Submission requirements.* The tree preservation plan shall be submitted with any preliminary subdivision plan or site plan as required by the subdivision regulations of this Code; incorporated as a part of any landscape plan as required by the zoning regulations of this Code; or incorporated as part of a land disturbance plan and an application for any land disturbance permit as required by this Code. All tree preservation plans must be certified by a forester or landscape architect retained by the applicant.
- (d) *Implementation.* All sites shall be staked, as depicted in the approved tree preservation plan, and the required tree protection fencing shall be installed before land disturbance is to commence. The City shall inspect the construction site prior to the beginning of the land disturbance to ensure that protective fencing and other protective measures are in place. 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.
- (e) *Allowable tree removal.* Up to thirty (30) percent of the Diameter inches of Significant trees on any parcel of land being developed 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:

- (1) Dead trees;
  - (2) Trees that were planted as part of a commercial business such as a tree farm or nursery; or
  - (3) Trees that were planted by the current property owner. In making such determination, the City shall consider consistency of the age of the trees, any patterns in the location of the trees, historical aerial photography, and evidence of intentional planting such as invoices, formal planting plans, or cost sharing agreements.
- (f) *Mitigation.*

- (1) In any development where the allowable tree removal is exceeded, the applicant shall mitigate the tree loss by either:
  - a. Planting replacement trees in appropriate areas within the development in accordance with the tree replacement schedule;
  - b. Planting replacement trees on City property under the direction of the parks and recreation director or a designee; or
  - c. Paying to the City a cash mitigation, based on the Diameter inches of required replacement in accordance with the tree replacement schedule. The fee per Diameter inch of required replacement is set forth in the City's fee schedule. The payment shall be deposited into an account designated specifically for tree planting.
- (2) The form of mitigation to be provided by the applicant shall be determined by the City.
- (3) The planting of trees for mitigation on residential projects shall be in addition to any other landscape requirements of the City.
- (4) All trees, except ornamental trees, planted as Landscaping on commercial projects may be counted towards tree replacement requirements.
- (g) *Tree replacement calculations.* Thirty (30) percent of the total Diameter inches of Significant trees on the site may be removed without replacement. The allowable thirty (30) percent removal is first credited to the Common trees removed, then the Conifers, and lastly the Hardwood Deciduous species.

The following calculation procedure must be used to determine tree replacement requirements:

- (1) Tally the total number of Diameter inches of Significant trees on the site.
- (2) Calculate thirty (30) percent of the total Diameter inches of Significant trees on the site. This is the allowable tree removal limit, or the number of inches that can be removed without replacement.
- (3) Tally the total Diameter inches of Common trees that will be removed, and subtract this number from the allowable tree removal limit.
- (4) If there are any allowable inches left, tally the total Diameter inches of Coniferous tree species that will be removed, and subtract this number from the remaining allowable inches.
- (5) If there are any allowable inches left, tally the total Diameter inches of Hardwood Deciduous tree species that will be removed, and subtract this number from the remaining allowable inches.

If at any point in the above calculation procedure the number of inches to be removed exceeds the thirty (30) percent allowable removal limit, the remaining inches of removal above the allowable limit must be replaced according to the tree replacement schedule in subsection (h).

- (h) *Tree replacement schedule.* Tree removals over the allowable tree removal limit on the parcel shall be replaced according to the following schedule:
  - (1) Common tree species shall be replaced with new trees, at a rate of one-half ( $1/2$ ) the Diameter inches removed. Replacement trees must be a minimum of two (2) inches in Diameter. Replacement trees may be larger than two (2) inches in Diameter, but will only be given credit for a maximum of two (2) inches per tree.

- (2) Coniferous species shall be replaced with new trees, either Coniferous or Deciduous, at a rate of one-half ( $1/2$ ) the Diameter inches removed. Replacement trees must be a minimum of six (6) feet in height. Since Coniferous species may be sold by Diameter inch rather than height, a three (3) inch Diameter tree can be planted. Replacement trees may be larger than six (6) feet in height, or three (3) inches in Diameter, but will only be given credit for the minimum requirement.
  - (3) Hardwood Deciduous tree species shall be replaced with new Hardwood Deciduous trees at a rate of one-half ( $1/2$ ) the Diameter inches removed. Replacement trees must be a minimum of two (2) inches in Diameter. Replacement trees may be larger than two (2) inches in Diameter, but will only be given credit for a maximum of two (2) inches per tree.
  - (4) Specimen trees shall be replaced with new Hardwood Deciduous trees at a rate of two to one (2:1) Diameter inches removed. Replacement trees must be a minimum of two (2) inches in Diameter. Replacement trees may be larger than two (2) inches in Diameter, but will only be given credit for a maximum of two (2) inches per tree.
- (i) *Species requirement.* The City must approve all species used for tree replacement. Ornamental trees are not acceptable for use as replacement trees. 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.
  - (j) *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 project closure shall be removed by the applicant and replaced with a new healthy tree meeting the same minimum size requirements within eight (8) months of removal.
  - (k) *Required protective measures.* The tree preservation plan shall identify and require the following measures to be utilized to protect Significant trees:
    - (1) Prior to land disturbance, installation of snow fencing or polyethylene laminate safety netting, four (4) feet in height must be 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, or storage of materials shall occur within this fenced area, until final construction is complete.
    - (2) Oak trees cannot be wounded, pruned or damaged in any way (roots, bark, branches, etc.) between the dates of March 15 and July 30. Any oak trees so pruned shall be required to have any cut areas sealed with an appropriate nontoxic tree wound sealant.
    - (3) Prevention of change in soil chemistry due to concrete washout and leakage or spillage of toxic materials, such as fuels or paints.
    - (4) Removal of any Nuisance trees located in areas to be preserved.
  - (l) *Additional protective measures.* The following tree protection measures are suggested to protect Significant trees that are intended to be preserved according to the submitted tree preservation plan, and may be required by the City:
    - (1) Installation of retaining walls or tree wells to preserve trees.
    - (2) Placement of utilities in common trenches outside of the Drip Line of Significant trees, or use of tunneled installation.
    - (3) Use of tree root aeration, fertilization, and/or irrigation systems.
    - (4) Therapeutic pruning.

- (m) *Incentives.* As an incentive to protect a Specimen tree (greater than 30 inches in Diameter) or Significant woodland the City will allow the following:
- (1) *Specimen tree credit.* A credit may be applied to the required tree replacement if a healthy, Hardwood Deciduous tree that is identified as a Specimen tree, greater than thirty (30) inches in Diameter, is preserved on a site. The tree must be approved by the City as a quality tree worth saving. The credit will be applied at a rate of 2:1, up to fifty percent (50%) of the required replacement. If a Specimen tree for which a credit is provided does not survive two years after construction, the developer will be required to pay the fee-in-lieu.
  - (2) *Significant woodland credit.* A credit may be applied to the required tree replacement if a Significant woodland area, as identified and approved by the City, is preserved. Specimen trees within the area are eligible for a credit of 2:1, and Significant trees are eligible for a credit of 1:1. The trees must be approved by the City as quality trees worth saving. Credits from Specimen tree and Significant woodland preservation cannot exceed fifty percent (50%) of the required replacement for the site. If trees for which a credit is provided do not survive two years after construction, the developer will be required to pay the fee-in-lieu.
  - (3) *Density transfer.* Contiguous wooded areas shall be platted as outlots and dedicated at no cost to the City. These areas can be utilized for a density transfer or for a reduction in gross development area subject to area charges. Some or all of the density associated with the dedicated area may be transferred for use elsewhere in the project area at the sole discretion of the City consistent with an approved planned unit development in accordance with chapter 24, article IV. If allowed density for the outlot area is transferred elsewhere within the development, the outlot area will remain as part of the gross developable area for the purpose of calculating area charges, park dedication and other development fees. If the density transfer is not used, dedicated outlot areas will be subtracted from the gross development area for the purpose of calculating area charges, park dedication, and other development fees. Density calculations will be documented with a recorded document for future reference.
  - (4) *Unit bonus.* Projects that provide for dedication of contiguous wooded areas to the City over and above normal park dedication requirements may be eligible for a density bonus in accordance with the City's adopted density bonus policy.
- (n) *Compliance with the plan.* The applicant shall implement the tree preservation plan prior to and during any construction. 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.
- (1) No Significant trees shall be removed until a tree preservation plan is approved and except in accordance with the approved tree preservation plan as approved by the City. If a Significant tree(s) intended to be preserved is removed or damaged to the point that City staff believes the tree will not survive, a cash mitigation, calculated per Diameter inch of the removed/damaged tree in the amount set forth in the City fee schedule, shall be remitted to the City.
  - (2) The City shall have the right to inspect the development and/or building site in order to determine compliance with the approved tree preservation plan. The City shall determine whether compliance with the tree preservation plan has been met.
- (o) *Protected tree replacement fee.* If a Significant or Specimen tree that was identified for preservation and received replacement credit or zoning ordinance consideration is removed or critically damaged during construction, the developer will be required to pay to the City a cash mitigation. The fee is based on the Diameter inches of the tree(s) damaged or

removed. The fee per Diameter inch is set forth in the City's fee schedule as the Protected tree replacement fee. The payment shall be deposited into an account designated specifically for tree planting.

**Section Four. Amendment that Chapter 27 – Environmental Management, Division 4- Protection of Woodlands, Section 27-41 – Tree protection standards for nondeveloping properties be amended to delete the same in its entirety and substitute the following therefore:**

**Sec. 27-41. – Tree protection standards for nondeveloping properties.**

**(a) *Undeveloped parcels.***

- (1) There are no restrictions or permit requirements for removal of dead trees.
- (2) 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 chapter, provided fourteen (14) days prior notice is given to the City.
- (3) 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.
- (4) If a forest management plan is not prepared, a permit for the removals must be obtained from the City. The permit application must include a tree inventory, certified by a forester or landscape architect, which includes the size, species, and location of all existing Significant trees located on the property.
- (5) Upon receipt of a completed tree removal permit application, and compliance with this division the City will issue a permit within fourteen (14) days to allow removal of the trees.
- (6) If, within a ten-year time period of receiving a tree removal permit the property is developed, the developer will be responsible for replacing the trees that were previously removed in accordance with section 27-40(g), tree replacement calculations, and section 27-40(h), tree replacement schedule.

**(b) *Unauthorized tree removal on undeveloped parcels.***

- (1) The City may record a notice of tree replacement requirement against nondeveloping 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 areal 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 areal basis) without supplying the City with a tree inventory before the removals take place.
- (2) The calculation for potential future tree replacement requirement will be made based on the area of trees removed. Baseline tree cover will be calculated from the April 10, 2009 aerial photos provided by Washington County.



- (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 removals the property is developed, a fee equivalent to the tree replacement fee in effect at the time of development will be required to be paid to the City, or the appropriate amount of tree replacement must be planted as part of the development plan.
  - (5) If more than ten (10) years have passed from the date of the removals, no fee or tree replacement will be required.
- (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, with the exception of Specimen trees.
  - (2) Before a Specimen tree is removed, an owner must obtain a permit from the City.
- (d) *Existing developed commercial properties.*
- (1) Trees that are removed must be replaced in accordance with the original Landscaping plan, unless City approval is obtained 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 section 27-40(h). The thirty (30) percent allowable tree removal limit does not apply in these situations.

**Section Five. Amendment that Chapter 27 – Environmental Management, Division 4- Protection of Woodlands, Section 27-42 – Exceptions be amended to delete the same in its entirety and substitute the following therefore:**

**Sec. 27-42. – Exceptions.**

- (a) *Exception standards.* Notwithstanding the City's desire to accomplish the tree protection goals outlined in section 27-38, there may be instances where these goals are in conflict with other City objectives. These conflicts are most likely to occur on small, heavily wooded parcels. At the discretion of the City council, exceptions may be granted if all of the following conditions exist:
  - (1) The subject parcel is five (5) acres in size or less;
  - (2) It is not feasible to combine the subject parcel with adjacent parcels that could use the parcel as required green space;
  - (3) Strict adherence to the requirements of the tree ordinance would prevent reasonable development that is consistent with the comprehensive plan and desirable to the City on the parcel; and
  - (4) The exception requested is the minimum needed to accomplish the desired development.
- (b) *Reduced mitigation for exceptions.* If an exception 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.

**Section Six. Effective date.**

This ordinance shall be in full force and effect following its passage and publication according to law.

Passed and adopted by the City Council of Woodbury, Washington County, Minnesota, this 10<sup>th</sup> day of November, 2020.

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Anne W. Burt, Mayor

Attest:

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Clinton P. Gridley, City Administrator

(SEAL)