



**CITY OF NEWPORT  
PLANNING COMMISSION MEETING  
NEWPORT CITY HALL**

**(May Be Held Electronically From Remote Locations)**

*Zoom Meeting Information* <https://us02web.zoom.us/j/85246335342> Meeting ID: 852 4633 5342 (PW: Newport)

**June 8, 2021 – 5:30 P.M.**

Commissioner:	Anthony Mahmood	City Administrator:	Deb Hill
Commissioner:	Maria Bonilla	Asst. to the City Admin:	Travis Brierley
Commissioner:	Brandon Leyde	City Planner:	Sherri Buss
Commissioner:	Tami Fuelling	Council Liaison:	Marvin Taylor
Commissioner:	Michael Kermes		

**AGENDA**

1. CALL TO ORDER
2. ROLL CALL
3. MEETING MINUTES
  - A. May 11, 2021
4. SEWER SERVICE IN RE DISTRICT
5. TREE REPLACEMENT REQUIREMENTS
6. COMMISSION REPORTS
7. ADJOURNMENT



**CITY OF NEWPORT  
PLANNING COMMISSION MEETING MINUTES  
NEWPORT CITY HALL  
May 11, 2021**

**1. CALL TO ORDER**

Chair Anthony Mahmood called the Planning Commissioner Meeting to order at 5:30 p.m. on May 11, 2021.

**2. ROLL CALL**

Present (4): Chair Anthony Mahmood, Commissioner Maria Bonilla, Commissioner Tami Fuelling, and Commissioner Michael Kermes.

Not Present (1): Commissioner Brandon Leyde

**3. MEETING MINUTES**

**A. April 6, 2021 Special Meeting**

Chair Mahmood motioned to approve the Planning Commission Minutes from April 6, 2021. Seconded by Commissioner Kermes. Approved 4-0.

**4. PUBLIC HEARING- Tree Ordinance**

City Planner Sherri Buss stated the Planning Commission has been working on updating the tree ordinance. The tree health portion of our ordinance needed updating to address issues related to how the City identifies and mitigates serious tree diseases. The tree ordinance needs to be consistent with definitions and recommendations of the DNR and the state agricultural commissioner. The draft ordinance is included in the packet.

Chair Mahmood opened the public hearing at 5:34 p.m. on May 11, 2021.

Bill Sumer, residing at 737 21<sup>st</sup> Street addressed the Commission. Mr. Sumner volunteers with the upkeep and care of the trees in Newport. Mr. Sumner stated he supports the proposed ordinance and feels the City should continue to pursue efforts to protect tree resources in the City.

Chair Mahmood closed the public hearing at 5:36 pm. on May 11, 2021.

Chair Mahmood motioned to recommend the updated Tree Ordinance to the City Council for approval. Seconded by Commissioner Fuelling. Approved 4-0.

## **5. PUBLIC HEARING- Sewer Service Ordinance**

Planner Buss stated there were inconsistencies to the requirements for sewer service in the RE district. The updates to the utility section of the City Code in section 34:13 require that all lots in new subdivisions be connected to both city sewer and water when the property is subdivided. Connections to the city water services should be required due to groundwater contamination affecting wells in Washington County. The requirements should include an option to use private sewer pump systems to connect the home to city services in some locations due to steep topography or other issues.

Chair Mahmood opened the public hearing at 5:41 p.m. on May 11, 2021.

Bill Sumner who resides at 737 21<sup>st</sup> Street addressed the Commission. Mr. Sumner stated he is in support of the proposed sewer service ordinance.

Brian Daly who resides at 1020 Bailey Road addressed the Commission. Mr. Daly stated he is adjacent to this property and inquired if this will change to R-1. Planner Buss stated if a parcel is in the RE district and within 100 feet of an existing city sewer line, then it is treated as an R-1 parcel. The Libby parcel is within 100 feet of the city sewer line, so that parcel would be treated as an R-1 parcel. Commissioner Kermes inquired if it is the parcel boundary or nearest building. Planner Buss stated the utilities ordinance used to state a home within 100 feet, whereas the subdivision ordinance and the zoning ordinance stated parcel, so the proposed ordinance clarifies everything to state parcel.

Mr. Daly inquired about the proposal for six homes and if all six homes would need to connect to city water and sewer. Planner Buss stated yes. Mr. Daly inquired if those six homes connected, then would his property be within 100 feet and required to connect? City Engineer Jon Herdegen stated perhaps we could change the language to within 100 feet of city sewer line and the parcel must be immediately adjacent to the public right-of-way.

Marvin Taylor who resides at 1247 2<sup>nd</sup> Avenue addressed the Commission. Mr. Taylor stated he is concerned with the parcel language because there are a couple parcels off Glen Road that have buildings over 100 feet away, but their parcels abut streets that have sewer running by. Mr. Taylor stated to verify the languages are synced between the utilities section and the subdivision.

The Commission discussed and Planner Buss stated we can continue this discussion at our next meeting with an alternative option and some additional examples.

Commissioner Bonilla left the Planning Commission Meeting at 6:20 p.m. on May 11, 2021.

Chair Mahmood closed the public hearing at 6:21 p.m. on May 11, 2021.

## **6. TREE REPLACEMENT REQUIREMENTS**

Planner Buss stated when we started getting into the tree ordinances, one of the things she noted was nearly all the communities around us have specific requirements for tree replacement when someone develops a property. Newport does not have specific tree replacement requirements and inquired if the Commission would like to consider this for a future discussion. The Commission agreed we should investigate adding a similar requirement.

## **7. COMMISSION REPORTS**

None.

## 8. ADJOURNMENT

Chair Mahmood motioned to adjourn the Planning Commission Meeting. Seconded by Commissioner Kermes. Approved 3-0.

The Planning Commission Meeting was adjourned at 6:33 p.m. on May 11, 2021.

Respectfully Submitted:  
Jill Thiesfeld  
Administrative Assistant II

Signed: \_\_\_\_\_  
Anthony Mahmood, Chairman

# Planning Memorandum

<b>To:</b>	<u>Newport Planning Commission</u>	<b>Reference:</b>	<u>May PC Meeting Agenda Items</u>
<b>Copies To:</b>	<u>Deb Hill, City Administrator</u>		<u></u>
	<u>Travis Brierley, Assistant to the Administrator</u>		<u></u>
	<u>Jon Herdegen, City Engineer</u>	<b>Project No.:</b>	<u>N2019-0002</u>
<b>From:</b>	<u>Sherri Buss, City Planner</u>	<b>Routing:</b>	<u></u>
<b>Date:</b>	<u>May 31, 2021</u>		<u></u>

## 1. Ordinance Requirements for Sewer Service in the RE District within 100 Feet of Existing Municipal Services—2<sup>nd</sup> Public Hearing

The Planning Commission has been working on the sections of the City Code that address requirements for City sewer and water for homes and lots that are within 100 feet of new city utilities at the request of the City Council.

The City's current ordinances that address sewer requirements are inconsistent: 1) some sections of the City Code require that individual homes within 100 feet of city sewer lines be required to connect, while other sections require that parcels with boundaries that are within 100 feet of the city sewer lines be required to connect to the city's system, and 2) the zoning ordinance requires connection to city sewer service only, while the subdivision ordinance requires connection to both sewer and water services where the utilities are available to new subdivisions.

The Commission worked with the City Engineer to develop a draft ordinance that was heard at a public hearing on May 11. Some issues identified during the hearing included the following:

1. One of the commenters at the hearing expressed concerns that if the property adjacent to his property (Libby Trust property) were connected to the City's sewer and water system, he would then be required to connect as well under the draft ordinance because the home on his property is within 100 feet of the sewer line that could be constructed to serve the Libby property. Staff noted that this situation is probably unique due to the unusual shape of the Libby Trust parcel.
2. Council member Taylor asked if the amended ordinance would require some existing homes along Glen Road to connect to city services because their parcel boundaries are within 100 feet of the city's sewer service, while the homes are not within 100 feet of the sewer line.
3. The Commission requested that the City Engineer try to determine how many properties, including those on Glen Road, could be affected by the proposed amendment.

### Information and Amended Ordinances for discussion on June 8

#### Issue #1

Jon Herdegen, the City Engineer, has suggested an option for ordinance 34-13 to address the concern about existing homes that may inadvertently be required to connect to the city's sewer

system when a subdivision is created near them. He suggested a change to the proposed amendment to ordinance 34-13 to keep the requirement that only parcels immediately adjacent to the right-of-way for the sewer line or utility easements where the parcel is within 100 feet of the sewer system would be required to connect and to remove the requirement in the current ordinance that buildings located on blocks through which the system extends within 100 feet of the property line must connect.

With this option, existing homes that may be located within 100 feet of the sewer line located in a new subdivision, but where the property itself would not be adjacent to the sewer line or utility easement (such as the parcel adjacent to the Libby property) would not be required to connect.

The amended language (in red) would read as follows:

- (1) *Existing buildings.* Any building used for human use or habitation and located on property that is adjacent to a **public right-of-way or utility easement where a sanitary sewer main exists and the parcel is within 100 feet of the sanitary sewer main**, shall be connected to the municipal sanitary sewer system within two (2) years from the time a connection is available to any such property.

Item (3) in the proposed amendment (attached) has been updated to be consistent with (1).

#### Issue #2

If the homes cited by Council member Taylor are on parcels that are located adjacent to a sewer line, they are required to connect to the sewer system under the current ordinance, regardless of the distance separating the home from the sewer line. The ordinance amendment would not create a different situation for those homes.

Existing homes that are adjacent to a sewer line are required to connect to sewer services, but the existing ordinance or the proposed amendment would not require a connection to city water services for existing homes—just for new subdivisions.

#### Issue #3

The Engineer's info will be provided at the Planning Commission meeting on June 8.

### **Second Public Hearing for Amended Ordinance**

The Planner revised the proposed ordinance amendments to the Sewer section of the Code and to the Residential Districts section as suggested by the City Engineer. The copies of the proposed amendments for the June 8 public hearing are attached.

Because the change is significant, the Planning Commission will hold a second public hearing at the June meeting on the proposed ordinance amendments.

## **2. Tree Replacement Requirements for Developing Properties**

The Commission had a brief discussion about adding tree replacement requirements for developing properties to the City Code at the May meeting. The Commission requested that the Planner develop a draft ordinance for Newport using the examples discussed in May.

The draft ordinance is attached for discussion on June 8. Some items for discussion will include:

- The list of projects that require a tree preservation plan and replacement and those that are exempt from the requirements.
- The proposed 30% allowable tree removal. This is an average percentage allowed in the ordinances reviewed. Some communities do not allow any removal without replacement; others permit a higher level of allowable removal for some projects such as multifamily home development or industrial and commercial development.
- The requirements for replacement.

Example ordinances from the cities of Maplewood, Cottage Grove, and Woodbury were included in the May 11 packet and may be used for comparison with the draft ordinance.

Sec. 34-13. - Utility connection requirements. Amendment for June 8

- (a) *Valves required.* There shall be installed in every connection to the city water system one full-way valve which shall be installed at a point between the curb stop box and the meter so that the water may be turned off and the meter and house plumbing entirely drained. There shall be installed another full-way valve in the pipe on the house side of the meter.
- (b) *Backflow valves.* All water lines serving commercial, industrial, or multiple dwelling structures which are connected to the municipal water system shall contain an automatic backflow valve to prevent contamination of the municipal water in the event of low pressure. The valve shall be of a type approved and identified in the city public works design manual.
- (c) *Hydrant shutoff valves.* All fire hydrants installed in the city, except those in single-family residential districts, shall be equipped with a shutoff valve in the water supply line.
- (d) *Pipe specifications.* All service pipe connections shall be installed to meet the requirements of the adopted city public works design manual.
- (e) *Separate lines required.*
  - (1) The drainage and plumbing systems of each new building, and work installed in an existing building, shall be separate from and independent of that of any other building, and every building shall have an independent connection with the public sewer and water when such is available.
  - (2) Exception. Where one building stands to the rear of another building on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building roof drain from the front building may be extended to the rear building and the whole shall be considered as one building roof drain. Where the building roof drain is extended, a clean out shall be provided immediately inside the rear wall of the front building. This exemption shall be determined on a case by case basis by the public works superintendent.
- (f) *Replacement of existing utility services.* When new buildings are erected on existing sites served by existing services and it is necessary, as determined by the public works superintendent, to increase or change the existing services; the property owner is required to replace the old water or sewer service. New connections with the sewer or water main shall not be made until all the old services have been removed and the water or sewer main is plugged.
- (g) *Use of old house sewers.* Old house sewers or portions thereof may be approved for use by the public works superintendent. The public works superintendent may request that the old sewer be excavated and/or televised for the purpose of facilitating inspection. No cesspool or septic tank shall be connected to any portion of the house sewer. The existing cesspool or septic tank shall immediately be pumped, cleaned, and filled with earth to the surrounding ground level.
- (h) *Required connection to sewer.*
  - (1) Existing buildings. Any building used for human use or habitation and located on property that is adjacent to a public right-of-way or utility easement where a sanitary sewer main exists and the parcel is within 100 feet of the sanitary sewer main, shall be connected to the municipal sanitary sewer system within two (2) years from the time a connection is available to any such property. ~~Existing buildings. Any building used for human use or habitation and located on property adjacent to a sewer main, or in a block through which the system extends within 100 feet of the property line, shall be connected to the municipal sanitary sewer system within two (2) years from the time a connection is available to any such property.~~
  - (2) *New buildings.* All buildings hereafter constructed within the city on property adjacent to a sewer main, or in a block through which the system extends within one hundred (100) feet of the property line, shall be provided with a connection to the municipal sanitary sewer system for the disposal of human wastes. The connection shall be made by the owner of the building at no cost to the city.



(3) *New subdivisions.* All homes in subdivisions hereafter constructed within the city on a parcel(s) adjacent to a public right of way or utility easement where a sanitary sewer main exists shall be served by the municipal sanitary sewer and municipal water system. The connection shall be made by the subdivider at no cost to the city.

On parcels where topography or other physical conditions may require a lift station(s) to provide municipal sewer service to homes within the subdivision, private pump systems or another option approved by the city may be permitted to connect the homes to the municipal sewer system. This option may be permitted by the city on a case-by-case basis. If approved by the city, all private pump systems shall be owned and operated by the property at no expense to the city, All lateral piping connecting pump systems to city-owned collection system piping shall be equipped with a curb stop and backflow prevention device located on or near the property line.

(Code 1997, § 1000.13)

ARTICLE IV. - RESIDENTIAL AND OPEN SPACE DISTRICTS Amendment for June 8

Sec. 36-206. - Purpose.

(1) The residential and open space districts and district standards are established to carry out the intent and purposes of the Comprehensive Plan and to protect public health, safety, convenience, and public welfare.

(Code 1997, §1340.01)

Sec. 36-207. – Purpose of Zoning Districts.

- (1) *RE, Residential Estates District.* This district shall be intended for low-density single-family residential areas without public utilities and to preserve lands in their natural state or in agricultural uses pending the proper timing for the economical provision of utilities and orderly development. A lot or parcel of land located in a Residential Estates (RE) zone served by municipal sewer and water facilities shall be treated as an ~~urban~~ low-density single residential (R-1) district parcel and shall be required to meet all requirements of the R-1 district.
- (2) *R-1A, River Residential District.* This district shall be intended to provide areas for low-density single-family development along and near the Mississippi River where public utilities are available.
- (3) *R-1, Low Density Single-Family Residential District.* This district shall be intended to provide areas for low-density single-family dwelling development where public utilities are available.
- (4) *R-2, Urban Mixed Residential District.* This district shall be intended to provide areas for a variety of housing types at urban densities including single-family and multifamily residential uses in areas served by municipal sewer and water services.
- (5) *OS, Open Space District* This district is designed to provide areas for public parks, open spaces and public buildings and facilities. Public parks and open space may be owned or operated by the City of Newport or any other public body. All improvements within these districts must be consistent with the Newport Comprehensive Land Use Plan.

(Code 1997, § 1340.02; Ord. No. 2016-13, 12-15-2016)

Sec. 36-208. - Residential lot area, depth, width, coverage, setbacks and heights.

The following minimum requirements shall be required in all residential districts:

	RE †	R-1A	R-1	R-2	OS
<b>Minimum lot sizes per unit in square feet</b>					
Dwellings, single-family	Unsewered areas: 2 Acres (87,120 sq ft)  <u>Sewered areas:</u>	15,000 sq ft	7,800 sq ft	7,200 sq ft	NA

	Use R-1 District standards				
Dwellings, duplex	—	—	—	6,000 sq ft	NA
Dwellings, townhome or quadhome	—	—	—	3,650 sq ft	NA
Dwellings, Multifamily				2,200 (up to 20 units per developable acre)	NA
Other uses	2 Acres	1 Acre	1 Acre	1 Acre	1 Acre
<b>Minimum Lot Depth in Feet</b>	200	150	130	120	NA
<b>Minimum Lot Width in Feet</b>					
Interior lot/(corner lot)					
Dwellings, single-family	160 / (200)	100 / (120)	60 / (75)	50/(60)	NA
Dwellings, two family	—	—	—	60/(80)	NA
Dwellings, more than two family	—	—	—	NA	NA
Other permitted uses	160 / (200)	100/(120)	60/(75)	50/(60)	NA

<b>Minimum front yard in feet***</b>	40	30	30	20	20
<b>Minimum side yard in feet*</b>					
Dwellings, single-family or two family	20 / (40)	10 / (30)**	10 / (30)**	SF 5ft; 2-family or corner lot 10 ft	
Dwellings, more than two family	—	—	—	20 (40)	NA
Dwellings and garages, more than two-family if adjacent to RE, R-1A or R-1 District or an existing or future arterial or collector roadway	N/A	N/A	N/A	50	NA
Garages or accessory structures***, single and 2-family	20 / (40)	5 / (30)	5 / (30)	5/(20)	NA
Other permitted uses	20	30	30	20	10/(30)**
<b>Minimum rear yard in feet</b>					
Dwellings, single-family or two family	50	30	30	25	NA
Dwellings, more than two family	—	—	—	30	NA
Garages or accessory structures**	20	5	5	5 SF/ 30MF	NA

Other uses	50	40	40	25	25
Maximum lot coverage, impervious surfaces, single family dwelling units	20 percent	20 percent	35 percent (25 percent in Shoreland and MRCCA Districts ****)	50 percent	NA
Maximum lot coverage, impervious surfaces, dwellings, more than 2 family	N/A	N/A	N/A	60 percent	NA
Maximum building height in feet	35 feet	35 feet	35 feet	40 feet	40 feet
Public sewer <u>and water services</u> required	No	Yes	Yes	Yes	No

† A lot or parcel in the RE District ~~located adjacent to a public right of way or utility easement where a sanitary sewer main exists by municipal sewer and water facilities~~ shall be treated as a low-density single-family residential (R-1) district parcel and shall meet the requirements of the R-1 district and the Subdivision Ordinance, including the requirement to serve all of the lots created by subdivision of the parcel with municipal sewer and water services.

\* Regardless of the setback standards noted in this table, the distance between a proposed foundation wall and an existing foundation wall on an adjacent lot may not be less than 15 feet.

\*\* Side setbacks for substandard lot widths in R-1A: Ten percent of lot width (25 percent for corner lot, street side). Side setbacks for substandard lot widths in R-1: 15 percent of lot width (33 percent for corner lot, street side).

\*\*\* Minimum front setback from the right-of-way of a collector or arterial roadway is 50 feet in all districts.

\*\*\*\* See Shoreland Management and MRCCA district regulations § 36-328 and 36-360.

(Code 1997, § 1340.03; Ord. No. 2016-13, 12-15-2016)

Sec. 36-209. - Uses in the residential districts.

Use *	RE	R-1A	R-1	R-2	OS
<b>Residential Uses</b>					
Single family detached, one dwelling per lot	P	P	P	P	N
Single family detached, more than one dwelling unit per lot	N	N	N	C	N
Two family residences	N	N	N	C	N
Multi-family residences (3 units or more per building)	N	N	N	PUD*	N
Homes for handicapped or infirm including group homes or halfway houses but not containing more than six (6) unrelated persons	P	P	P	P	N
Nursing homes	N	N	N	N	N
Assisted living, memory care and similar facilities	N	N	N	N	N
Planned unit developments (PUDs) – minimum 10-acre area required for PUDs)	PUD	PUD	PUD	PUD*	N
Manufactured single-family dwelling	P	P	P	P	N
Mobile homes	C	N	N	N	N

<b>Commercial and Mixed Uses</b>					
Agricultural operations and buildings, row crops, tree farming, and keeping of domestic farm animals in compliance with Code requirements	P	N	N	N	N
Churches, synagogues, temples, and associated facilities except schools	C	P	P	P	N
Commercial greenhouse operation	C	N	N	N	N
County club and golf course	C	C	C	C	N
Historic Site	P	P	P	P	P
Horseback riding, stables	I	N	N	N	N
Kennel for more than six animals	I	N	N	N	N
Live-work building	C	C	C	C	N
Medical clinics	N	N	N	C	N
Mixed-use (dwelling unit above ground floor commercial or other use)	N	N	N	C	N
Open space, public or private	C	C	C	C	P
Private athletic fields or courts	C	C	C	C	C
Public facilities including government offices, emergency facilities, public works facilities, schools, libraries, museums, art galleries, and other municipally owned or operated facilities.	C	C	C	C	P
Public utility	C	C	C	C	C
Short-term residential unit rental(s) not in owner-occupied unit(s)—further discussion)	N	N	N	N	N

<b>Accessory Uses</b>					
Accessory structures in accordance with §36-163	P	P	P	P	P
Accessory renewable energy system, including ground source heat pump, solar energy system, or wind-energy system in compliance with Article X.	P	P	P	P	P
<u>Agritourism</u>	I	N	N	N	N
Bed and Breakfast within a single-family residence	C	C	C	C	N
Common property to a multifamily complex or a PUD	N	N	N	C	N
Day care facilities in single-family homes with 14 or fewer children being attended to	P	P	P	P	N
Day care facilities in single-family homes with more than 14 children being attended to	C	C	C	C	N
Day care facilities in multi-family buildings	N	N	N	C	N
Gazebo, arbor and play equipment in public or private areas	P	P	P	P	P
Home occupation in accordance with §36-163(c)(2)	P	P	P	P	N
Parking lot, as an accessory use	N	N	N	P	P
Short-term home rental within single family residence	N	N	N	N	N
Swimming pool	P	P	P	P	P

P = Permitted use.

C = Permitted with a conditional use permit.

I=Permitted with an Interim Use Permit

N = Not permitted.

PUD = Permitted with a planned unit development.



\* Multifamily residential developments in the R-2 District shall require a PUD and a minimum 10-acre parcel area unless the proposed use is adjacent to an existing multifamily use.

(Ord. No. 2016-13, 12-15-2016)

Sec. 36-210. - Credits and allowances for multiple dwellings.

The following lot area credits and allowances shall be applied for multiple dwellings in the R-2 and Mixed-Use district but in no event shall the minimum lot area with allowances be less than three thousand (3,000) square feet per dwelling unit in the R-2 district based on the following schedule:

- (1) For each parking space provided within or beneath a principal structure, subtract three hundred (300) square feet; or if one-third ( $\frac{1}{3}$ ) or more of the required parking spaces is in a covered or underground parking structure the city may grant a density bonus of ten (10) percent;
- (2) If the site upon which the multiple dwelling is being constructed is adjacent to a site zoned for a commercial use, subtract three hundred (300) square feet;
- (3) If the adjacent site is zoned R-1 or R-1A, add three hundred (300) square feet per unit for that portion of the multiple dwelling site within one hundred and fifty (150) feet of the R-1 or R-1A district;
- (4) If the total lot coverage is less than twenty (20) percent, subtract one hundred and fifty (150) square feet per unit;
- (5) For each unit containing more than two (2) bedrooms, add three hundred (300) square feet.

(Code 1997, § 1340.05; Ord. No. 2016-13, 12-15-2016)

Sec. 36-211. - Additional requirements for residential development in the R-2 district.

- (a) All multi-family residential development in the R-2 district shall utilize the planned unit development (PUD) process in accordance with section 36-259, and planned unit developments (PUDs) shall be a minimum ten (10) acres in size, based on the gross developable area of the parcel(s), which is defined as the total area of the parcel(s) excluding existing public streets or highways).

(Ord. No. 2016-13, 12-15-2016)

Secs. 36-212—36-225. - Reserved.

Sec. 18-42. - Tree protection standards for developing properties.

(a) Findings and purpose

The city desires to protect the trees and woodlands in the City of Newport because trees and woodlands provide numerous environmental, economic, and scenic benefits. It is therefore the city's intent to protect, preserve, and enhance the trees and woodlands of Newport and to encourage a resourceful and prudent approach to development in the city thereby promoting and protecting public health, safety, and welfare of the citizens of Newport. The purpose of this division is to establish tree preservation and protection regulations to assure the continuance of significant and specimen trees and woodlands for present and future generations by protecting existing trees and requiring the replacement of trees removed for development, including the following goals:

- (1) Preserve the natural character of neighborhoods in developed and undeveloped areas.
- (2) Ensure the health and wellbeing of Newport's urban forest.
- (3) Protect the health and safety of residents.
- (4) Protect water quality and minimize stormwater runoff.
- (5) Help prevent erosion, sedimentation, and flooding.
- (6) Assure orderly development within wooded areas to minimize tree loss and environmental degradation.
- (7) Establish a minimum standard for tree preservation and mitigation of environmental impacts resulting from tree removal.
- (8) Ensure the city's urban forest has a good age distribution, from young trees through large old specimen trees.
- (9) Promote the planting of trees to provide these benefits to present and future generations.

(b) Definitions.

The following words, terms, and phrases, as used in this division, shall have the meanings ascribed to them in this section:

*Applicant* means developer, builder, contractor, or owner who applies for a woodlot alteration, land use, grading, or building permit.

*Caliper inch* means a measurement used for nursery stock. It is the unit of measurement for defining the diameter of the tree trunk measured six inches above the soil surface for tree trunks four diameter inches or less and measured 12 inches above the soil surface for tree trunks greater than four diameter inches.

*Certified arborist* means an arborist with up-to-date certification by the International Society of Arborists.

*City forester* means a forester who is employed by the city or appropriate agent or independent contractor designated by the city.

*Conifer tree* means a woody plant that is a member of the division Pinophyta and at maturity is at least twelve (12) feet or more in height. Conifers are cone bearing and most in our climate keep their leaves (also called needles) year-round. Tamarack (*Larix laricina*) is the conifer that is native to Minnesota that drops its needles in the fall.

*Deciduous tree* means a woody plant, which sheds leaves annually, having a defined crown and at maturity is at least fifteen (15) feet or more in height.

*Diameter* is a measurement used for trees in the landscape. It is the diameter of a tree trunk as measured at a height of four and one-half (4.5) feet above ground. To determine diameter, measure the circumference of the tree trunk at four and one-half feet above ground and divide by 3.14.

*Hardwood deciduous tree* means all deciduous tree species except those listed as softwood deciduous trees below.

*Hazard tree* means a tree that has structural defects that may cause the tree or tree part to fail, and the city forester determines that such failure could cause property damage or personal injury.

*Invasive species* means species that are not native to Minnesota and cause economic or environmental harm or harm to human health.

*Major home addition* means an addition on a single- or double-dwelling lot of which the addition or accessory building is more than a sixty (60) percent increase in the footprint of the single- or double-dwelling structure on said lot.

*Minor home addition* means an addition on a single- or double-dwelling lot of which the addition or accessory building is less than a sixty (60) percent increase in the footprint of the single- or double-dwelling structure on said lot.

*Native prairie* means a landscape or planting that consists predominantly of grasses, flowers, and sedges that are native to Minnesota prairie ecosystems.

*Shade tree* means a woody perennial that at maturity is at least fifteen (15) feet in height and grown primarily for aesthetic or environmental purposes.

*Significant tree* means a healthy tree measuring a minimum of six (6) inches in diameter for hardwood deciduous trees, eight (8) inches in diameter for conifer trees, twelve (12) inches in diameter for softwood deciduous trees, and specimen trees. Buckthorn or other invasive or noxious woody plants or trees as determined by the city are not considered a significant tree species at any diameter.

*Softwood deciduous tree* means the following tree species: box elder, cottonwood, elm, poplar/aspens, silver maple, and willow.

*Specimen tree* means a tree of any species that is twenty-eight (28) inches in diameter or greater, except invasive species. Specimen trees must have a life expectancy of greater than ten (10) years, have a relatively sound and solid trunk with no extensive decay or hollow, and have no major insects, pathological problem, or defects. Specimen trees are valued for their size and their legacy.

*Structure* means anything manufactured, constructed, or erected which is normally attached to or positioned on land, including portable structures.

*Tree preservation plan* is a plan that shows all trees in the area to be developed or within the property and includes the information that is required by this Section.

*Utility* means electric, telephone, cable television, water, sanitary or storm sewer, solid waste, gas or similar service operations.

*Wetland* has the meaning given under MSA §103G.005.

*Woodlot* means a treed area of at least one-quarter acre on a vacant lot, which includes significant and/or specimen tree(s).

- (c) Prohibited Tree Removal: The removal of significant trees or woodlot(s) on any property by means of clear cutting or in a systematic removal method shall be prohibited, except in accordance with a city-approved tree preservation plan unless it is excepted pursuant to subsection (d).

- (d) Tree preservation plan:

- (1) *Tree preservation plan applicability.*

This section shall apply to any applicant that requests a land use, grading, or building permit, including a building permits for major home additions. This includes all sites of new or redevelopment that contain significant and specimen trees or woodlots. Platting and adding new roadway and right-of-way are subject to this division.

- (2) The following are exceptions and are exempt from the requirements of the tree preservation plan:

- a. Minor home additions, general home improvements, and construction of accessory buildings (i.e., garage, shed).
- b. Tree removal related to public improvement projects to existing roadways, sewers, parks, and utility/infrastructure work or repair.
- c. Emergency removal of a tree(s) to protect public health.
- d. Tree removal related to public improvement projects to restore or enhance woodlands, savannas, or prairies.
- e. Commercial tree nursery and landscape operations.
- f. Removal of dead or dying trees unless those trees were planted as part of tree replacement in which case they shall be replaced based on the approved plan.
- g. Removal of nonnative trees that the city deems invasive species.

(e) *Tree preservation plan applications.* Applicants for projects that require a tree preservation plan shall submit a plan prepared in accordance with the provisions of this section for approval by the city before any tree removal or other disturbance occurs on the site. 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.

(f) *Tree preservation plan requirements.* 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 development project.
- (2) A tree inventory, indicating the size, species, general health, and location of all existing significant trees and woodlots located within the area to be developed or within the parcel of record. All significant trees must be tagged in the field for reference on the tree preservation plan. These significant 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 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 trees proposed to be removed, total diameter inches of healthy hardwood deciduous trees proposed to be removed, total diameter inches of healthy coniferous/evergreen trees proposed to be removed, the total diameter inches of common trees removed, and the total area of woodlot(s) proposed to be 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 trees proposed to be removed within the construction area. These significant trees should be identified in both graphic and tabular form.
- (10) Measures to protect significant 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 person(s) preparing the plan.
- (g) *Requirements for sites with large woodland areas.*  
For sites containing a large woodland tract within which no qualifying trees will be disturbed, an alternative inventory meeting the following requirements may be provided:
- (1) Trees within undisturbed large woodland tracts are not required to be inventoried individually. Instead, the area of the undisturbed tract may be measured in square feet (on site or by means of an aerial photo) and divided by sixty (60) to produce a proxy that shall be counted as the number of inches the tract contributes to the total qualifying inches.
  - (2) All qualifying trees located on the site but outside of an undisturbed large woodland tract shall be inventoried as described in (a) above.
  - (3) The site's total existing qualifying inches shall be the sum of the inches contributed by undisturbed large woodland tracts and by qualifying trees outside the tract.
- (h) *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.
- (i) *City Review and Modification of Plan:* The tree preservation plan shall be reviewed by the city to assess the best layout to preserve qualifying trees and to enhance the efforts to minimize damage to qualifying trees. The applicant shall meet with city staff prior to submission of the development application or prior to application for the grading permit, whichever is first, to determine the most feasible and practical placement of buildings, parking, driveways, streets, storage, and other physical features, in order that the fewest qualifying trees are destroyed or damaged. During the modification process, the city has the following options:
- (1) The city may require modification to a tree preservation plan if the proposed tree removal exceeds what is allowed by this section.
  - (2) The city may declare an application requiring a tree preservation plan incomplete based on the lack of required submittal information. Such application will be rejected.
  - (3) The city may deny an application requiring a tree preservation plan if it is incomplete, lacks sufficient detail, if the tree removal exceeds what is allowed, or the applicant is unwilling to modify the plan to comply with this section.
  - (4) The city may require a dedication of a deed restricted conservation easement designed to ensure that specific tree preservation areas are not negatively impacted or destroyed.
  - (5) The city may require relocation of proposed private and public utilities, hard surface, and structures to increase preservation opportunities within the site.
- (j) *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.
- (k) *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, diseased, or dying trees;
- (2) Trees that are transplanted from the site to another appropriate area within the city;
- (3) Trees that were planted as part of a commercial business such as a tree farm or nursery; or
- (4) 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.

(l) *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, city forester or another city 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.

(m) *Tree replacement calculations.*

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/evergreen 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).

(n) *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-eighth ( $1/8$ ) the diameter inches removed. Replacement trees must be a minimum of one (1) inch in diameter.
- (2) Coniferous/evergreen species shall be replaced with new trees, either coniferous or deciduous, at a rate of one-fourth ( $1/4$ ) the diameter inches removed. Replacement trees must be a minimum

of one (1) inch in diameter. Since coniferous species are often sold by height rather than diameter inch, the following conversion formula can be used:

Height of replacement coniferous tree/2 = Diameter inches of credit.

- (3) Hardwood deciduous tree species shall be replaced with new hardwood deciduous trees at a rate of one-half ( $\frac{1}{2}$ ) the diameter inches removed. Replacement trees must be a minimum of one (1) inch in diameter.
- (o) *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.
- (p) *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.
- (q) *Required protective measures.* The tree preservation plan shall identify and require the following measures to be utilized to protect significant trees:
  - (1) Installation of snow fencing or polyethylene laminate safety netting placed at the drip line or at the perimeter of the critical root zone, whichever is greater, of significant trees, specimen trees, and significant woodlands to be preserved. No grade change, construction activity, or storage of materials shall occur within this fenced area.
  - (2) Identification of any oak trees requiring pruning between April 15 and July 1. Any oak trees so pruned shall be required to have any cut areas sealed with an appropriate nontoxic tree wound sealant.
  - (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.
- (r) *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.
- (s) *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.

(t) *Specimen trees*. Removal of any specimen tree shall require a special permit in addition to the other requirements in section 27-40.

(Ord. No. 1839, § 1839.01, 3-9-2011)