

# **APPENDIX E: City of Minnetonka Wetland Protection Ordinance**

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*City of Minnetonka Water Resources Management Plan*

# Minnetonka City Code

## SECTION 300.23. WETLANDS PROTECTION.

### 1. Purpose and Intent.

a) The purpose of this section is to recognize, preserve and protect the environmental, aesthetic and hydrologic functions of the city's wetlands by regulating the use of wetlands and their adjacent properties. These functions include, but are not limited to, sediment control, pollution control, filtration, fish and wildlife habitat and aquifer recharge.

b) The intent of this section is to protect wetlands to the maximum extent possible while allowing a reasonable use of the property. This section adopts the regulations and standards of the Wetland Conservation Act of 1991 (WCA), Laws of Minnesota 1991, chapter 354, as amended, and the rules adopted pursuant to the WCA. It also establishes a wetland overlay district. This overlay district further regulates the underlying land use as allowed by other districts or the WCA.

### 2. Designation of Protected Wetlands and Exemptions.

a) The wetlands protected and regulated by this Section are types 1, 2, 3, 4, 5, 6, 7, and 8 wetlands, as defined in circular 39, "Wetlands of the United States", 1971 edition, United States Department of the Interior. Protected wetlands are further defined as follows:

**Type 1 Seasonally Flooded Basins or Floodplains:** Type 1 wetlands are seasonally flooded basins or flats in which soil is covered with water or is waterlogged during variable seasonal periods but usually is well-drained during much of the growing season. Type 1 wetlands are located in depressions and in overflow bottom lands along water courses. Vegetation varies greatly according to the season and duration of the flooding, and includes bottom land hardwoods, as well as herbaceous plants.

**Type 2 Inland Fresh Meadow:** Occurs along the shallow edges of lakes, marshes and floodplains, or in perched depressions. The soil is usually without standing water during much of the growing season, but is waterlogged within at least a few inches of the surface. Vegetation includes grasses, sedges, rushes and various herbaceous plants.

**Type 3 Inland Shallow Fresh Marsh:** Soil is usually water logged during the growing season, often covered with as much as six inches or more of water. Vegetation includes grasses, bulrushes, cattails, arrowheads, smartweeds and other emergent aquatic vegetation.

**Type 4 Inland Deep Fresh Marsh:** Soil covered with six inches to three feet or more of water during growing season. Vegetation includes cattails, reeds, bulrushes and wild

rice. Open water areas may contain pondweeds, naiads, coontail, water milfoils and other submergent aquatic vegetation.

**Type 5 Inland Open Fresh Water:** Water is usually less than 10 feet deep and is fringed by a border of emergent vegetation. Vegetation includes pondweeds, naiads, coontail, water milfoils and other submergent aquatic vegetation.

**Type 6 Shrub Swamp:** Occurs along sluggish streams or on floodplains. The soil is usually waterlogged during the growing season, and is often covered with as much as six inches of water. Vegetation includes alder, willow and dogwood.

**Type 7 Wooded Swamp:** Occurs along sluggish streams, on floodplains, on flat perched depressions and in shallow lake basins. The soil is waterlogged to within a few inches of its surface during the growing season and is often covered with as much as one foot of water. Vegetation typical to this wetland includes tamarack, white cedar, black spruce, balsam fir, red maple and black ash.

**Type 8 Bog:** Occurs along sluggish streams, on flat perched depressions and shallow lake basins. The soil is waterlogged and supports a spongy covering of mosses. Vegetation typical to this wetland type includes sphagnum moss, heath shrubs and sedges. Minnesota bogs contain leatherleaf, Labrador tea, cranberries and pitcher plants. Scattered stunted black spruce and tamarack also are common features of bogs.

b) Areas that exhibit wetland characteristics but were created for a purpose other than to create a wetland are exempt from this section. This includes areas such as storm water ponds, roadway ditches, or other areas that receive artificial hydrology. The landowner has the responsibility to prove by a preponderance of the evidence that an area is exempt under this paragraph.

c) The reconstruction and maintenance of existing public roads and associated public utilities are exempt from this section 300.23 as long as they comply with the WCA as approved by city staff.

### **3. Boundaries of the Wetland Overlay Districts.**

This section establishes the presumptive wetland overlay districts. These districts are subject to additional requirements beyond those required by the WCA. The boundaries of the presumptive wetland overlay districts are identified by government survey section and contour elevation above mean sea level in Appendix A to this section. The city's official wetland map graphically shows these boundaries.

If a specific wetland delineation has been done under WCA rules, then the boundaries of the wetland overlay district for that location will be as shown in the delineation rather than the presumptive boundaries. The city may require wetland delineations to determine compliance with WCA rules and this section 300.23; however, property owners may have wetland delineations done for their properties on their own initiative. The delineation

must be done by a professional wetland delineator according to WCA rules and be acceptable to the planning director. Public waters and public water wetlands are included in the overlay district.

#### **4. Interpretation of Wetlands Boundaries.**

Whenever a wetland boundary is disputed or uncertain, the city planning director may require the submission of a registered survey of the property and field staking showing the wetland delineation, and such other information as the director may require to resolve the dispute or uncertainty. No boundary change may be authorized on the basis of fill that was placed on the site after the city designated the area as part of the wetland overlay district. Persons aggrieved by a decision of the city planning director may appeal such decision in accordance with the provisions of section 300.04, subdivision 6 of this ordinance and the WCA rules.

#### **5. Wetland Buffer Areas.**

a) This subsection establishes requirements for wetland buffer areas around protected type 2-8 wetlands. Buffer areas are necessary and beneficial to maintain the health of wetlands. Buffer areas protect the edge of wetlands from erosion while filtering sediment, chemicals and other nutrients from runoff that drains into wetlands. Buffer areas can improve the biological diversity and health of a wetland environment while reducing the adverse impacts of human activities.

b) Buffer areas regulated by this section are areas of vegetative cover that are upland of the wetland edge, and that occur in a natural condition or through restoration. Buffer areas consist of shrubbery and trees, native grasses and/or forbs that are not mowed, fertilized or manicured in any manner.

c) Wetland buffer areas must be created or existing buffer areas must be maintained around all protected type 2-8 wetlands in the following situations:

1) when wetlands are required to be replaced or restored;

2) when new development occurs. For purposes of this subsection, new development means:

a) any subdivision that creates a new lot that has no principal use on it;

b) construction of a principal use on an existing vacant parcel of land;

3) when redevelopment occurs. For purposes of this subsection redevelopment means the removal of the principal use of more than 50 percent of its market value and reconstruction on the same property. This requirement does not apply if construction is the result of more than 50 percent of the building being damaged by an involuntary force, such as fire, wind, or vandalism;

4) when the city requires a buffer as part of a variance, conditional use permit, or a site plan review; or

5) on any preserve wetland when grading or construction is proposed that requires a city permit and the proposed activity could potentially impact the quality of the wetland by increasing hard surface run off, altering existing drainage, or impacting an existing buffer.

d) Buffer area widths will be based on the wetland classification in the city's water resources management plan. The following are the required buffer area widths:

<b>Wetland Classification</b>	<b>Width of Buffer Area</b>
<b>From the Wetland Boundary</b>	
Manage 2	16.5 feet
Manage 1	25 feet
Preserve	50 feet

e) In cases of new development or redevelopment the city may require that vegetation in the wetland buffer be installed prior to the issuance of the certificate of occupancy. The city may waive this requirement in lieu of a cash escrow or letter of credit equal to 150 percent of the cost to install the required buffer.

f) The city may allow the disturbance of an existing buffer area during the course of construction activity. This disturbance must be kept to a minimum, soils must be decompacted to a level that will accommodate root growth, and the buffer area must be re-established as required by the city. The city will determine the amount of allowable disturbance. The city may require a cash escrow or letter of credit equal to 150 percent of the cost to re-establish the buffer to its original condition.

g) The city may require buffer area planting and maintenance when the city determines that there is inadequate vegetation in the buffer area to meet the intent of this section. The city may require a cash escrow or letter of credit equal to 150 percent of the estimated cost of the vegetation and installation. The escrow or letter of credit must be valid for up to two years and may be used by the city to replace any vegetation that dies.

h) The affected property owner or homeowner association that is responsible for the maintenance must:

1) maintain and repair damage to buffer areas from such activities as mowing, cutting, grading or other prohibited activities, unless mowing is approved by city staff as a buffer management strategy. Permission must be obtained from the city before

implementing buffer management strategies, which may include mowing, burning, and the use of herbicides.

2) be responsible for maintaining only the permitted vegetation in the buffer area and must remove all noxious weeds and invasive, non-native species such as European buckthorn;

3) ensure that all soil surfaces in the buffer area are planted with the permitted vegetation and that there is no open soil surface that may result in erosion.

## **6. Permitted Uses.**

a) Within the wetland overlay districts no land may be used except for one or more of the following uses:

1) native wetland vegetation, provided that no change is made to the ground elevation;

2) wildlife and nature preserves;

3) overhead utility lines and poles that are less than two feet in diameter;

4) docks and reasonable access to the wetland, poles that are less than two feet in diameter to be used for boardwalks and bridges, and pervious hiking, skiing and horseback riding trails that comply with WCA standards. Pervious will mean an area where water is able to infiltrate into the ground;

5) public and private flood control structures, ponding and drainage facilities and associated accessory appurtenances;

6) environmental monitoring or control facilities, including those related to water quality and wildlife regulation;

7) in wetlands where impervious, public trails exist, maintenance of the trail will be allowed as long as there is not an increased impact to the wetland.

b) Within wetland buffer areas no land may be used except for one or more of the following uses:

1) native vegetation, provided that no change is made to the ground elevation;

2) wildlife and nature preserves;

3) docks and reasonable access to the wetland, poles that are less than two feet in diameter to be used for boardwalks and bridges, and pervious hiking, skiing and

horseback riding trails. Pervious will mean an area where water is able to infiltrate into the ground;

- 4) public and private flood control structures, ponding and drainage facilities and associated accessory appurtenances;
- 5) environmental monitoring or control facilities, including those related to water quality and wildlife regulation;
- 6) overhead utility poles and lines that are less than two feet in diameter, underground utility lines and distribution equipment, light poles, traffic signals, traffic regulatory signs, mailboxes and other equipment that provides an essential public service;
- 7) fences;
- 8) retaining walls if the city determines that the retaining wall will protect the wetland from existing conditions of erosion;
- 9) in wetland buffer areas where impervious, public trails exist, maintenance of the trail will be allowed as long as there is not any additional impact to the wetland buffer area.

## **7. Conditional Uses.**

Within the wetland overlay districts and the wetland buffer areas no land may be used for the following except by conditional use permit and except in conformance with the standards specified in subsection 8 of this section:

- a) private and public recreational uses, including golf courses, impervious trails, picnic grounds and boat ramps;
- b) public utilities, including necessary structures;
- c) other non-structural facilities similar to those permitted by this section which also meet the intent of this section, as determined by the city; or
- d) public structures associated with recreational uses permitted by this subsection or by subsection 6 of this section that are designed in an environmentally sensitive manner and will withstand periodic flooding, except for structures designed or used for habitation or the storage of equipment.

No conditional use permit will be granted unless its approval will not adversely impact wetlands, the wetland buffer area, and surrounding properties, the intent of this ordinance or the goals and policies of the comprehensive plan. If applicable, granting of a conditional use permit will be conditioned upon approval of the request by all other

appropriate regulatory governmental agencies, including the watershed district or the Minnesota department of natural resources.

## **8. Standards for Wetlands Districts, Buffer Areas and Neighboring Lands.**

The following standards apply to all land within the wetland overlay districts, wetland buffer areas, and to neighboring lands:

a) Protection of wetlands and wetland buffer areas.

1) Except as modified or regulated by the standards of this subsection, all requirements of the underlying zoning district apply.

2) No structures are allowed in the wetland overlay districts, or wetland buffer area except those allowed as of right or by conditional use permit by subsections 6 or 7 of this section.

3) Activities including, but not limited to, building, paving, mowing, cutting, filling, dumping, yard waste disposal or fertilizer application are prohibited. Mowing may be permitted when approved by city staff as a buffer management strategy. However, invasive non-native vegetation, such as European buckthorn and noxious weeds, may be removed.

4) Before grading or construction near a wetland overlay district or buffer area, the owner or contractor must place erosion control fencing on the upland side of the perimeter of the wetland overlay district or wetland buffer area, whichever is more restrictive, or as required by the city. This fencing must remain in place until all development activities that may affect the wetland and the wetland buffer area have been finished and adequate vegetative cover has been established.

5) All structures must have a minimum basement floor elevation not less than two feet above the 100-year flood elevation.

6) All hard surface runoff must be treated in accordance with the requirements of the city and the appropriate watershed district. Treatment may include site retention, skimmers, weirs, bioretention or infiltration basins, or sedimentation ponds of appropriate scale. Structures and ponds serving this purpose must be properly maintained and serviced by the property owner.

7) Discharge into the wetlands must occur at a rate no greater than allowed by the city engineer in accordance with the city's water resources management plan and the appropriate watershed district requirements.

b) Setbacks.

- 1) All structures, except those permitted within the wetland overlay districts, must be setback at least 35 feet from a wetland overlay district and at least 10 feet from a required wetland buffer, whichever is greater. However, uncovered porches, decks, patios, sport courts, tennis courts, pool aprons, stairways, walkways, cantilevered building areas, porticos, and similar features may extend up to 10 feet into the required setbacks but not into buffer areas.
- 2) Pools must be setback 35 feet from the wetland overlay district. This distance will be measured from the water's edge of the pool.
- 3) Parking or driveway areas must not be located within 20 feet of a wetland overlay district and must be outside of any required buffer area.
- 4) A setback is not required from the wetland overlay district for overhead utility poles and lines that are less than two feet in diameter, underground utility lines and distribution equipment, light poles, traffic signals, traffic regulatory signs, mailboxes, and other equipment that provides an essential public service.
- 5) A setback is not required from the wetland overlay district for fences or retaining walls, except that retaining walls may not be within 25 feet of a wetland unless needed to control existing conditions of erosion.
- 6) An existing structure, driveway or parking area meeting the required setback from a city-designated wetland boundary or buffer area is considered a legal nonconforming development if a later wetland delineation or implementation of a wetland buffer shows that the wetland or its buffer is closer than the required setback.

## **9. Removal of Lands from the Wetlands Overlay District.**

- a) Removal of wetlands from a wetland overlay district requires a zoning amendment. An amendment must be made pursuant to the provisions of section 300.09 of this ordinance and WCA replacement rules. This amendment must be consistent with the purpose of this ordinance, the city's water resources management plan and the goals and policies of the comprehensive plan. In determining the appropriateness of a rezoning request, the city council will consider the size of the wetland overlay district, the magnitude of the area proposed for removal, hydrological and ecological effects and the type and function of wetlands involved in order to provide the maximum feasible protection.
- b) Wetlands within an overlay district may only be removed according to WCA rules and if at least an equal area of new wetland is created to compensate for the wetland being filled. Unless otherwise approved by the city council, compensatory wetland area must be provided within the same subwatershed district as the wetland being altered. The city may require cash escrow or letter of credit equal to 150 percent of the cost to mitigate for the wetland.

c) In addition to application requirements, the city may require submission and approval of the following information:

- 1) a concept plan showing ultimate use of the property;
- 2) a grading plan with appropriate drainage calculations and erosion controls prepared by a registered engineer;
- 3) a landscaping or revegetation plan;
- 4) such other information as may be necessary or convenient to evaluate the proposed rezoning; and
- 5) a determination of the function and value of the wetland using the most recent version of Minnesota routine assessment method for evaluating wetland functions (MinRAM) or other approved assessment methodology.

#### **10. Alteration of the Wetlands.**

a) Except as provided below, no alteration of land within a wetland overlay district or a wetland buffer is allowed without a wetlands alteration permit, subject to recommendation by the planning commission and approval of the city council. The planning commission must hold a public hearing after notifying the property owners within 400 feet of the proposed alteration. Activities that constitute an alteration regulated by this section include changes to the size, depth or contour of the wetlands or its buffer, dredging, or alterations of wetlands or buffer vegetation.

b) A wetland alteration permit is not required:

- 1) when a wetland district is rezoned to another zoning classification;
- 2) to remove vegetation from the wetland or its buffer pursuant to a restoration management plan approved by qualified city staff;
- 3) to alter vegetation in a type 1 wetland;
- 4) to plant native wetland vegetation;
- 5) to selectively clear or prune trees or vegetation that are dead, diseased, noxious or similar hazards;
- 6) to remove vegetation in a contiguous width not to exceed ten feet in order to install a dock or gain access to the wetland as permitted in 6(a) or 6(b) of this section and as approved by city staff;

7) to repair and maintain existing public facilities such as ponds, trails, and utilities if the work does not result in an increased impact to the wetland or its buffer; or

8) to remove sediment and debris from the wetland that has resulted from erosion, public works projects, transportation projects or other similar activities. The removal of sediment must not result in the removal of hydric soil from the wetland basin and must be approved by city staff.

c) Alteration of land within a wetland overlay district will only be allowed if the wetland and its buffer are provided in an amount compensatory to that removed. Unless otherwise approved by the city council, compensatory wetland area and its buffer must be provided within the same subwatershed district as the wetland being altered. In determining the appropriateness of an alteration request, the city council will consider the size of the total wetland district, the magnitude of the area proposed for alteration, the aesthetic, hydrological and ecological effect, the type and function of wetlands involved, and such other factors as may be appropriate in order to provide the maximum feasible protection to the wetlands. Application for a wetlands alteration permit must be accompanied by such information as required by the city, including:

- 1) a concept plan showing the ultimate use of the property;
- 2) a grading plan, with appropriate drainage calculations and erosion controls prepared by a registered engineer;
- 3) a landscaping or revegetation plan;
- 4) such other information as may be necessary or convenient to evaluate the proposed permit; and
- 5) a determination of the function and value of the wetland using the most recent version of Minnesota Routine Assessment Method for evaluation wetland functions (MinRAM) or other approved assessment methodology.

## **11. Public Control of Wetlands.**

a) The city council may require that the owner of any property affected by this ordinance must record wetland and buffer area easements or restrictive covenants within the property's chain of title. These easements or covenants must describe the boundaries of the wetland and buffer area and prohibit any building, paving, mowing (unless approved as a management strategy), cutting, filling, dumping, yard waste disposal or fertilizer application within the wetland and the buffer area. The owner or developer must record these easements or covenants with the final plat, with deeds from a lot division or, if no subdivision is involved, before the city issues a grading permit or building permit for an affected property. The applicant must submit evidence that the easement or covenant has been submitted to the county for recording.

b) If the city council does not require an easement or covenant, the city may record a notice of the wetland and buffer area requirements against the property. The property owner must still comply with the requirements of this section.

## **12. Wetland Buffer Markers.**

When new development or redevelopment results in multifamily residential or a business use, the developer must place markers at the upland boundary of the wetland buffer edge at least every two hundred feet. The developer must use uniform markers provided by the city. The city will charge a reasonable cost for the markers.