

ORDINANCE NO. 2011-30

**AN ORDINANCE AMENDING CITY CODE SECTIONS
300.23, 300.25, 300.27, AND 845.010
REGARDING ENVIRONMENTAL ORDINANCES**

The City of Minnetonka Ordains:

Section 1. City code section 300.23, subdivision 5(c) is amended as follows:

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~~ subsection redevelopment means the reconstruction of the principal structure if it includes the removal of the principal structure by more than 50% of the square footage of the building footprint or an increase of the square footage of the building footprint by more than 50%.~~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~~ 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, expansion permit, 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.

Section 2. City code section 300.23, subdivision 5(e) is amended as follows:

e) In cases of new development or redevelopment the city may require that

The ~~stricken~~ language is deleted; the underlined language is inserted.

vegetation in the wetland buffer be installed prior to the issuance of the certificate of occupancy. To ensure installation of the buffer theThe city may ~~waive this requirement in lieu of a~~ require a cash escrow or letter of credit equal to 150 percent of the cost to install the required buffer.

Section 3. City code section 300.23, subdivision 6(a)(4) is amended as follows:

4) docks and reasonable access to the wetland, poles, posts or footings 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;

Section 4. City code section 300.23, subdivision 6(b)(3) is amended as follows:

3) docks and reasonable access to the wetland, poles, posts or footings 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;

Section 5. City code section 300.23, subdivision 8(b) is amended as follows:

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. The distance for a pool will be measured from the water's edge of the pool. 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. For purposes of this section a pool apron is the hard surface or decking material that is contiguous to the water's edge of the pool.

~~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.~~

~~23) Parking areas, roadways, or driveway areas, trails and any retaining wall if it is structurally integral to the construction of these items~~ must not be located within 20 feet of a wetland overlay district and must be outside of any required buffer area.

~~34) 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.

45) 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.

56) 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.

Section 6. City code section 300.23, subdivision 9 is amended as follows:

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, the overall impact on the function and value of the wetland, the 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, it must be located outside of any public easement and it must not result in the loss of regulated trees. 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 (M~~N~~iRAM) or other approved assessment methodology.

Section 7. City code section 300.23, subdivision 10(c) is amended as follows:

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, it must be located outside of any public easement and it must not result in the loss of regulated trees.

d) 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 impact on the overall function and value of the wetland, 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 (M~~N~~iRAM) or other approved assessment methodology.

Section 8. City code section 300.25, subdivision 7(k) and (l) are amended as follows:

- | | | | |
|---|------------|------------|------------|
| k) Maximum impervious surface coverage <u>for the portion of land on a lot of lots wholly or partially that is</u> within 150 feet of OHWL: | 30 percent | 30 percent | 30 percent |
| l) Maximum impervious surface coverage <u>for the portion of land on a lot of lots wholly or partially that is</u> beyond 150 feet of OHWL: | 75 percent | 75 percent | 75 percent |

The city may allow credit for pervious hard surfaces such as pavers or pervious concrete to the extent of the proven infiltration rate for the pervious pavement area. For example if pervious pavers are installed in an area totaling 100 square feet, and the pavers are proven to infiltrate 14 percent of the area, up to 14 square feet may be subtracted from the impervious surface coverage.

Section 9. City code section 300.25, subdivision 8(i) is amended as follows:

i) Roadways, ~~and~~ parking areas, driveways and trails must meet the following standards:

1) Where feasible, all ~~roads, drives, and roadways~~, parking areas, driveway areas, trails and any retaining wall if it is structurally integral to the construction of these items must meet the setback requirements established for principal structures. If no feasible placement alternative exists, they must be designed to minimize adverse impacts to the public water and must not be constructed in the shore or bluff impact zones except as allowed under subdivision 5 of this section.

2) Roadways and drives may cross a public water. Footings for bridges may be allowed in the shore or bluff impact zone if they are designed to minimize adverse impacts to the public water.

3) Vehicles may not be parked in shore or bluff impact zones.

4) Vegetation must be used to screen parking areas when viewed from the water.

Section 10. City code section 300.27, subdivision 17 is amended as follows:

17. Maintenance of Landscaping.

The owner, tenant and their respective agents shall be jointly and severally responsible for the maintenance of all landscaping in a condition presenting a healthy, neat and

orderly appearance and free from refuse and debris. Plants and ground cover which are required by an approved site or landscape plan and which have died, have severely declined or have been damaged, must ~~shall~~ be replaced within three months of notification by the city. However, the time for compliance may be extended up to nine months by the director of planning in order to allow for seasonal or weather conditions. Trees and shrubbery will be considered to be severely declined if more than 25 percent of the crown has died.

Section 11. City code section 845.010, paragraphs 17 - 19 are amended as follows:

845.010. Public Nuisances Affecting Peace, Safety and General Welfare.

17. the intentional discharge of items such as leaves, grass clippings, pet feces, solvents, antifreeze, oil, fireplace ashes, paint, and cement reinsate into a street, storm sewer system, or water resource such as a wetland, creek, pond or lake;

18. depositing of, or permitting the depositing of, pet feces upon frozen lakes, ponds, wetlands or creeks or upon any public right-of-way, public trail easement area, or publically owned or controlled property;

1918. gravel driveways maintained in such a manner that the gravel erodes into, or is placed in, a public street or a water resource such as a wetland, creek, pond or lake; and

2019. encroachments onto publicly-owned property or tax-forfeited property under public control without a legal right or permission from the public owner, such as the placement of buildings or other objects, the dumping of organic materials, the storing of privately-owned items, and the undertaking of activities affecting the physical nature of the property such as mowing, vegetation removal, or the application of fertilizer, pesticides, or herbicides.

Section 12. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 13. This ordinance is effective 30 days after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on December 19, 2011.

Terry Schneider, Mayor

ATTEST:

David E. Maeda, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction: October 24, 2011

Date of adoption: December 19, 2011

Motion for adoption: Allendorf

Seconded by: Wiersum

Voted in favor of: Ellingson, Allendorf, Wiersum, Hiller, Wagner, Schneider

Voted against:

Abstained:

Absent:

Ordinance adopted.

Date of publication:

CERTIFIED COPY:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on December 19, 2011.

David E. Maeda, City Clerk