Agenda

City of Minnetonka

Study Session

Monday, March 26, 2018

6:30 p.m.

Minnehaha Room

1. Encroachments onto city property and city easements
2. Emerald ash borer management
3. Adjournment

The purpose of a study session is to allow the city council to discuss matters informally and in greater detail than permitted at formal council meetings. While all meetings of the council are open to the public, study session discussions are generally limited to the council, staff and consultants.
City Council Study Session Item #1  
Meeting of March 26, 2018

Brief Description:  
Encroachments onto city property and city easements

Background
Since at least 1982, the city council has had a policy regarding real property management. The current version of that policy is City Council Policy 11.12, attached. The policy requires that a committee of city staff, designated as the Land Committee, will maintain an inventory of city-owned properties for purposes of making recommendations to the city council regarding disposition of surplus city property. The Land Committee consists of staff from multiple departments, because each department has a unique perspective on the usefulness or need for any particular property. The committee reports to the city manager.

The Land Committee is in the process of updating the city land inventory. In the course of that update, as well as in the course of conducting regular city business, staff members on the Land Committee have identified, to date, over 60 city-owned properties (including parks) on which varying degrees of private use, or encroachments, are occurring. The nature of private use ranges from minor infractions such as mowing grass on city property (most often by a neighboring property owner) to more serious matters such as removing trees or erecting structures (playsets, sheds, etc.) on city property (again, most often by an adjoining property owner). See attached examples.

The city’s Strategic Profile directs city staff to be responsible stewards of the city’s physical assets and to protect and enhance the natural environment of the community. Unauthorized private use of publicly owned land conflicts with those goals. Historically, city staff has addressed encroachments by enforcing on a case-by-case basis, working with property owners to resolve issues as needed. With personnel turnover in the last several years and the recent work of the Land Committee, staff has determined that the city would benefit from having the Land Committee assigned to assume responsibility for land management issues, such as encroachments, in addition to its role of identifying surplus property. Not only are the functions related, but both may affect multiple operating divisions of the city, all of which already participate in the Land Committee.

The committee has developed guidelines for addressing encroachments on city properties, attached. The initial draft of the guidelines addressed only encroachments onto properties that the city owns in fee or under a tax-forfeited property deed. Through discussions, the guidelines evolved to include encroachments into city easements. The guidelines refer to Council Policy 8.1, regarding Nuisance Ordinance Enforcement, which is attached for convenience.

The guidelines are administrative, for use by city staff. With respect to encroachments into city easements, where both the property owner and the city have property rights, city staff recommends that the council consider adopting a council policy to provide guidance to residents and staff regarding permissible uses of city easements. Finally, the staff proposes an educational program to inform residents about respecting property lines and proper use of city easements. This report addresses each of those topics (city-owned property, city easements, and the educational program), in that order.
Encroachments onto city-owned property

The Land Committee’s guidelines recognize that private activities that interfere with city property rights are not all equal. Some encroachments are significant and may require enforcement methods that require substantial staff time and financial resources. Other private activities that interfere with city property rights are less serious and may be addressed in the ordinary course of business or as time permits. The guidelines incorporate consideration of various factors that may apply to any given encroachment, and the range of variation for each factor. For example, the guidelines consider:

- **Seriousness of encroachment**: the guidelines establish categories that range from the most serious (Type I; e.g., permanent improvements on city property) to the least serious (Type IV; e.g., mowing grass)

- **Means used to identify where encroachments exist**: those means de-escalate from (1) proactively searching for encroachments to (2) identifying encroachments as they are encountered in the course of other city business to (3) identifying encroachments when complaints are received.

- **Methods of enforcement**: enforcement options range from those that are routinely used for code enforcement (staff contact by phone, email or letter; administrative or criminal citation; nuisance abatement) to those that are infrequently used and may require more staff time or resources (granting an easement; adjusting a property line; civil lawsuit).

- **Length of time the city has known about the encroachments**: some encroachments have existed for many years, and the city is likely to discover new encroachments

As a general matter, the guidelines provide that: the more serious the encroachment, the more proactive the staff will be to identify and resolve the matter; new issues will be dealt with promptly; and more long term issues will be prioritized based on evaluation of the type of encroachment and time and cost involved to resolve the matter. A Land Committee recommendation and city manager approval is required for all non-routine enforcement methods and, where required by applicable law, council approval will be obtained. City staff persons will address routine enforcement matters in the course of their usual workloads, without prior city manager approval or review by the Land Committee.

The city staff that are likely to be most involved in enforcement activities are those from the Public Works Department (natural resources and parks), the Community Development Department (environmental health) and the Legal Department. With current workloads, staffing and budgets, city staff expects the progress in removing encroachments to be slow and intermittent, especially where the encroachment involves a structure or has existed for a long period of time. The objective is to pursue enforcement in a steady and deliberate manner, as time and budgets permit.

Discussion Points

- **Does the council agree with the general approach to addressing encroachments onto city properties, as reflected in the Land Committee guidelines?**
Encroachments into public easements
Encroachments into easements merit separate discussion, because easements involve both public and private property rights. The city has easements over nearly all of the properties in the city – whether the properties are publicly or privately owned. Those easements fall into varying categories, including:

- *Easements that contain public facilities*, whether those facilities are underground utilities, stormwater drainage ponds, or public sidewalks or trails.
- *Easements that contain no underground public facilities*, but that serve an above-ground drainage function.
- *Easements that contain no underground public facilities* but that are needed for access to public facilities such as stormwater drainage ponds or underground facilities.
- *Easements that contain no underground public facilities*, are not needed for access to other facilities, and do not serve an above-ground drainage function. (Most easements in this category are drainage and utility easements located around the perimeter of lots that were dedicated as part of a plat.)

As a matter of property law, an easement may be “exclusive” or “non-exclusive.” All or nearly all of the city’s easements are expected to be non-exclusive in nature, which means that the property owner can continue to use the easement area or to grant others the right to use the easement area, so long as the use is not expressly prohibited by the easement document and does not interfere with the easement holder’s rights.

Property owners have the right to use city easement areas, so long as their use doesn’t interfere with the city’s use. The rule is simple to state, but it raises difficult questions in application. Can the owner plant and mow grass? Maintain a garden? Install ornamental landscaping? Plant trees? Install a fence? Whether a use constitutes interference depends upon the nature of the easement, whether there are facilities in the easement, and what those facilities are. The Public Works Department has assembled several examples of encroachments into city utility easements (attached).

In the absence of specific language in an easement document, the issue of what does or doesn’t interfere with the city’s easement gets resolved on a case-by-case basis. For example, assume that a property owner has planted a garden over a city utility easement. The garden does not interfere with the underground sewer line, so the city likely could not require the owner to remove the garden. However, if the sewer line requires repair that involves excavation, the city has the right to dig up the garden without any compensation to the property owner, because the garden interferes with the city’s repair efforts. Historically, the city has followed a practice of addressing conflicts as they arise, and many cities follow similar practices.

One downside to addressing conflicts as they arise, however, is that property owners typically are not aware of the city’s right to remove uses that interfere with the easement. Some property owners become angry or upset that they’ve spent money on an improvement and won’t be compensated for its loss. For that reason, some cities have enacted ordinances or policies to put property owners on notice of the city’s easement rights.

Examples of other cities’ approaches include:
• Shakopee adopted a policy (attached) that identifies allowable private uses within public easements, based on five different categories of easements.
• Bloomington’s zoning code (§19.08, attached) includes a provision on encroachments into side yard setbacks, and additionally states that specified improvements (decks, patios, etc.) cannot encroach into public easements without written city approval.
• Plymouth included a provision in its right of way management ordinance that addresses encroachments into easements. (Plymouth City Code § 800.02, subd. 16F, attached)
• Edina and Woodbury adopted ordinances that specifically address encroachments onto property and easements (Edina City Code §§ 24-21 and 24-22; Woodbury City Code §§ 15-51 to 15-59, attached)

The city has the ability to enforce its property rights as a matter of general real estate law. City staff can follow the proposed guidelines and public education program to deal with easement encroachments; the city is not required to adopt a policy or ordinance. The advantage of a policy or ordinance, however, is that it can be used to educate property owners, simplify enforcement (because the rules are clearly articulated), and establish expectations for compliance. Public education efforts can accomplish some of the same objectives, but residents may not perceive educational articles as carrying the same weight as a formal policy or ordinance.

City staff prefers the adoption of council policy to the adoption of an ordinance. A policy serves the purpose of providing information and setting expectations. An ordinance, with the potential for civil or criminal fines, can be adopted later if needed. A preliminary draft of a policy is attached for council information. If the council agrees that a policy is advisable, the draft will be revised based upon the study session discussion.

Discussion Points

- Does the council agree that a council policy on encroachments into city easements is appropriate?

- Does the council have comments or questions regarding the draft policy?

Public education plan

Select members of the Land Committee will work with communication staff to develop an outreach program with the intent of informing and cultivating awareness about public property and easements without encouraging residents to complain about their neighbors.

- Four messages will appear annually to raise awareness about the importance of publicly owned properties and easements.
- All platforms of media including the Minnetonka Memo, website, electronic newsletters and Facebook® page will be utilized.
- Tips about what owners can do to locate their property corners will be included. The tips will reference current programs like the city’s Metal Detection Program and resources such as Hennepin County’s Interactive Map site.
- Reminders about the brush drop will be referenced to address Type 3 offenders and the website will be referenced to assist with additional information like the fence brochure.
City staff will review existing handouts (e.g., the fence information brochure) and revise as appropriate to incorporate information about uses within rights-of-way. A separate informational handout on uses within city easements may also be prepared.

Handouts will be available at the fall open house event.

For any encroachment that involves a significant cost to the property owner, the city manager will notify the ward council member before communicating with the property owner, in order to make the council member aware of the upcoming communication and potential enforcement action.

Discussion Points

- Does the council have feedback on the proposed public education plan?

Summary

Unless the council provides policy direction to the contrary, city staff will follow the Land Committee’s guidelines for addressing encroachments onto city property and into city easement areas. City staff would like council direction on a proposed council policy regarding encroachments into easements, as well as the proposed education plan.

Submitted through:
- Geralyn Barone, City Manager
- Julie Wischnack, AICP, Community Development Director
- Will Manchester, City Engineer
- Brian Wagstrom, Public Works Director

Originated by:
- Corrine Heine, City Attorney
- Jo Colleran, Natural Resource Manager
Policy Number 11.12
Real Estate Property Management

Purpose of Policy: This policy establishes the program to inventory properties owned by the city to ensure maximum utilization.

Introduction
Public benefit may be realized by continued public ownership of real property or by disposing of surplus property to return it to the real property tax rolls.

Inventory
The city should maintain an inventory of its property, including the following information for each parcel:

- Legal description
- Property identification number
- Acquisition information (former owner, purchase price, date of acquisition)
- Purpose for the holding
- Restrictions, if any

Analysis
A staff team designated as the land committee will convene periodically to review the city’s property inventory and determine if any parcels are potentially surplus. The land committee may also review requests to purchase land that has not been designated as surplus.

Disposition of Surplus Property
Disposition of real estate will be conducted following the provisions of the city’s Charter and laws regulating those transactions. The city council may dispose of real property through a sealed bid process or private negotiations. The purchase price may be less than an appraised value if this is supported by a valid, public policy reason that is stated for the record. The city council will also determine whether title is conveyed by a warranty or quit claim deed. The property inventory will be amended to indicate properties that are sold.

Land Acquisitions and Sales
Land acquisitions and sales may be submitted to the planning commission in accordance with Minn. Stat. Section 462.356.

Adopted by Resolution No. 82-6958
Council Meeting of July 19, 1982

Amended by Resolution No. 2003-077
Council Meeting of August 25, 2003
GUIDELINES FOR ADDRESSING ENCROACHMENTS ON CITY PROPERTIES AND EASEMENTS

Minnetonka Land Use Committee
Last revised: February 27, 2018

PURPOSE

These guidelines establish priorities and procedures for addressing encroachments onto city-owned properties and easements. This document uses the term “encroachment” to refer to any unauthorized physical intrusion of a private use onto property owned by the city in fee title and to any unauthorized private use that interferes with a city easement. An “unauthorized” intrusion or use is one that the city has not approved or, with respect to easements, exceeds the rights of the owner of the property that the easement encumbers.

These guidelines further the city’s goals of being a responsible steward of the city’s physical assets and protecting and enhancing the unique natural environment of the community. The city’s real property interests – both in the form of easements for public use and land owned in fee title – are important public assets, held in trust for the benefit of the greater community. City-owned properties are not limited to those with public buildings or public parks and recreational areas. Most city-owned properties are undeveloped tracts of land that are not actively managed or opened to public use – yet they enhance the natural beauty of the city and may perform essential functions such as storm water drainage and filtration.

Unauthorized private use of city-owned properties and easements may discourage, prevent or interfere with the city’s interests. Private use may cause degradation to natural resources or other damage to city property and may present liability issues for the city. Removal or cessation of encroachments is in the public interest, but enforcement efforts must be balanced against the availability of city staff and financial resources.

CATEGORIES OF ENCROACHMENTS

Encroachments are categorized according to significance in terms of interference with city operations and ownership rights. The categories are ranked from most serious to least serious:

Type I: Represents the highest level of interference with city operations and ownership rights. Examples include improvements that encroach onto city property or easements, such as buildings, driveways, fences, and retaining walls.

Type II: Represents a significant level of interference with city operations or ownership rights, but where the encroachments are less permanent in nature than Type I encroachments. Examples include moveable or removable items on city property or within city easements, such as sheds, personal property, gardens, landscaping improvements or play equipment.

Type III: Represents conditions that constitute public health or public safety nuisances under city code, pose an adverse impact on natural resources, or are unsightly or otherwise unacceptable to the city.
Examples include dumping brush, clippings, or other items on city property or removing trees from city property.

Type IV: Represents conditions that do not constitute public nuisances and are not unsightly but still intrude on the city’s ownership rights.
Examples include mowing grass, applying fertilizer, pesticides, or herbicides on city property, or removing vegetation other than trees from city property.

ENFORCEMENT OPTIONS

The enforcement options available to the city are listed below in order of least serious to most serious. “Seriousness” involves an evaluation of several factors, including amount of staff time involved, number of staff involved, out-of-pocket enforcement costs for the city, and potential penalties for the encroaching person. In general, the city will try to follow a graduated enforcement approach; however, for higher-level encroachments or higher-level opposition from the encroacher, the city may immediately take more serious enforcement measures. The most serious enforcement measures – encroachment agreement, altering property lines or a civil lawsuit – require approval by the city council.

- Talking to encroacher
- Sending letters to the encroacher
- Removing the encroachment from a city easement, without compensation to the owner, in situations where an encroachment interferes with work occurring within the easement
- Obtaining a survey to verify property lines
- Issuing citation, with enforcement as administrative penalty or criminal penalty
- Abating as nuisance (845.010)
- Entering into encroachment agreement – stays until city requires it to be removed or until some specific date
- Altering property lines and selling to encroacher
- Civil lawsuit to compel removal of encroachment

PRIORITIES AND GENERAL APPROACHES

Type I: Examples: encroachments that encroach onto city property or easements, such as buildings, driveways, fences, and retaining walls.

Means of identifying: City staff will use all means of identifying Type I encroachments, including responding to complaints, following up on violations noticed by staff while performing other duties, and using a systematic approach to identify problems. The systematic approach will be two-fold: (1) as part of the process of updating the property inventory, city staff will determine whether encroachments may exist; and (2) staff will prioritize enforcement actions on known Type I violations, addressing the most persistent and serious instances first, and progressing down the list of identified instances.

Methods of enforcement: Because Type I encroachments are semi-permanent and have the greatest potential impact on both the city and the encroacher, the Land Committee will review each Type I encroachment and make a recommendation to the city manager regarding the appropriate enforcement action to be taken. Council authorization will be obtained when required (e.g., for alteration of property lines or
sale of land). The methods of enforcement that are most appropriate for Type I encroachments include abatement as a nuisance; entering into an encroachment agreement, altering property lines and selling land to the encroacher, or a civil lawsuit. In appropriate instances, the city may need to obtain a professional survey to locate and mark property boundaries.

**Responsible staff:** The Land Committee will determine which city staff should be in charge of enforcement, based upon the method of enforcement that will be used and the nature of the encroachment.

**Type II:** **Examples:** moveable or removable items on city property or within city easements, such as sheds, personal property, gardens, landscaping improvements or play equipment.

**Means of identifying:** City staff will use all means of identifying Type II encroachments, including responding to complaints, following up on violations noticed by staff while performing other duties, and using a systematic approach to identify problems. The systematic approach will be two-fold: (1) as part of the process of updating the property inventory, city staff will determine whether encroachments exist; and (2) staff will prioritize enforcement actions on known Type II violations, addressing the most persistent and serious instances first, and progressing down the list of identified instances.

**Methods of enforcement:** The Land Committee will review each Type II encroachment and make a recommendation to the city manager regarding the appropriate enforcement action to be taken. In appropriate instances, the city may need to obtain a professional survey to locate and mark property boundaries. All means of enforcement are theoretically possible, but most encroachments are likely to be resolved without the use of enforcement measures that require council approval.

**Responsible staff:** The Land Committee will determine which city staff should be in charge of enforcement, based upon the method of enforcement that will be used and the nature of the encroachment.

**Type III:** **Examples:** dumping brush, clippings, or other items on city property or removing trees from city property.

**Means of identifying:** City staff will follow Council Policy No. 8.1 to address Type III encroachments.

**Methods of enforcement:** The less serious enforcement methods, up to nuisance abatement, will be used to address Type III encroachments.

**Responsible staff:** Public works staff (natural resources, parks or utilities) or environmental health staff will be primarily responsible for Type III encroachments, based on whether the encroachment falls within their normal duties for code enforcement on private properties.

**Type IV:** **Examples:** mowing grass, applying fertilizer, pesticides, or herbicides on city property, or removing vegetation from city property.
Means of identifying: City staff will follow Council Policy No. 8.1 to address Type IV encroachments.

Methods of enforcement: The less serious enforcement methods, up to nuisance abatement, will be used to address Type IV encroachments.

Responsible staff: Natural resources staff or environmental health staff will be responsible for Type IV encroachments, based on whether the encroachment falls within their normal duties for code enforcement on private properties.
Policy Number 8.1
Nuisance Ordinance Enforcement

Purpose of Policy: This policy establishes a system of enforcement for the provisions of Minnetonka’s nuisance ordinance.

Introduction
This policy is intended to provide for the health, safety, and welfare of the community, and to ensure the enjoyment and preservation of Minnetonka’s residential neighborhoods. The city council has adopted an ordinance (Section 845 et. seq.) that identifies nuisance conditions and provides for their abatement. This policy applies to all complaints and enforcement action taken by the city under the provisions of the nuisance ordinance.

Complaints
Because limits to city resources do not permit a comprehensive, city-wide inspection and enforcement program, the city will enforce the ordinance by responding to citizen complaints regarding alleged violations of the ordinance provisions. City staff is directed to investigate and initiate enforcement as follows:

1. Upon any complaint alleging an imminent threat to public health or safety.

2. Upon complaint by one or more households or property owners in the immediate neighborhood of the alleged ordinance violation. "Immediate neighborhood" includes:
   - The area within 400 feet of the property where the violation is alleged to exist;
   - Property from which the alleged violation can be clearly seen; or
   - Property that is primarily accessed by driving past the location of the alleged violation.

   The complainant’s address must be verified by a city representative. Anonymous complaints should not be investigated.

3. Upon observation of a suspected violation during the ordinary course of duties, as time permits.

Mediation
In cases where the alleged violation does not involve an imminent threat to public health or safety, the parties to a complaint are willing to participate, and community interests will be served by avoiding the recurrence of alleged violations and disputes between the parties, the city may provide a referral to a mediation service. Referral to a mediation service must be a complement to the city’s enforcement process, and must not relieve any party of the obligation to comply with city ordinance requirements.
Public Education
The city will establish an ongoing program of public information and education to make citizens aware of reasons for the ordinance requirements and ways to avoid the creation of nuisance conditions.

Adopted by Resolution No. 87-8378
Council Meeting of June 1, 1987

Amended by Resolution No. 92-9390
Council Meeting of June 15, 1992

Amended by Resolution No. 99-074
Council Meeting of April 26, 1999

Amended by Resolution No. 2002-043
Council Meeting of April 22, 2002

Amended by Resolution No. 2003-077
Council Meeting of August 25, 2003
Type 1 City Property Encroachment
Type 1 City Property Encroachment
Type 2 City Property Encroachment

Canoes, debris, junk
Type 2 City Property Encroachment
Type 3 City Property Encroachment
Type 3 City Property Encroachment
Type 4 City Property Encroachment
Type 3 & 4 City Property Encroachment

- Mowing
- Garden
Type 1 Easement
Encroachments
Type 1 Easement Encroachments
Type 1 Easement Encroachments

- Water Distribution Main
- Sewer Gravity Main
- Water - Hydrants
- Sanitary Sewer Manhole
- Photo Direction
- Sanitary and Water Easements
EASEMENT FENCING AND LANDSCAPING POLICY
Adopted by the Shakopee City Council June 5, 2007

For the purpose of this policy, easements shall be classified into the following categories:

1) Standard lot line drainage and utility easements that do not contain underground storm sewer, sanitary sewer, or watermain utilities.
2) Drainage and utility easements that contain underground storm sewer, sanitary sewer, or watermain utilities.
3) Drainage and utility easements that serve as inspection and maintenance access points for City personnel.
4) Drainage and utility easements that serve as ponding basins.
5) Trail or pedestrian easements.

Any fence, plantings, or other landscape improvements installed within a drainage and utility easement are subject to removal as necessary for the installation, repair, maintenance, access or removal of public utilities and/or drainage improvements. The property owner shall be responsible at their expense for both the removal costs and reinstalling any improvements within the drainage and utility easement that were removed in order to utilize the drainage and utility easement.

1. Standard lot line drainage and utility easements that do not contain underground storm sewer, sanitary sewer, or watermain utilities.

Fences, trees, bushes, gardens, lawn irrigation systems and other types of landscaping are permitted as long as the improvements meet City ordinance requirements and applicable permits are granted. However, these improvements cannot impede drainage flow.
2. Drainage and utility easements that contain underground storm sewer, sanitary sewer, or watermain utilities.
No fences, trees, landscape timbers or block, play structures, utility sheds or hedges and other large bushes shall be installed within drainage and utility easements that contain underground storm sewer, sanitary sewer, or watermain utilities. Small gardens, small bushes and other low level landscaping is permitted within these easements as long as such improvements do not block inspection and maintenance access to the underground utilities.

3. Drainage and utility easements that serve as maintenance access points for City personnel.
No fencing or landscaping improvements are permitted within a drainage and utility easement that will impede inspection or maintenance access points for City personnel.
4. **Drainage and utility easements that serve as ponding basins.**

Non-slat chain link fences or split rail type fences, trees, bushes, landscape walls, and other landscape materials may be permitted within drainage and utility easements that serve as ponding basins provided they are: approved by the Public Works Department; are installed above the 100 year high water level for the pond; and do not impede water flow or maintenance access to the pond. The Public Works Department may require the installation of gates for fence installations that may restrict access to the ponding basin.

All of the ground surface within the ponding basin area at or below the 100 year high water level for the pond must be vegetated with grass or other suitable ground cover approved by the Public Works Department. No mulch, gardens, bushes or bare soil shall be permitted within the ponding basin area at or below the 100 year high water level for the pond.

5. **Trail or pedestrian easements.**

No private fence or landscaping improvements are permitted within trail or pedestrian easements.
§ 19.08 PERMITTED ENCROACHMENTS INTO REQUIRED YARDS AND SETBACK AREAS.

(a) General. Except where otherwise regulated by this code and as established below, all buildings, site features and equipment shall maintain the setback requirements established for the zoning district in which they are located.

(b) Permitted encroachments; required setbacks. Except as prohibited by Chapter 17, Article II, Division E of this code, the site features and equipment listed below shall be permitted to locate in yards and to encroach into required zoning district setbacks to the extent specified in this section, but in all cases shall maintain the minimum setback indicated.

(1) Yards. The established yards of the Zoning Code and any primary zoning district. For the purposes of this section, the terms “front yard,” “side yard” and “rear yard” shall have the same meanings as defined in § 19.03, except that any yard adjacent to a public street shall in all cases be considered a “front” yard for setback purposes unless otherwise specified.

(2) Setbacks from public streets. All setbacks from public streets or proposed public streets shall be measured from the planned widened rights-of-way in accordance with the Master Street Plan of the city. References to a “front property line” is assumed to denote the planned widened rights-of-way in accordance with the Master Street Plan of the city.

(3) Required setback. Except where otherwise noted, references to “required setback” means the minimum setback required for the principal building in the applicable zoning district.

(c) In all zoning districts.

(1) Utility poles and wires, water, gas and other public utility appurtenances are permitted at any location in a front, side or rear yard with no minimum setback from any property line.

(2) Retaining walls up to four feet in height are permitted at any location in a front yard provided that a front setback of not less than ten feet shall be maintained and at any location in a side or rear yard with no minimum setback from any property line. There shall be no encroachment into public easements of record without the written approval of the issuing authority.

(3) Steps, stoops, egress windows and exterior landings are permitted in a front, side or rear yard providing that front, side and rear setbacks of not less than five feet shall be maintained. There shall be no encroachment into public easements of record without the written approval of the issuing authority.

(4) Private sidewalks are permitted in a front yard without a minimum front setback provided that a side setback of not less than five feet shall be maintained, and a side or rear yard providing that side or rear setbacks of not less than five feet shall be maintained. Private sidewalks shall not encroach into public easements of record without the written approval of the issuing authority.

(5) Overhanging eaves may encroach up to three feet into a required front, side or rear setback. Where a required setback to a property line is reduced to less than three feet by reason of a variance or other approval granted by the city, the allowed eave encroachment shall in no event cross the property line. An overhanging eave may encroach up to six feet into a required front or rear setback when placed over steps, stoops or an exterior landing providing that the encroachment shall not exceed eight feet in.
width along the wall plane. There shall be no encroachment into public easements of record without the written approval of the issuing authority.

(6) Underground garages, in accordance with § 21.301.06(h), may encroach into any required front, side or rear setback, provided that a front setback of not less than 15 feet and side and rear setbacks of not less than five feet shall be maintained. There shall be no encroachment into public easements of record without the written approval of the issuing authority.

(7) Antennas and supporting structures, including satellite receiving antennas greater than one meter in diameter in residential districts and greater than two meters in diameter in nonresidential districts, shall not be located within a front yard and shall be located only to the side or rear of the principal structure where side and rear setbacks of no less than ten feet shall be maintained. All antennas and supporting structures, including satellite receiving antennas, shall meet the applicable requirements of §§ 15.14, 19.63.05 and 21.301.10 of the city code. There shall be no encroachment into public easements of record without the written approval of the issuing authority.

(8) Ramps and other devices for access to buildings and sites by disabled persons in compliance with the American Disabilities Act may encroach into any required front, side or rear setback, provided that a front setback of not less than 20 feet and side and rear setbacks of not less than two feet shall be maintained. There shall be no encroachment into public easements of record without the written approval of the issuing authority.

(9) Fences are permitted to encroach into front, side and rear yard setbacks when specifically permitted by the city code.

(d) In residential zoning districts (R-1A, R-1, RS-1, R-4, RM-12, RM-24 and RM-50).

(1) Patios and terraces may encroach ten feet into a required front setback, five feet into a required side setback and 20 feet into a required rear setback, provided that a front setback of not less than 20 feet, a side setback of not less than five feet and a rear setback of not less than ten feet shall be maintained. There shall be no encroachment into public easements of record without the written approval of the issuing authority.

(2) Open decks and balconies not greater than five feet above grade at any point may encroach ten feet into a required front setback, five feet into a required side setback and 20 feet into a required rear setback, provided that a front setback of not less than 20 feet, a side setback of not less than five feet and a rear setback of not less than ten feet shall be maintained. There shall be no encroachment into public easements of record without the written approval of the issuing authority.

(3) Open decks and balconies greater than five feet in height above grade at any point may encroach five feet into a required front setback and ten feet into a required rear setback, provided that a front setback of not less than 25 feet, a rear setback of not less than 20 feet and a side setback of not less than ten feet shall be maintained. Such features are permitted in a side yard provided that a side setback of no less than ten feet shall be maintained. There shall be no encroachment into public easements of record without the written approval of the issuing authority.

(4) Chimneys may encroach three feet into a required front, side or rear setback, provided that front and rear setbacks of not less than 27 feet and a side setback of not less than seven feet shall be maintained. Chimneys shall not encroach into public easements of record without the written approval of the issuing authority.

(5) Awnings may encroach three feet into a required front, side or rear setback, provided that front and rear setbacks of not less than 27 feet and a side setback of not less than seven feet shall be maintained. An awning may encroach up to six feet into a required front or rear setback and up to five feet into a required side setback when placed over steps, stoops or an exterior landing, provided that the
encroachment shall not exceed eight feet in width along the wall plane and that front and rear setbacks of not less than 24 feet and a side setback of not less than five feet shall be maintained. Awnings shall not encroach into public easements of record without the written approval of the issuing authority.

(6) Clothes lines and laundry drying equipment are not permitted within the front yard and shall be located only in side and rear yards where side and rear setbacks of not less than five feet shall be maintained. In instances where the side or rear yard abuts a public street, the required setback shall be no less than the required setback for a principal building in the zoning district. These features shall not encroach into public easements of record without the written approval of the issuing authority.

(7) Arbors and trellises may encroach ten feet into a required front setback, five feet into a required side setback and 20 feet into a required rear setback, provided that a front setback of not less than 20 feet, a side setback of not less than five feet and a rear setback of not less than ten feet shall be maintained. A setback of not less than 20 feet shall be maintained from any public street. These features shall not encroach into public easements of record without the written approval of the issuing authority.

(8) Permanently installed outdoor fireplaces and barbecues are not permitted within the front yard and shall be located only in side and rear yards. Such features shall not encroach into the required side setbacks and may encroach up to 15 feet into the required rear setback provided that a rear setback of not less than 15 feet shall be maintained. In instances where the side or rear yard abuts a public street, a setback of not less than the required front setback shall be maintained. Such features shall not encroach into public easements of record without the written approval of the issuing authority.

(9) Basketball backboards, rims and support structures may encroach 15 feet into required front and rear setbacks and five feet into a required side setback in the front yard, provided that front and rear setbacks of not less than 15 feet and a side setback in the front yard of not less than five feet shall be maintained. In side and rear yards, side setbacks of not less than 15 feet shall be maintained. Such features may encroach on public easements of record with the written approval of the issuing authority.

(10) Other recreational equipment, such as, but not limited to, play apparatus over four feet in height, ice rinks, skateboard ramps over two feet in height, trampolines, and children’s swimming pools over two feet in height are not permitted within the front yard. Such features are permitted in side and rear yards provided that side and rear setbacks of not less than 15 feet shall be maintained, including those instances where the side or rear yard abuts a public street. Such features may encroach on public easements of record with the written approval of the issuing authority.

(11) Air conditioning equipment may encroach five feet into any required front, side and rear setback, provided that front and rear setbacks of not less than 25 feet and side setbacks of not less than five feet shall be maintained. Air conditioning equipment shall not encroach into public easements of record without written approval of the issuing authority.

(12) Bay and bow windows may encroach two feet into any required front, side and rear setback, provided that front and rear setbacks of not less than 28 feet and a side setback of not less than eight feet shall be maintained. Such features shall not encroach into public easements of record without written approval of the issuing authority.

(13) Entry vestibules ten feet or less in width may encroach six feet into any required front and rear setback, provided that front and rear setbacks of not less than 24 feet shall be maintained. The overhanging eaves of the entry vestibule may encroach up to an additional three feet into the required front, side or rear setback provided that the entry vestibule eaves do not exceed the prevailing dimension of overhanging eaves on the elevation of the house to which the entry vestibule is attached. No encroachment shall be allowed into a required side setback, except for an overhanging eave as described above. Such features shall not encroach into public easements of record.
(14) Covered but open porches without windows or screens may encroach eight feet into any required front setback and ten feet into any required rear setback, provided that a front setback of not less than 22 feet and a rear setback of 20 feet is maintained. No encroachment shall be allowed into a required side setback. Such features shall not encroach into public easements of record.

(c) In nonresidential zoning districts.

(1) Telephone booths are permitted in any front, side or rear yard, provided that a front setback of not less than 15 feet, a side setback of not less than five feet and a rear setback of not less than that required for the principal building in the zoning district shall be maintained. Telephone booths shall not encroach into public easements of record without written approval of the issuing authority.

(2) Newspaper boxes are permitted in the front, side and rear yards when the property is occupied by a principal building, provided that a front setback of not less than 15 feet and side, and rear setbacks of not less than five feet shall be maintained. In instances where the side or rear yard abuts a public street, a setback of not less than the required front setback shall be maintained. Such features shall not encroach into public easements of record without the written approval of the issuing authority.

(3) Awnings and canopies may encroach six feet into required front and rear setbacks and four feet into required side setbacks provided that a front setback of not less than ten feet, and side and rear setbacks of not less than five feet shall be maintained. Such features shall not encroach into public easements of record without the written approval of the issuing authority.

(4) Underground storage tanks for any purpose (but not above-ground appurtenant equipment) are permitted in any front, side or rear yard, provided that front, side and rear setbacks of not less than ten feet shall be maintained. Such features shall not encroach into public easements of record.

(5) Above-ground equipment appurtenant to underground storage tanks (except fuel dispensing equipment and stations as per § 19.61 of this code) is not permitted within a front yard and shall be located only in side and rear yards. The side setback for such equipment not over five feet in height above grade shall be not less than ten feet and the equipment shall be screened from public streets and adjacent properties in accordance with the requirements of § 19.52(d). The side setback for such equipment over five feet in height above grade shall be not less than the required side setback of the principal building in the zoning district or ten feet, whichever is greater. The rear setback for all such equipment shall be not less than ten feet. Such equipment shall not encroach into public easements of record.

(6) Refuse and recyclable material storage rooms may encroach eight feet into a required side setback and 12 feet into a required rear setback, provided that a side setback of not less than five feet and a rear setback of not less than 15 feet shall be maintained. Such features are not permitted within the yard area between a building and the public right-of-way. Such features shall not encroach into public easements of record without written approval from the issuing authority.

Plymouth City Code – in Right of Way Management ordinance, Section 800.02, subd. 16, general public right of way regulations:

user shall be responsible for the cost of repairing any facility damages. This provision is intended to include costs for damages to boulevard amenities placed by adjacent property owners, (e.g. sprinkler systems, etc.).

F. Encroachment in Public Easements. Placement of any structure in public rights-of-way or on City property must comply with Section 21180 of the Zoning Ordinance. Placement of structures that have a foundation is prohibited in a public easement, unless the structure is exempted under Section 21180 of the Zoning Ordinance. The erection or placement of a structure without a foundation in a public easement requires an encroachment agreement application together with Council approval. The application shall include a written request for the encroachment(s), a description of the proposed structure or obstruction, a plan, drawing, or sketch that shows the proposed structure of obstruction, as well as the location of the easement(s) affected, and payment of an application fee as specified in Chapter X of the City Code. Applications shall be submitted to the City Engineer. Upon receipt of a completed application, the City Engineer will review the application and will consider factors such as the type and use of the existing easement(s), as well as the type and use of the proposed structure or obstruction, when making a decision to recommend approval or denial of the requested encroachment. If an approval recommendation is made, the applicant will be required to sign an Encroachment Agreement, prepared by the City, before the City Engineer’s recommendation is forwarded to the Council for consideration. If the Encroachment Agreement is approved by the Council, the Encroachment Agreement will be executed and recorded against the subject property of record.
Sec. 24-21. - Prohibited encumbrances or obstructions.

Except as provided in section 24-22, no person shall obstruct, encroach upon, encumber or interfere, wholly or partially, with any street, boulevard, alley, sidewalk, easement, park or public ground by placing or installing any of the following:

(1) Curbing or pavement.
(2) Fences or landscaping.
(3) Buildings or structures.
(4) Refuse, as defined in article III of chapter 20.
(5) Combustible materials.
(6) Implements, tools, boxes, merchandise, goods or cans.
(7) Corn poppers, peanut roasters, ice cream containers, vending or food carts or islands.
(8) Construction material, including sand, gravel, sod or other earthen material.
(9) Snow or ice.
(10) Posts, pillars or other supports for awnings, canopies or other structures.
(11) Signs.
(12) Wires or cables above a street, alley or sidewalk.


Sec. 24-22. - Exceptions.

The following are exceptions to section 24-21:

(1) Any activities undertaken by the city.
(2) The deposition of snow and ice by snow and ice removal operations of the city, county or state.
(3) The deposition of snow and ice from privately owned property, provided that such snow and ice are deposited only upon boulevards which are adjacent to and not separated by the traveled portion of the street from the private property from which the snow or ice is removed.
(4) Vehicles parked on streets in accordance with articles I through VI of chapter 26.
(5) Driveways installed and paved on a boulevard in accordance with the requirements of...
article IV, division 2 of this chapter.

(6) Shade trees planted on boulevards, provided that the following species are prohibited unless permission is granted in writing by the park director:
   a. Willows.
   b. Elms.
   c. Box elder.
   d. Cottonwood, aspen, poplar or other members of the genus Populus.
   e. Pine, spruce, fir, yew or other conifers.
   f. Silver maple.
   g. Ash trees.

(7) Trees, shrubs, landscape materials, fences, driveways and parking lots installed on easements held by the city for underground utility purposes.

(8) Trees and other plantings which overhang the traveled portion of streets or sidewalks, provided that no portion of such tree or planting is less than 16 feet above the traveled portion of the street or less than eight feet above the sidewalk.

(9) Grass clippings and leaves placed in containers on boulevards are subject to section 16-126.

(10) Privately owned bus stop benches and street furnishings and publicly owned bus stop shelters placed on streets, sidewalks and boulevards, subject to the written approval of the engineer as to location so as to avoid danger to vehicles and pedestrians.

(11) Newspaper vending machines and U.S. Postal Service drop boxes placed on sidewalks and boulevards, subject to the written approval of the engineer as to location so as to avoid danger to vehicles and pedestrians.

(12) Awnings not supported by posts or pillars which extend over sidewalks, provided that not less than eight feet of clearance is provided between the sidewalk elevation and the lowest point of the awning.

(13) Mailboxes subject to U.S. Postal Service standards, provided that mail boxes which are integral to a structure must be approved in writing by the engineer.

(14) Installed sprinkler systems, provided that the system shall be maintained by the owner of the adjacent property.

(15) Wires or cables installed by a public utility.

(16) Pushcarts, as defined in article V of chapter 20, placed on sidewalks and public walkways within the area included in the plan, prepared by the HRA entitled "50th and France Commercial Area Plan," dated December 3, 1974, are subject to a permit issued pursuant to section 24-254.
(17) Sidewalk cafes, as defined by section 24-253, are subject to a permit issued pursuant to section 24-313.


Secs. 24-23—24-47. - Reserved.
CHAPTER 15 - NUISANCES

ARTICLE III. - PUBLIC PROPERTY ENCROACHMENTS AND EASEMENTS

Sec. 15-51. - Purpose and scope.

Public parks, city owned land, publicly owned road rights-of-way, statutory right of way, and easements are intended for use by the public for recreation, open space, infrastructure, utilities, transportation, environmental preservation, water quality and other public purposes. Drainage easements are for the purpose of conveying, controlling, preserving, and providing for the storage of water. Activities or encroachments that in any way prevent or inhibit that intended use, make public land appear to be private, change the character of public property, frustrate the public purposes for such lands or create a hazardous situation are prohibited.

(Ord. No. 1831, § 1831.01, 3-24-2010)

Sec. 15-52. - Enforcement.

Enforcement of this article shall be by those appointed by the city administrator. This article is to be construed liberally in consideration of the facts of each case and in conjunction with the provisions of the City Code to meet the purpose and intent of this article.

(Ord. No. 1831, § 1831.01, 3-24-2010)

Sec. 15-53. - Relation to the provision of City Code.

This article is not to be construed to modify, amend or otherwise alter the provisions of other sections of the City Code.

(Ord. No. 1831, § 1831.01, 3-24-2010)

Sec. 15-54. - City parks and city-owned land.

(a) Scope. This section applies to city parks and city-owned land.

(b) General. Activities or encroachments that prevent, inhibit or deny the public use, make public land appear to be private, change the character of public property or create a hazardous situation are prohibited.

(c) It is prohibited for any person without written consent of the city to place, deposit, store, display, install, construct, alter, maintain or conduct any of the following on city parks or public property including but not limited to:

(1) Mow, cut, trim, fertilize, apply chemicals, alter or maintain any grass, tree, bush, shrub or vegetation.
(2) Planting any plant, plant material, tree, shrub or vegetation.

(3) Fire pits or fire rings.

(4) Structures, buildings, fences, retaining walls, clothes lines.

(5) Storage of firewood, construction materials, ladders, wheelbarrows, equipment, or storage of any private or personal property.

(6) Storage of recreational equipment, all terrain vehicles, boats, canoes, kayaks, snowmobiles, trailers, campers, toppers, vehicles or vehicle parts.

(7) Install or use lawn sprinkler pipes, heads or any part of a sprinkler or irrigation system.

(8) Compost materials, brush, debris, garbage or waste containers.

(9) Establish obstructions of any kind.

(10) Retaining walls, landscaping, gardens, planters, brick or stone structures.

(11) Ice rinks, sport courts, pools or docks.

(12) Swing sets, trampolines, playhouses, skateboard ramps, play equipment, recreational facilities, basketball hoops, hockey nets or batting cages.

(13) Patio blocks, patio stones, concrete, asphalt, gravel, mulch, or other walking surfaces.

(14) Statues, carvings, sculptures, rocks, boulders, decorative ornaments, fixtures or silhouette cutouts.

(15) Kennels, invisible fences, dog houses, dog runs, bird houses, bird, rabbit, deer or other animal feeders.

(Ord. No. 1831, § 1831.01, 3-24-2010)

Sec. 15-55. - Right-of-way and road easements.

(a) Scope. This section applies to publicly owned right-of-way, statutory right-of-way and road easements.

(b) General. Activities or encroachments that prevent or inhibit the intended use of easements are prohibited.

(c) Activities or encroachments that violate the purpose or terms of the easement or create a hazardous situation are prohibited.

(d) It is prohibited to place, deposit, display, install, construct, alter, or maintain any structure, fence, goods, landscaping or other obstructions upon, across or under any city property or public right-of-way or road easement.

(e) No sight obstruction shall be placed in the shaded area of clear sight triangle.

(f) No obstruction shall be placed that interferes with infrastructure or utility access.
(g) Work permitted. The city has the right to evaluate, maintain, construct, improve, remove, excavate, grade, fill and repair all items and features in publicly owned right-of-way, statutory right-of-way and easements.

(h) Any structure within a publicly owned right-of-way, statutory right-of-way or road easements that impedes the access or intended purpose may be removed by the city at the violator’s expense.

(Ord. No. 1831, § 1831.01, 3-24-2010; Ord. No. 1871, § 1, 12-11-2013.)

Sec. 15-56. - Drainage and utility easements.

a. Scope. This section applies to drainage and utility easements.

b. General. Activities or encroachments that interfere with access, prevent or inhibit the purpose or intended use of easements or create a hazardous situation are prohibited.

c. Activities or encroachments. Activities or encroachments that violate the purpose or terms of the easement are prohibited.

d. Right-of-entry. The city has the right to enter upon any easement at any time necessary.

e. Work permitted. The city has the right to evaluate, maintain, construct, improve, remove, excavate, grade, fill and repair all items and features in easements including but not limited to:
   (1) Pipes, lines, equipment, and materials.
   (2) Lift and pumping stations, catch basins, manholes.
   (3) Revise, restore and reroute drainage.
   (4) Remove trees, bushes, undergrowth, retaining walls, equipment, landscaping, stairs, fences or other obstructions.

(Ord. No. 1831, § 1831.01, 3-24-2010)

Sec. 15-57. - Blocking drainage prohibited.

It is prohibited to block drainage in drainage facilities, drainage ways, drainage easements, drainage areas, emergency overflows or modify the drainage to be non compliant with the approved development or grading plans. Drainage facilities shall be open and unobstructed at all times. The city may take action as necessary to remove obstructions at the property owner's expense.

(Ord. No. 1831, § 1831.01, 3-24-2010)

Sec. 15-58. - Conservation, scenic and other easements granted to the City of Woodbury.
Any and all activities or encroachments that obstruct or violate the terms or purpose of the easement are prohibited.

(Ord. No. 1831, § 1831.01, 3-24-2010)

Sec. 15-59. - Mailboxes.

Mailboxes must meet applicable state and federal standards. Mailboxes not in compliance may be removed in accordance with M.S. § 169.072.

(Ord. No. 1831, § 1831.01, 3-24-2010)

Sec. 15-60. - Appeals.

(a) In the event that the recipient of a correction notice or order believes that the city has incorrectly applied chapter 15, article 3, public property and easements, the recipient may appeal to the public property and easements appeals board.

(b) The board shall consist of one city council member appointed annually by the city council, the chair person of the planning commission and one city staff member appointed by the city administrator.

(c) Request for an appeal must be received by the city in writing within 30 days of the date of the correction notice or order. The hearing schedule will be established by the city. The board shall render a decision within 30 days of the hearing.

(d) The public property and easements appeals board shall make the final decision for the city. There shall be no additional city appeals.

(e) All parties shall have seven days to comply with the decisions of the board unless the decision includes an alternate time frame.

(f) Limits of authority. The appeals board does not have the authority to waive or relinquish any city property owner rights or easement rights on any public property or easements.

(g) Nothing in this section shall be construed to limit the right and authority of the city to immediately remove any and all obstructions and encroachments from city lands, easements and rights-of-way.

(h) The appeals process specified in this section shall be used to hear appeals of administrative citations issued pursuant to City Code chapter 26 for violations of this article.

(Ord. No. 1831, § 1831.01, 3-24-2010)

Sec. 15-61. - Penalty provision.
Any person who shall do or commit any act that is forbidden by the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed $1,000.00 or imprisonment for a period not to exceed 90 days, or both.

(Ord. No. 1831, § 1831.02, 3-24-2010)
Policy Number 11.19
Private Uses of Public Easement Areas

Purpose of Policy: This policy establishes guidelines for determining when a private use interferes with a public easement.

Introduction
The city holds easement rights over most private properties in the city. Public easements over private properties are necessary to provide public utility services, a network of streets and trails, storm water drainage systems for water quality and water control purposes, and preservation of open spaces.

As a matter of real property law, the owners of properties encumbered by easements typically may use the property within an easement area, provided that the owner’s use is not prohibited by the terms of the easement document and provided further that the owner’s use does not interfere or conflict with the easement holder’s use of the easement area. A property owner’s right to use an easement area is subordinate to the rights of the easement holder – if the private use interferes with the easement holder’s rights, the easement holder can require the property owner to stop the owner’s use or to remove improvements that interfere with the easement, without compensation to the property owner.

The city has identified private property uses that commonly occur and those that interfere with public easements. This policy is intended to provide uniformity in addressing conflicts between private and public uses, to educate property owners and prevent conflicts in uses from occurring, and to minimize the cost and delay that occurs in public projects when private improvements obstruct public easement areas.

Categories of easements
This policy addresses private uses within the following types of easements:

- **Boulevard easements.** The portion of any easement for public street or roadway purposes that is not improved with a roadway surface or curb and gutter.
- **Perimeter easements without utilities.** Drainage and utility easements around the perimeter of lots, that do not contain underground storm sewer, sanitary sewer, or watermain utilities and in which the city has no plans to install utilities in the future. The city typically has acquired this type of easement in connection with the subdivision of land.
- **Utility easements with utilities.** Drainage and utility easements that contain underground storm sewer, sanitary sewer or watermain utilities or in which the city has plans to install utilities in the future.
- **Access easements.** Drainage and utility or access easements that serve as access points for city staff, for purposes of inspecting and maintaining city facilities in easement areas.
- **Ponding easements.** Any easement area that serves as a ponding basin, whether the easement is designated for drainage and utility purposes or stormwater ponding purposes.
- **Trail easements.** Trail or sidewalk easements for the purpose of pedestrian or non-motorized vehicular traffic.

**General provisions**
For each type of easement, this policy identifies frequently-encountered private uses of public easements and indicates whether the use: (1) is allowed without prior city approval, (2) may be allowed, but only with prior city approval; or (3) is prohibited. Any use that is not specifically addressed by this policy requires prior city approval.

All private uses of public easements are subordinate to the city’s use. This means that that, even if a private use is allowed by this policy, the city has the right to remove that use whenever the city needs to install, repair, maintain, access or remove any public facilities or improvements allowed within the easement. In those instances, the city will restore the easement area with either seed or sod, at the city’s option. Unless the city has arranged otherwise as part of the specific project, the property owner is responsible for watering the seeded or sodded area in order to establish the turf.

Except as expressly provided by this policy, the city will not compensate a property owner for removal of any private use or improvement installed within a city easement area. The property owner who installs any improvement within a city easement does so at the property owner’s sole risk. The city may require a property owner to pay for the cost of removing any private obstruction within a city easement.

When a use is allowed with prior city approval, the city may refuse to allow the use if the city determines, in its discretion, that the use may interfere with the city’s use of its easement. The city may also place conditions upon its approval such as: the city’s right to terminate the use at any time; a requirement that the owner maintain the use at its sole cost; a requirement the owner carry insurance and defend and indemnify the city against claims related to the use; or other conditions that the city deems appropriate and necessary to protect the public interest.

A use that is allowed in a public easement under this policy must comply with all applicable ordinances. For example, a fence more than seven feet in height requires a building permit.

To the extent that any provision of this policy is in conflict with the provisions of an instrument that created the public easement, the terms of the instrument control over this policy.

**Restrictions on uses within city easements**

**Boulevard easements.**

- **Uses allowed without prior approval:** Turf, bushes and landscaping that do not obstruct the view of traffic, mailboxes, lawn irrigation systems and underground pet fencing systems may be installed without prior city approval. Owners should be aware that the city uses boulevard easement areas for snow storage, which may contain salt or other chemicals harmful to plants. Mailboxes must conform to U.S. Postal Service standards for urban areas. The city does not compensate...
owners for damage to any private improvements located within the boulevard if the damage caused by snowplow operations or by an emergency utility excavation. The city will reimburse a private property owner for the reasonable cost of repairing an underground pet fencing system or lawn irrigation system, if the system is damaged as part of a planned city project such as street reconstruction or installation or replacement of city utilities.

- **Uses that require prior approval**: Retaining walls are allowed only as approved by a city right-of-way permit.

- **Prohibited uses**: Within boulevard easements, deciduous trees may not be planted within 15 feet of the back of curb, and coniferous trees may not be planted within 20 feet of the back of curb. Trees within the boulevard can interfere with sight distances for motorists. Trees are vulnerable to storm damage, which may result in traffic obstructions, and low-hanging branches can present hazards to vehicular and pedestrian traffic. Trees also interfere with the safety of utility excavations.

**Perimeter easements without utilities.**

- **Uses allowed without prior approval**: Turf, fences, trees, bushes, gardens, lawn irrigation systems, and electric pet fencing systems may be installed within these easements, at the owner’s risk, without prior city approval, provided that the installed improvements do not impede surface water drainage flow. Note: see “Access easements” below, if the city uses the easement for access purposes.

- **Uses that require prior approval**: Any use that is not listed above requires prior city approval.

- **Prohibited uses**: Any use that alters the grade or changes the drainage flow within the city’s easement is prohibited.

**Utility easements with utilities.**

- **Uses allowed without prior approval**: Turf, gardens, small bushes and low-level landscaping may be installed without prior city approval, provided that the improvements do not prevent the city from gaining access for routine inspection and maintenance.

- **Uses that require prior approval**: Any use that is not listed above as allowed without prior approval and not listed below as prohibited, requires prior city approval.

- **Prohibited uses**: Fences, trees, landscape timbers or landscape blocks, play structures, utility sheds, hedges and large bushes are prohibited within any public easement that contains underground city utilities (storm sewer, sanitary sewer, watermain).

**Access easements.**

- **Uses allowed without prior approval**: Turf is allowed without prior city approval.
• *Uses that require prior approval:* All private uses, other than turf or those uses prohibited below, require prior city approval. As a condition of approval, the city will require any fence that crosses an access easement to have a gate wide enough for city equipment to pass through.

• *Prohibited uses:* Trees, hedges, large bushes and any type of structure are prohibited within access easements.

**Ponding easements.**

• *Uses allowed without prior approval:* Non-woody or herbaceous vegetation, including turf, is allowed within ponding easement areas.

• *Uses that require prior approval:* Any private use that is not listed above as allowed and not listed below as prohibited, requires prior city approval.

• *Prohibited uses:* Any private use that disturbs the vegetated ground cover or contributes to erosion within the ponding basin area, at or below the 100 year high water level for the basin, is prohibited. For example, tilled gardens or mulched planting areas are not allowed.

**Trail easements.**

• *Uses allowed without prior approval:* No private uses are allowed without prior city approval.

• *Uses that require prior approval:* All private uses within a public trail easement, including the establishment of turf, require prior city approval, except for the uses that are prohibited below.

• *Prohibited uses:* Private fences, retaining walls, and landscaping improvements are not allowed within public trail easements.

Adopted by Resolution No. 18-____
Council Meeting of ______________, 2018
Emerald ash borer management

Background

Emerald ash borer (EAB) is a non-native invasive insect that was accidentally introduced into North America from Asia. It was discovered in Detroit, MI and Windsor, Ontario in 2002. Despite eradication and suppression efforts, EAB has destroyed tens of millions of trees in the U.S. and Canada. As of August 2017, EAB was identified in 31 states and two Canadian provinces.

Emerald ash borer feeds on all native ash species and all eradication attempts have been unsuccessful. EAB was first discovered in Saint Paul in 2009 and since that time it has been identified in other metro area communities including Minneapolis, Apple Valley, Woodbury, Lakeville, Plymouth and Eden Prairie as well as in southeastern MN.

When the beetle is initially detected it can generally be contained for a period of 6-10 years. After that time the beetle population increases and can no longer be suppressed. At that point, cities consider themselves to be “infested”.

The city council previously discussed how to prepare and fund an emerald ash borer management plan at the Jan. 14, 2013 council study session and has since received annual budget updates. Staff has been implementing components of the plan over the past several years that include;

**Tree Inventory**
A tree inventory was completed which identified:
- 450 ash trees on city-owned property; maintained areas of parks, water towers, fire stations etc.
- 900 ash trees on city owned outlots that could pose a risk to private property.
- 6,000 ash trees within city right-of-way (ROW).

**Ash Removals**
In order to eliminate the risk that EAB infested trees will cause (due to their brittle nature), the city has started removing ash trees from public property. Currently 983 structurally unsound, unhealthy and small sized ash trees have been removed as follows:
- 484 from parks (maintained areas and trails)
- 70 from city-owned buildings/trails
- 249 from 40 of the total 377 city-owned outlots (important to note that staff’s field review indicates that there are fewer ash than were originally inventoried)
- 180 risk trees from the ROW

**Reforestation**
In order to compensate for the loss of the ash trees, staff has replanted 720 trees in 34 parks and five city-owned properties with a diversity of species. Additionally since the inception of the tree sale for residents in 2007, the city has sold over 14,700 trees representing 25 different species.
Injections
Protection of larger, structurally sound, healthy ash is also a component of the EAB management plan. This will occur until the smaller replanted trees reach a larger stature.

- 170 trees injected bi-annually
  - 85 trees per year
  - 31 parks
  - Five city-owned buildings

In 2015 the city offered a discounted rate to residents to promote a cost effective approach to treating ash trees. Currently over 500 properties have participated at the rate of $6 per diameter inch.

Education
The city has been educating property owners about the impacts of emerald ash borer for over seven years. The education campaign includes articles in the Memo, and information on the city’s website, billboards and in presentations.

To date the city has spent $395,000 to prepare and mitigate for EAB, and more work is planned.

Detection

When emerald ash borer is finally discovered in Minnetonka, staff’s goal is to contain it as long as possible to suppress the EAB beetle population. The containment strategy will 1) allow property owners time to reduce the number of ash trees on their properties, 2) increase replanting to replace the lost tree canopy of our urban forest and 3) keep the number of risk trees initially low in the ROW and on private property.

To accomplish these goals, the city will need to expand the outreach campaign to include city-wide and neighborhood meetings to inform property owners of the city’s management strategy as it relates to public and private trees, including those located within rights-of-way and trails.

Additionally, homeowners will be able to schedule consulting appointments with forestry staff in order to assist in the identification of ash trees on their property and to discuss removal, injection and replacement options.

Social media will be utilized, encouraging residents to send photos and questions to Minnetonka Mike, and post to FaceBook. The city will tweet about timely EAB topics.

To actively contain EAB for as long as possible, city staff will actively scout the city for EAB infested trees, identify and mark those infested trees, and require removal of infested ash trees during the non-flight season of the beetle, which is Oct. 15 – March 15.

Management Options

Past council direction has been to explore options that create opportunities to assist property owners in managing EAB. With this in mind, staff has identified five options to contain EAB when it is first discovered. All of the options will include the above referenced education and outreach program as well as required removal during the non-flight season of the beetle.
**Option A** - The property owner is responsible for the removal of any EAB infested tree regardless of its location, whether it is located on their private property or in the right-of-way.

This option has a low cost to the city and does not assist the property owner.

**Option B** - The property owner is responsible for the removal of any EAB infested tree on their private property and the city would cost share the removal of any EAB infested tree located in the ROW. The cost share amount would be pre-determined, on a per property basis, based on a specific allocated amount.

This option has a low cost to the city and provides some assistance to the property owner. When the city declares that it is generally infested (the beetle population can no longer be contained) the cost share component is eliminated.

**Option C** - The property owner is responsible for the removal of any EAB infested tree on their private property and the city would remove any EAB infested tree in the ROW.

This option has a medium cost to the city and provides assistance to the property owner. When the city declares that it is generally infested (the beetle population can no longer be contained) staff recommends that this option be re-evaluated and continued.

This option is fair to all property owners because people drive many streets in the city, it streamlines the process creating a more efficient use of staff’s time, and it is consistent with the city’s current risk tree practices.

**Option D** - The city will cost share all EAB infested trees regardless of the location. The cost share amount would be pre-determined, on a per property basis, based on a specific allocated amount.

This option has a high cost to the city but provides assistance to the property owner. Private tree removal can be very expensive based on the location of the tree; i.e. if the tree is located in the backyard, next to the pool, surrounded by landscape features and a deck.

When the city declares that it is generally infested (the beetle population can no longer be contained) staff recommends that **this option be eliminated**.

**Option E** - The city will cost share private property EAB infested trees and remove any EAB infested tree in the ROW. The cost share amount would be pre-determined, on a per property basis, based on a specific allocated amount.

This option has a high cost to the city and provides assistance to the property owner. As referenced above, private tree removal can be very expensive based on the location of the tree (in the backyard, next to the pool, surrounded by landscape features and a deck).

When the city declares that it is generally infested (the beetle population can no longer be contained) staff recommends that **this option be eliminated**.
Staff is recommending Option C be implemented when EAB is first detected and continued when there is the declaration of general infestation.

The following chart briefly outlines the options discussed above.

<table>
<thead>
<tr>
<th>Option</th>
<th>ROW tree removal</th>
<th>Private tree removal</th>
<th>City’s management</th>
<th>Cost level</th>
<th>Management intensity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option A</td>
<td>Private</td>
<td>Private</td>
<td>Admin</td>
<td>Low</td>
<td>Low</td>
</tr>
<tr>
<td>Option B</td>
<td>Cost Share</td>
<td>Private</td>
<td>Admin and funding</td>
<td>Low</td>
<td>Medium</td>
</tr>
<tr>
<td>Option C</td>
<td>City</td>
<td>Private</td>
<td>Admin and staff/contractor</td>
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<td>Medium</td>
</tr>
<tr>
<td>Option D</td>
<td>Cost Share</td>
<td>Cost share</td>
<td>Admin and funding</td>
<td>High</td>
<td>High</td>
</tr>
<tr>
<td>Option E</td>
<td>City</td>
<td>Cost Share</td>
<td>Admin, staff/contractor, and funding</td>
<td>High</td>
<td>High</td>
</tr>
</tbody>
</table>

**Generally Infested**

When the beetle population can no longer be contained, the city will move from the detection phase to being generally infested. It is about six to ten years from the time of initial detection until general infestation. St. Paul, MN first discovered EAB in 2009, and in 2017 they declared themselves generally infested.

The infestation declaration will be triggered through data modeling which is currently under development through scientific evaluation. This evaluation is anticipated to minimize resident concerns about the process being subjective.

When the city is generally infested, staff will scout, mark, and require removal of all infested ash trees that pose a risk to public property (e.g. playgrounds, tennis courts etc.) or the public ROW or trails. The goal is to protect the city from any liability caused by brittle, failing ash trees. Private property ash trees that do not pose a risk to public safety will not be required to be removed. This is the approach that has been taken by many metro area cities.

During this final phase, staff recommends that the city continue to accept responsibility for all ROW trees that pose a risk to the roadway (not just ash trees). This benefits all property owners within the city because the city is keeping the roadways safe for the traveling public. It is also fair to the majority of taxpayers because most property owners have trees within the right-of-way, and will receive the direct public benefit on their own property. This is the approach that has been taken by many metro area cities.

The annual community survey indicates that an average of 66 percent of those surveyed support using city funds to manage EAB on private land and an average of 59 percent support the city offering methods to help manage EAB on private land.

With the understanding that the city must address all EAB infested trees that could pose a liability to public safety and understanding that once the beetle is detected it can be contained for six to ten years, the city will have approximately ten years to remove all ROW ash trees.
In calculating the annual cost over a ten year period for the proposed ROW tree removal, staff estimates the following:

- Currently 6,000 ash trees within the ROW
- An average size tree of 14 - 16" dbh (diameter breast height)
- Current contractor rate $223 per tree
- Remove 600 trees per year, $130,000 per year
- 2 seasonal staff, $30,000 per year
- Loss of current Dutch elm disease and oak wilt cost share receipts, $10,000 per year

It is important to note that this estimated cost is on the high end of the spectrum. Staff believes that with the assistance of city crews and the inter-community work crew, many of the ROW trees can be removed at a lower cost. Staff anticipates that in 2019 a second forestry technician will need to be hired at a cost of $86,000 per year.

**Total cost equals $256,000 annually.**

The city has planned for this scenario and has much of the funding already available. At the end of 2018 the projected forestry fund balance will be $950,000 with levy increases in the Capital Improvement Plan (CIP) as follows:

- In 2018 and 2019, the current annual levy is $60,000 per year.
- 2020, the levy increases to $85,000 per year for 2 years.
- 2022, the levy increases to $100,000 per year for 2 years.
- For planning purposes, an additional $15,000 is estimated per year every other year through 2028.

Funds would be allocated for removals and the additional staffing as follows;

- In 2019, $188,000 will come from the forestry fund and $68,000 from the general fund ($32,000 is currently budgeted in the general fund)
- Operating costs would continue to be budgeted through the general fund using annual transfers from the forestry fund balance, and contracted capital costs would flow directly through the forestry fund.

As emerald ash borer is managed, surplus revenues will be reserved to prepare for the next major insect or disease that will most likely be on the horizon.

**Discussion Points**

- *Does the council agree that Option C should be implemented when EAB is first detected?*

- *Does the council agree that the city should continue to accept responsibility for all ROW trees, not just ash but any tree that poses a risk to the roadway?*
Submitted through:
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Originated by:
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  Hannibal Hayes, City Forester