

Councilpersons:
First Ward: Gallenberger, Friedmeyer
Second Ward: Schmidt, Hiers
Third Ward: Meurer, Bricher

Mayor: Rollin Hall
City Attny: Peter Ekstrand
City Adm: David Schmidt
City Clerk: Susan Schamaun

Date: March 1, 2011

PROCEEDINGS OF THE CITY COUNCIL

The regular meeting of the City Council of the City of Wabasha was held on Tuesday, March 1, 2011, and was called to order at 7:00 pm by Mayor Rollin Hall.

All present stood and recited the Pledge of Allegiance.

Mayor Hall announced all Councilpersons were present.

Guest Presentation:

Alison Springer, NEC Marketing Manager was present and gave a presentation on Soar with the Eagles. She provided a flyer containing a list of all events/activities during the Soar celebration to all council members; the flyer is also available at the Chamber of Commerce, the NEC and was inserted in the local newspaper. Ms. Springer stated that Soar with the Eagles runs thru the month of March and will have activities every weekend. Some of the activities are David Stokes; Taste of Wabasha; flying bird programs; and a raffle. She stated that last year there were about 15, 000 visitors to the NEC during the Soar celebration and they hope to have about the same this year.

Public Comments - None

Mayor Presentation:

Mayor Hall stated that there had been a special meeting held on Monday, February 28 to discuss the City Administrators employment contract, the council voted to extend the contract for 2 years with a 5-2 vote. Today an email was sent out from a city council member suggesting the open meeting law had been violated. After reviewing the provisions of the open meeting law with the LMC, the City Charter and our City Attorney, it was determined that no violation had occurred.

Mayor Hall announced that there will be a "Coffee with the Chief" morning with the Chief of Police at the Eagles Nest Coffee house on Saturday March 12 at 8am and encouraged the public to attend. It will give the citizens of Wabasha a chance to get to know the chief and ask any questions.

Changes/Additions to Agenda - None

Committee Reports and Wabasha Good News:

Council Member Hiers reported on the Park Board. She stated that the Park Board has been working on improving the Summer Rec program. The board held a public meeting on February 7 to get input on the Summer Rec program. She reported that the meeting went very well and the program should be a much better program this year because of the discussions.

Council Member Schmidt reported on the Utilities Commission. He stated that the Commission has determined that the coating on the water tower is in need of repair and they have requested Bill Anderson of Yaggy Colby to prepare specifications for bids. He also stated that with the anticipated flooding, homeowners should purchase plugs for their basement floor drains if they get seepage into their basement because of the strain the extra flow would put on the treatment plant. He stated that plugs can be purchased from plumbers or hardware stores. He also reported that the commission is also considering changing the responsibility of individual serviced to the city rather than the homeowner.

Council Member Friedmeyer reported on the Planning Commission and Ambulance Commission. He stated that the Planning Commission reviewed the Tower Ordinance as requested by the council and it is currently on the agenda. The commission has also looked at trails and pedestrian routes throughout the city. The Ambulance Commission met and is currently getting new members up to date on ambulance duties. The ad for the ambulance director position should go in the paper next week and hope to have applications coming in this month.

Council Member Bricher reported on the Street Commission. He stated that the commission also reviewed trails and pedestrian routes and determined that 12th and 10th streets should have sidewalks in the future design plan. The commission also discussed seal coating, Tony Johnson contacted the same company he purchased from last year and was quoted approximately \$40,000 for material, which is the same price as last year, with prices going up the street commission recommended he go ahead. He also stated that Tony Johnson will be getting pricing on new radio equipment, because the city will need to convert to an 800 system in order to communicate with the county.

Mayor Hall reported on the Port Authority. He stated that the Port Authority has been visiting local businesses and that they have recently visited Wabasha Discount Market and JLM Powder Coating.

Wabasha Good News

Council Member Meurer reported that the Eagles Basin development has sold all 3 homes currently built. City Administrator David Schmidt also reported that he has spoken with the HRA and they are looking at looking at financing for 2 additional homes to be built this year.

Council Member Gallenberger announced that the Home and Garden show is the weekend of March 12 and they are having a cake raffle. She challenged other council members to bake a cake and enter it in the raffle. Proceeds of the raffle will go to the Chamber of Commerce. Mayor Hall has already accepted a challenge with Frank Lee from Kellogg. She also reminded everyone to get their pets licensed; licenses are available beginning March 7th at City Hall.

Mayor Hall announced that the Grumpy Plunge was very successful with more jumpers this year than last. He also reported that there had been 300 ice fishers with ¾ of them non-residents.

Councilpersons Hiers and Meurer moved to approve the following consent agenda. Adopted Unanimously.

Approved the February 1, 2011 regular meeting minutes and February 22, 2011 workshop minutes as presented.

Approved fund transfer per audit recommendation

Approved amendment to city code chapter 10, sale, consumption and display of Liquor and Beer Section 1010.

Approved Board of Appeal and Equalization date April 18, 2011 at 6:00pm.

Approved Wabasha County Fair gambling permit for Wabasha County Fair

Approved authorizing Mayor and Clerk to sign MnWarn Mutual Aid Agreement

Approved the following warrants as presented:

Mayors	General Fund	\$2,569.71
Legal	"	\$3,587.78
Fire Dept.	"	\$3,171.69
Zoning	"	\$12.94
Park	"	\$1,414.70
Streets	"	\$4,885.90
Building Inspection Fees	"	\$744.93
Police	"	\$1,380.98
Ambulance	"	\$4,633.88
2011 Street Imp. Eng. Fee	"	\$13,675.00
2008 Street Paving Project	"	\$7,768.36
Total		\$43,845.87

9.1 Wabasha County Fair Association Assessment:

The Wabasha County Fair Association was assessed for the 2005 Street Improvement on Coulee Way. In October 2005 the council deferred the principal and interest for 10 years. In 2007 the Fair Association requested leeway on the assessment, the council moved to make a donation equaling the amount of the payment of that year with the 10-year assessment, to be reviewed annually. The donation was given again in 2008, but not in 2009 or 2010. Staff does not recommend a donation based on the current city finances.

Barb Petit President of the Wabasha County Fair Board was present and addressed the council. She stated that the fair board had not come before the council the last 2 years to request the donation because they thought it was a regular payment.

Council discussion included the deferred assessment; past donations; the Ski Association, issues associated with forgiving an assessment to a non-profit organization;

After all discussion, Council members Schmidt and Bricher moved to forgive the assessment for the year 2011 and to authorize a payment to the Wabasha County Fair for the amount of the assessment for that year. Adopted unanimously.

9.2 Modification to Park Board Membership Ordinance:

The Park Board is requesting a modification to the membership ordinance to allow one non resident to serve on the board. The city attorney has reviewed the modification.

Council members Gallenberger and Meurer moved to approve the following modification to 7B.01 of the Park Board Ordinance to permit one non-resident to serve on the Park Board. Adopted Unanimously.

ADDITION 7B

CREATING A PARK BOARD

7B.01 ESTABLISHMENT.

The Park Board for the City is hereby created to be composed of seven (7) members, ~~who shall be qualified residents of the City~~ **at least 6 who shall be qualified residents of the city, and one who may be a nonresident of the city.** When first created, one member shall be appointed for one year, one for two years, and one for three years, and thereafter each board member shall be appointed for a three (3) year term, except that vacancies shall be filled for the unexpired term only. Each board member shall take the oath prescribed by law before assuming the duties of their office and shall continue in office until their successor has been appointed and qualified.

7B.03 POWERS.

The Park Board is authorized and empowered for and on behalf of and in the name of the City to acquire by gift or devise, lands to be held in use for park and recreational purposes and shall provide for the improvement thereof.

7B.05 DUTIES.

The Park Board shall have general supervision, management and control of park and recreational facilities and may appoint suitable persons to care for and take charge and prescribe their duties, subject to City Council approval.

7B.07 PERSONNEL.

The Park Board shall have the authority to hire a Park Superintendent and such other personnel as is necessary to carry out the work of the Park Board, subject, however, to City Council approval.

7B.09 PURCHASES.

The Park Board shall have authority to purchase necessary equipment and supplies in carrying out the necessary work of the Park Board, but before incurring any exceeding the sum of \$300.00, City Council approval shall be required.

7B.11 RULES AND REGULATIONS.

The Park Board is authorized and empowered for and on behalf of and in the name of the City to set rules and regulations to be carried out by all persons in the City Parks, subject however to City Council approval.

9.3 Pay Modification to No-Wake Ordinance:

There have been requests to extend the no-wake zone from Bailey Avenue to Lawrence Blvd and Main Street due to increasing erosion of the shoreline. The current no-wake zone ends at Bailey Avenue at which point the boats increase their speed causing large wakes along Lawrence Blvd. With the proposed change, the boats would be beyond Lawrence before increasing speed. A petition was submitted from property owners on Lawrence Blvd requesting the No-wake zone be extended.

Connie Wiles from the lower marina was in attendance and addressed the council. She is requesting the no-wake zone be extended further down past the lower marina because of safety and erosion concerns. She stated that currently when their employees are fueling boats it is difficult when other boats are going by causing the large wake; it is not a safe environment.

City Administrator David Schmidt stated that a public hearing would need to be held and that approval would also be needed from the State, the DNR and from Nelson Township in Wisconsin.

Council discussion included the impact changing the no-wake zone would have on boaters; fishing tournaments; and the process required to change the ordinance.

Council members Bricher and Gallenberger moved to direct staff to move forward with setting the public hearing to amend City Code Chapter XI Traffic: motor Vehicles; Other Vehicles Section 1135 No Wake, moving the no-wake zone to the lower marina contingent upon the approval of the MN and WI DNR and Nelson Township and to move forward with the public hearing. Adopted Unanimously.

SECTION 1135 NO WAKE ORDINANCE

1135.01 DEFINITIONS.

Terms used in this ordinance relative to boating are as defined in M.S. § 86B.005.

The following words and phrases, when used in this Section, have the following meanings:

Subd. 1. "Boat" is any watercraft as defined in Minnesota Statutes 361.02, Subd. 7.

Subd. 2. "Motorcraft" means any boat propelled by machinery as defined in Minnesota Statutes 261.02, Subd. 8.

Subd. 3. "Person" includes an individual, partnership, association, corporation, or any body of persons.

Subd. 4. "Slow No Wake" means the operation of a watercraft at the slowest possible speed necessary to maintain steerage and in no case greater than five (5) miles per hour, or at a speed that causes minimal wash or wake.

1135.03NO WAKE ZONE.

In the interest of public health, safety and general welfare, no person shall operate a watercraft, excluding commercial barge traffic on the main channel of the Mississippi River, at greater than a slow-no wake speed from the "Upper Harbor" Mile 760.6 to the extension of the center of Bailey Avenue ~~Northeasterly into the Mississippi River Milepost 760.0.~~ "Lower Harbor" Mississippi River Milepost 759.3 to the "Upper Harbor" Mississippi River Milepost 760.6.

1135.05EFFECTIVE PERIOD.

This restriction is effective from and including Memorial Day week-end through and including Labor Day week-end.

1135.07NOTIFICATION AND MARKING.

The City of Wabasha shall inform the public by official notification, as well as posting and buoying the "Upper Harbor" and the extension of the center of Bailey Avenue where the same intersects the main channel of the Mississippi River. "Lower Harbor" Mississippi River Milepost 759.3 to the "Upper Harbor" Mississippi River Milepost 760.6. ~~All necessary law enforcement agencies are authorized and entitled to enforce the provisions of this Section.~~

1135.08 ENFORCEMENT

The primary enforcement of this ordinance shall rest with the Wabasha County Sheriff's Office and the City of Wabasha Police Department. This, however, shall not preclude enforcement by other licensed peace officers

1135.09PENALTIES.

Any person who shall violate any of the provisions of this Section shall be guilty of a petty misdemeanor, punishable by a fine of not more than \$100.

1135.11EXEMPTIONS.

~~Motorboats utilized by government agencies and rescue craft while on official business shall be exempt from the provisions of this Section.~~

All authorized resource management, emergency and enforcement personnel, while acting in the performance of their assigned duties, shall be exempt from the restrictions in this ordinance.

9.4 Fee Schedule Modification:

Increasing the fee schedule was part of the budgeting process for the 2011 budget. Council members were provided with an alternative recommendation to address the increase. Council members discussed the proposed fee increases.

Council members Gallenberger and Bricher moved to approve the Staff Recommendations on the following proposed amendments to City Code Chapter VIII Licenses and Permits, Procedures and Fees, Section 810 License Fees. Adopted Unanimously.

SECTION 810 LICENSE FEES

810.01 LICENSE FEES.

The fees for various licenses are set forth in this subsection.

TYPE OF LICENSE	SECTION REQUIRING LICENSE	LICENSE EXPIRES	FEE*	STAFF RECOMMENDATION
Billiard or Pool Table (Owner)	915.01	Dec. 31	\$20.00 <u>\$21.00</u>	25.00
Billiard or Pool Table (Operator)	915.01	Dec. 31	\$20.00 <u>\$21.00</u>	25.00
Mechanical Musical Device	920.01	Dec. 31	\$20.00 <u>\$21.00</u>	25.00

(Owner)				
Mechanical Musical Device (Operator)	920.01	Dec. 31	\$20.00 <u>\$21.00</u>	25.00
Games of Skill (Owner)	910.05	Dec. 31	\$20.00 <u>\$21.00</u>	25.00
Games of Skill (Operator)	910.05	Dec. 31	\$20.00 <u>\$21.00</u>	25.00
Maximum License Fee			\$400.00 <u>\$105.00</u>	125.00
On or Off Sale & Special On Sale	1010.15	June 30	\$100.00	
Garbage and Refuse Hauler	405.03	Dec. 31	\$400.00 <u>\$105.00</u>	125.00
Mobile Home Location	415.01	March 30	\$5.00 <u>\$5.25</u>	10.00
Dogs/Cats Male	705.02	March 31	\$5.00 <u>\$5.25</u>	10.00
Fem	705.02	March 31	\$40.00 <u>\$10.50</u>	15.00
Personal Kennel	705.06	Dec. 31	\$40.00 <u>\$10.50</u>	20.00
Commercial Kennel	810-1	Dec. 31	\$400.00 <u>\$105.00</u>	125.00
Sale of Fireworks		Dec. 31	\$25.00 <u>\$26.25</u>	30.00
Sale of Cigarettes	900.01	Dec. 31	\$50.00 <u>\$52.50</u>	55.00
Transient Merchants	905.03		\$25.00 <u>\$26.25</u>	30.00
TYPE OF LICENSE	SECTION REQUIRING LICENSE	LICENSE EXPIRES	FEE*	STAFF RECOMMENDATION
Taxicab	925.07	Dec. 31	\$50.00 <u>\$52.50</u>	55.00
Bingo	930.05	Dec. 31	State Set Fee	
Gambling	935.09	Dec. 31	State Set Fee	
On-Sale Wine	1015.03	June 30	\$300.00	
On-Sale Intoxicating Liquor	1020.15	June 30	\$1,200.00	
On-Sale Intoxicating Liquor (Sunday)	1020.15	June 30	\$200.00	
Temporary Liquor On-Sale 1-4 Days			\$100.00	
On-Sale Club	1020.15	June 30	Per State Law	
Off-Sale Liquor	1030.15	June 30	\$200.00	
Bicycles - Every Two Years	1125.01	April 30	\$1.00 <u>\$1.05</u>	5.00

810.03 PENALTY FOR LATE PAYMENT OF LICENSE FEE.

Subd. 1. No Penalty. No Penalty for the late payment of any license shall be incurred by any licensee provided the owner or his/her agent makes application for the renewal of his/her existing license to the City Clerk and includes therein the payment of the required fee therefore prior to the expiration date of said license.

Subd. 2. Penalty for Late Payment. Every person whose trade, business, profession, activity or privilege is licensed by the City, other than one who has been closed down or who has not operated such activity in the City after the expiration of the licensing year, shall pay to the City Clerk the regular license fee and in addition thereto the following penalty for late application for a renewal:

- A. One to seven days late - 25% penalty.
- B. Eight to fourteen days late - 50% penalty.
- C. After fourteen days late the activity for which the license is required shall be suspended on order of the Mayor and no new license for such activity shall be considered by the Council for 60 days.

Subd. 3. Later Payment of License Fee With Penalty No Bar to Prosecution for Operating Without a License. The late payment of the license fee along with the penalty set forth herein is no bar to any prosecution by the City for operating any licensed trade, business, profession, activity or privilege within the City without a license therefore.

9.5 Amend City Code Chapter 335 Tower Ordinance:

The Planning Commission is requesting the council consider the following amendment to the Tower Ordinance. The amendment is based on a request from US Cable to allow them to replace their current tower.

SECTION 0335 - TOWER ORDINANCE

335.01 PURPOSE AND INTENT.

The natural and scenic landscape of Wabasha is among its most valuable assets, and greatly benefits the residents and a significant number of visitors to the area each year. The degradation of this asset would potentially risk undermining the very characteristics responsible for our economic vitality and future potential. The City understands and accepts the increasing demand and need for wireless communication and environmentally responsible energy technologies as well as other such potential activities that would require the use of tower facilities. The purpose of this ordinance is to protect and preserve the City's natural, cultural, and scenic assets in accordance with goals and policies of the Wabasha Comprehensive Plan.

This Ordinance is designed and intended to balance the interests of the residents of the City of Wabasha, telecommunication, other service providers, and customers in the siting of towers (including wireless communication services facilities and small wind energy conversion systems) within the city. These standards are also intended:

- A. To avoid or minimize any adverse impact of such facilities on: visual; environmental; historically significant areas; health and safety; and property values;
- B. To require the use of alternative structures for the purposes of co-location of carriers and minimize the total number of towers located within the city;
- C. To allow the construction of new towers only where all other opportunities have been exhausted;
- D. To require the users of communication towers and antenna structures to configure them in a way that minimizes the need for additional towers in the City of Wabasha;
- E. To provide for the removal of towers and associated development which are no longer being used for their original purposes;
- F. These regulations are not intended to place any restrictions on privately operated and licensed amateur radio operators, satellite dishes, or radio and television broadcast facilities as allowed under federal regulations and exempt from local controls.

335.02 APPLICABILITY, FEDERAL AND STATE REQUIREMENTS

- A. The Telecommunication Act of 1996 affirms Local Government's right to control the siting, construction, and modification of cellular and other wireless telecommunication facilities. The permitting process in this Ordinance does not discriminate among providers of functionally-equivalent services and does not prohibit the provision of personal wireless services.
- B. Towers erected for the use of federally licensed amateur radio operators may be erected at heights and dimensions sufficient to accommodate amateur service communications as required and allowed by the Telecommunication Act of 1996 or as amended.
- C. Minnesota Statue Chapter 216F governs the permitting and location of Wind Energy Conversion Systems and allows local jurisdictions to establish requirements for the siting and construction of SWECS. Nothing in this Ordinance is intended to govern LWECS which are governed by the Public Utilities Commission under Chapter 216F or as amended.

335.03 ZONING DISTRICTS/PERFORMANCE STANDARDS/DIMENSIONAL REQUIREMENTS.

Subd. 1. All Towers

A. New towers shall be allowed in zoning districts as provided for in the City of Wabasha's Zoning Ordinance with the issuance of a conditional use permit.

~~B. New towers shall be of a self-supporting design either monopole or lattice design. Guy wires are prohibited.~~

C.B. Aesthetics, Landscaping, and Buffers.

1. Towers and antennas shall have a neutral finish or be painted an approved neutral color to reduce visual impact.
2. Towers shall not be artificially lighted except as required by FCC, FAA or other state or federal laws.
3. Road access to towers shall be the minimum size necessary to allow safe access for the proposed specific use and maintenance needs in a non linear manner so as not to provide a direct view corridor to the support structures.
4. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with the tower shall be prohibited.
5. All towers shall maintain the required setbacks as undisturbed vegetated buffers, except for the access road. The size and quantity of plantings shall be subject to Planning Commission/Planning Department approval to enhance the quality and effectiveness of the buffer area to serve as a visual screen.
6. The base of a tower may not be located in wetland, floodplain, or shoreland overlay zones.

D.C. Access & Security.

1. A security fence, to be approved by the Planning Commission/Planning Department, of not fewer than eight feet in height from the finished grade shall be provided around the tower. Fence shall be painted an approved neutral color to minimize visual impacts. Access to the tower shall be through a gate that can be secured.
2. All ground mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access. The tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground.
3. All electrical wires shall be located underground where possible.
4. All towers shall comply with all applicable state construction and electrical codes, and the National Electrical Code.
5. All tower facilities shall be maintained in a safe and clean condition. The tower facility owner shall be responsible for maintaining a graffiti, debris, and litter free site. The landscape plan shall be maintained for the life of the tower facility. If the facility is not maintained, the City may bring legal action. The City's remedies may include, after 60 days notice to the owner or operators, an order allowing the City to complete the maintenance at the cost of the owners or operators of the tower facility.

E.D. Structures.

1. The design of any buildings and related structures shall, to the extent possible, use materials, colors, textures, screenings and landscaping that will blend the facilities with the natural setting and built environment.
2. All buildings and accessory structures must meet setbacks and other requirements of the zoning ordinance.

F.E. Height. Towers including antennas, wind blades, or other attachments shall not exceed a height of one hundred fifty (150) feet except for those towers expressly satisfying all co-location requirements for four or more communication carriers which may be constructed to a maximum height of one hundred ninety-nine (199) feet.

G.F. Setbacks. ~~All~~Towers shall be set back a distance equal to at least one hundred twenty-five percent (125%) of the tower height from the lot lines, any public road right of way, unless written permission is granted by the governmental entity with jurisdiction over the road, and any overhead utility lines, unless written permission is granted by the affected utility. Lesser setbacks will be

considered by the Planning Commission when the applicant provides documentation that an easement from adjacent properties has been secured which would equal a 125% of the tower height setback;

H.G. Performance Guarantees

1. No permits will be issued until the applicant has filed a performance bond or bank letter of credit approved by the city attorney equal to one hundred twenty-five (125%) percent of the cost of completing the following improvements:

- a. The construction of any drainage systems involving piping, culverts, or retention or detention facilities
- b. The construction of erosion and sedimentation control measures or landscaping required to meet the standards of this section;
- c. Other site improvements required by the Planning Commission/Planning Department to meet the standards of this section.

2. Removal of Abandoned/Unused Facilities.

- a. The owner of a tower shall be required to remove the tower and associated facilities should it not be used for the use or uses approved for a period of ninety (90) consecutive days. This period may be extended by the Planning Commission/Planning Department if there are extenuating circumstances beyond the control of the applicant. For a permit under this section an applicant shall post a performance bond or bank letter of credit approved by the city attorney with the city prior to obtaining a permit that is equal to one hundred twenty-five percent (125%) of the cost of removing the structure. The performance guarantee must be in effect for the life of the tower.
- b. The performance guarantee covering such removal shall be reviewed for renewal at a maximum term of five years, to account for cost adjustments. It must contain a mechanism, satisfactory to the city, for review of the cost of removal of the structure every five years, and a mechanism for increasing the amount of the guarantee should the revised cost estimate so necessitate.

3. To ensure compliance with the prescribed ordinances, all approvals will be subject to an annual permit renewal conducted by the Planning Department. The Planning Department, at a minimum, shall review the continued use of the facility; maintenance of the facility and site improvements; availability for co-location of new service; and review of bonding documents. The documents and permit renewal fee shall be submitted to the Planning Department no later than October 1st of each year following the original approval.

Council discussion included the purpose of guy wires, tower height, and tower co-location. Molly Patterson Lundgren, City Planner provided information and answered council questions.

After all discussion, Council Members Hiers and Gallenberger moved to approve the modifications to the Tower Ordinance, Section 335 of City Code as recommended and proposed above by the Planning Commission. Adopted unanimously.

9.6 Amend City Code Section 1220 Forestation Control Ordinance

Street Superintendent Tony Johnson and the Street Commission are requesting the Council consider an amendment to city code Section 1220 to address the responsibility of the removal of storm damaged trees and stumps. Due to no policy currently in place for the responsibility of removal of trees and stumps, there was considerable cost to the city in 2010 from removal of trees and stumps from storm damage. The commission is requesting the council consider the following changes to the city's current ordinance section 1220 Forestation Control:

CHAPTER 1220

FORESTATION CONTROL

1220.01: PURPOSE:

It is the purpose of this Chapter to protect and promote the public health, safety and general welfare of the people of the City by:

1. Regulating the planting, maintenance and removal of trees and plants on all public spaces

and rights of way.

2. The licensing of the planting, maintenance, removal and trimming of trees on public lands.
3. The inspection of trees on public and private lands.
4. The control tree diseases to protect the trees and to prevent and abate hazardous conditions and nuisances within the City.
5. Protecting and preserving existing healthy trees.
6. Encouraging the planting of trees for the protection and enhancement of the environment.

1220.02: DEFINITIONS:

As used in this Chapter, the following words and terms shall have the meanings ascribed to them in this Section:

BOULEVARD: That property between the edge of the street and the property line (right-of-way line). On undeveloped streets, that property between the property lines.

COMPREHENSIVE TREE PLAN: Official planting guide and regulations outlining allowed and disallowed species, locations, techniques and treatments.

DISEASED TREES: Trees afflicted with dutch elm, oak wilt or other arboracious diseases identified in the Comprehensive Tree Plan.

HERBACEOUS PLANTS: Ordinary trees and shrubs.

TREE: Any self-supporting, woody perennial plant.

TREE TRIMMING: Recommended trimming and pruning techniques are outlined in the Comprehensive Tree Plan. Tree topping is specifically prohibited on all public lands.

1220.03: TREE BOARD:

The Park Commission shall act at the City Tree Board in all matters relating to the advice on issues contained in this Chapter and all other matters relating to forestation within the City. The process, conditions for appointment and terms shall be the same as those for the Park Commission.

1220.04: APPLICABILITY:

This Chapter applies to all trees, plants and shrubs located within street right of ways, parks and public places of the City, and to trees, plants and shrubs located on private property that constitute a hazard or threat as set forth in this Chapter.

1220.05: FORESTATION MANAGEMENT:

1. **City Forester:** The Park Superintendent or such other employee so designated by the City Administrator shall act as the City Forester.
2. **Authority of City Forester:** The City Forester shall have jurisdiction and supervision over all trees, shrubs and plants located within street right of ways, parks and public places of the City, and to trees, plants and shrubs located on private property that constitute a hazard or threat.
3. **Duties of Forester:** The City Forester may cause the planting of trees on public grounds and may direct the trimming, removal, treatment or other care of any tree, shrub or plant on private property in order to preserve or restore its condition or to protect the public from damage or injury. The cost of any such work may be assessed against the property on which the tree is located.
4. **Tree Planting Plan:** In addition to the other responsibilities under this Chapter, the City Forester shall prepare a Comprehensive Tree Plan regarding the planting of trees on public property within the City and the planting of trees on private property that may present a health or safety hazard. When approved by resolution of the City Council following a review by the City Tree Board, the Comprehensive Tree Plan and any modifications will be the official plan of the City. After the adoption of the official plan, no tree planting permit will be issued which does not conform to the Comprehensive Tree Plan.
5. **Comprehensive Tree Plan Contents:** The Comprehensive Tree Plan shall address the following matters together with any other matters deemed appropriate by the City Forester:
 1. **List of Acceptable Varieties:** The list may provide for the planting of certain varieties or mixes of varieties in certain locations.
 2. **Specifically prohibited plantings.**
 3. **Minimum size.**

4. Grade.
5. Method of planting and support.
6. Maintenance.
7. Recommended trimming and pruning techniques.

1220.06: OTHER REGULATIONS FOR PLANTING TREES OR REMOVING HERBACEOUS PLANTS OR SHRUBS:

1. Hazard Placement: No tree, shrub or herbaceous plant shall be planted, placed or allowed to remain in a place which the City Forester determines causes a traffic hazard.
2. Boulevard Planting: Trees, herbaceous plants or shrubs must be located within the first three feet (3') of the boulevard, measured from the property line and shall be consistent with the Comprehensive City Tree Plan and not in conflict with public plantings based on the judgment of the City Forester. Planting within the boulevard or upon other public property owned by the City of Wabasha will be by permit only.
3. Spacing/Placement: Placement of trees, herbaceous plants or shrubs must be consistent with Sections 1220.06 through 1220.08 and the regulations listed in the Comprehensive Tree Plan.
4. Abuse or Mutilation: No person shall on public spaces and right of way:
 1. Damage, cut, remove, transplant, burn, carve, kill or injure trees without authorization.
 2. Trim, prune, remove, spray or otherwise treat trees without authorization.
 3. Attach any rope, wire, advertising poster, or other contrivance to any tree.
 4. Cause or permit any wire charged with electricity or any gaseous liquid or solid substance to come in contact with trees which are located on, or extend over, any public street, boulevard, park or other public place without a permit.
5. Permits:
 1. No person shall plant, maintain, prune, or remove trees or shrubs on a public boulevard without first obtaining a permit from the City Forester.
 2. The following provisions apply to the issuance of permits for planting trees or herbaceous plants and shrubs on a public boulevard:
 1. Application Data: The application required under this Section shall state the number of trees to be planted, the location, size and specific species of each tree or plant.
 2. Standards for Issuance: A permit shall be issued by the City Forester only after the application has been determined to be in compliance with the Comprehensive Tree Plan and the requirements of this Section and related sections.
 3. Replacement: As a condition to the granting of a tree removal permit, the City Forester may require the applicant to relocate or replace trees consistent with the Comprehensive Tree Plan.
 4. Bond Requirements: A compliance bond or cash escrow may be required in an amount to be determined by the City Forester conditioned upon satisfactory compliance with the terms of the permit.
 5. Permit Denial: If a tree planting or removal permit is denied, the reason(s) for denial shall be set forth in writing and given to the applicant.
 6. Denial Appeal: Any applicant adversely affected by the decision may appeal to the City Tree Board and, finally, to the City Council.
6. Areas Not Applicable: The provisions of subsection D above shall not apply to:
 1. The removal of trees on public easements/rights of way, conducted by, or on behalf of, a Federal, State, County, Municipal or other governmental agency in pursuance of its lawful activities or functions in construction of improvements.
 2. The removal of any tree by a public utility when such tree has the reasonable potential of endangering the facility's operation by the utility.

1220.07: DUTIES OF PRIVATE OWNERS:

It shall be the duty of any person owning private property to comply with the following:

1. Planting on Private Property: No person shall plant or allow to be planted on any privately owned property any tree listed on the City tree plan as prohibited.
2. Acceptable Plant Materials: All plant materials shall not have characteristics detrimental to the public welfare such as susceptibility to disease and wind damage or a tendency to interfere with utilities or public easements or rights of way.
3. Prohibited Obstructions:
 1. Obstructing View: No tree or herbaceous plant or shrub shall be planted or allowed to grow so as to obstruct the view of any vehicular traffic on streets or pathways or pedestrians on pathways.
 2. Utilities: No trees may be planted under or within ten (10') level feet of any overhead utility wire or over or within ten (10') lateral feet of any underground water line.
4. Trimming of Trees: Private property trees must be trimmed so as not to cause a hazard to persons or property on abutting property. All trees shall be pruned to sufficient height to allow free passage of pedestrians and vehicular traffic: nine feet (9') over sidewalks and sixteen feet (16') over streets.
5. Tree Inspection: The City Forester may enter on any private lands which may harbor diseased or dangerous trees as listed in the official Comprehensive Tree Plan to inspect trees located on such premises.

6. Removal of Diseased or Dangerous Trees: Diseased and/or insect- ridden trees, dead or injured trees deemed to be a health or safety hazard by the City Forester must be treated or removed so as not to constitute a health or safety hazard to the public or other trees or plants in the City.

7. Storm-Damaged Trees: Storm damaged trees within City Right-Of-Way will be removed by the City. Removal of stumps will be the responsibility of the adjacent property owner.

8. Stockpiling and Storage of Elm Logs: No person shall stockpile or store elm logs with the bark intact without first having obtained a permit to do so. The City Forester may issue permits, upon proper application, for the stockpiling or storage of such logs only between September 15 and April 1 of the following year and only at locations which are specified in the permit.

9. Abatement of Dutch Elm Disease: The City Forester shall cause the infected tree or wood to be removed or otherwise effectively treated so as to destroy and prevent, as fully as possible, the spread of Dutch elm disease fungus and elm bark beetles. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and plans as may be designated by the City Forester.

1220.08: ORDER PROCEDURE:

When the City Forester determines that it is necessary to order the trimming, treatment or removal of trees or plants as authorized in subsection 1220.07, a written order to correct the condition shall be served.

1. Notice Format:

Dutch elm disease/oak wilt disease (or other prohibited or dangerous trees, as listed in the City tree plan) exist on these premises: _____(legal address)_____ and all trees marked with a designated symbol must be removed by _____(date)_____.

BY ORDER OF THE CITY FORESTER

2. Removal Date: The date inserted in the notice in subsection 1220.08A shall be twenty two (22) days after the notice is mailed.

3. Appeal: A person receiving said notice may, within five (5) working days of the postmark date of said notice, file an appeal with the City. The appeal will be heard by the City Tree Board and forwarded to the City Council for action within twenty one (21) calendar days following the appeal of said notice.

4. Summary Removal of Diseased Trees: In the event the trees covered in said notice are not removed, destroyed and/or treated, as provided in subsections 1220.08A through C, within ten (10) calendar days following the denial on an appeal as set forth in subsection 1220.08C, the City Forester shall cause said tree to be summarily removed, destroyed and/or treated and shall take any other action necessary to prevent the spread of the disease or danger to the public.

5. Under emergency situations, where delay may cause an unreasonable amount of risk to the health, welfare, or safety of the people of the city, the City Forester may cause necessary action to be taken to private trees without prior notification to the property owner.

6. Cost Responsibility: Any costs of inspecting, removing or treating trees, including any legal expense, shall be itemized and mailed to the owner at the address shown in the records of the County Auditor. In the event said itemized bill is not paid within thirty (30) days, the amount of said costs, plus interest, shall be certified to the proper County officials as a special assessment and collected with the next succeeding five (5) years real estate taxes as provided for in Minnesota Statute sections 18.023 and 429.101.

Street Superintendent Tony Johnson addressed the council and explained that due to the storms in 2010 and the trees that had fallen in the city ROW, the city spent approximately \$600-\$700 on stump removal last year. The city also had to hire contractors to remove trees in city ROW at considerable cost to the city.

Council discussion included responsibility of tree/stump removal in the ROW; cost of stump removal; cost of tree removal.

After all discussion, Council Members Bricher and Hiers moved to approve the modification of City Code Chapter XII Misdemeanors Section 1220 Forestation Ordinance Subsection 1220.07 Duties of Private Owners as proposed above. Adopted Unanimously.

9.7 Change Public Improvement Assessment Policy

Mayor Hall brought forward for discussion the Local Improvement Policy to consider changes regarding the city's current policy regarding assessments for utilities and streets. A public hearing has been set for the proposed street and utilities project on March 22, 2011 and notice will be sent out to affected property owners prior to the hearing. The letter needs to contain the estimated project costs and estimated assessment; therefore staff is requesting council consider amending the current policy. The city's current policy is 80% for streets and 100% for utilities. Based upon discussion with Mr. Bubany and Mr. Springer it is staffs recommendation that council not go below a 50/50 policy which would be a 50% reduction in utilities and a 30% reduction in streets. Council members were provided with a copy of the current Local improvement Policy; Assessment Study by Springer Appraisal Associates, Inc and report from Mike Bubany.

Council discussion included the following:

1. bonding issues – requires assessing at least 20% by state law

2. city's ability to recoup the cost of the project
3. what citizens can afford
4. assessing prior projects was brought forward, current policy does not address. City Attorney, Peter Ekstrand stated that council would need to go thru the assessment process if they wanted to assess prior projects.

After all discussion Council Members Meurer and Bricher moved to approve modifications to the Public Improvement Policy with a policy of 30% for streets and 40% for utilities and to change the vote requirement in Section 2, Subd 2 from 5/7 to 4/5 to be in line with state law.

Adopted with the following vote: Ayes: Hiers, Bricher, Meurer, Gallenberger, Friedmeyer, Mayor Hall
Nays: Schmidt

Having no other business, Council Members Meurer and Hiers moved to adjourn at 9:35 pm. Adopted Unanimously.

Patty Heraty, Administrative Assistant