



**CITY COUNCIL WORK SESSION
MEETING AGENDA**

**April 6, 2020
5:30pm – 6:30pm**

Please note that the Council work session meetings will be held via teleconferencing until further notice due to the COVID-19 pandemic. To connect to the Minnetrista City Council meeting, call 312-626-6799, and enter the following meeting code number: 820 055 987

- 1) Call to Order**
- 2) Nuisance Ordinance**
- 3) Boulevard and ROW Tree Policy**
- 4) Storm Damage and Tree Debris Policy**
- 5) Adjourn**

CITY OF MINNETRISTA**STAFF REPORT ITEM**



Subject: Nuisance Ordinance

Prepared By: Michael Barone, City Administrator

Meeting Date: April 6, 2020

Information

The topic of a Nuisance Ordinance is not a new one, as we have had two or three discussions at Council Work Sessions about this topic over the past few years.

All of us can probably recognize a nuisance property when we see it, but the issue is, what does the City Council have a desire to do? Minnetrista is a rural community that is becoming more and more urbanized as we move forward. The objections by residents to nuisance properties have started to increase over the past few years as the city continues to grow.

The struggle in trying to do abatement of nuisance properties is two-fold. When the Police get involved, it's generally about having multiple vehicles being stored on a particular property, which are low-level criminal violations. The Police can determine if vehicles have current and valid vehicle license registrations, but after that, there isn't too much that can be done. If the vehicle gets its tabs updated, and possible fines paid, the property owner is off the hook, so to speak, with no real change in the appearance of the property.

A much more time consuming and expensive remedy would be a civil remedy. Back in January 2018, Assistant City Attorney Andrew Biggerstaff distributed some information to the City Council discussing a number of options or remedies, and an estimated cost for those options or remedies, in order to abate nuisance properties in our city. That document is attached with this memorandum.

Also included with the work session memorandum is an update by the City of Medina to their nuisance ordinance done in November 2015. Ron Batty is the city attorney for Medina, so I'm sure he was involved in the creation of that document.

Bottom line for all of this is - - what does the City Council want to do and how committed is the Council, from both a time commitment and financial perspective, willing to do what is necessary to tackle nuisance properties in Minnetrista. City staff will spend the time, if so instructed, to provide Council with options to try to remedy nuisance properties.

Mission Statement:

The City of Minnetrista will deliver quality services in a cost effective and innovative manner and provide opportunities for a high quality of life while protecting natural resources and maintaining a rural character.

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**DRAFT
MEMORANDUM**

To: Honorable Mayor and City Council
Mike Barone, city administrator

From: Andrew Biggerstaff, assistant city attorney

Date: January 11, 2018

Re: Code Compliance/Enforcement Options

This memorandum seeks to outline potential options that the Minnetrista City Council (the “City”) may want to consider with respect to those properties which are not compliant with the City’s code. The City has recently received complaints about non-compliance related to at least one property located within the City. While some of these options may be available to address that property, these options may also be generally available for addressing issues raised by other properties as well.

Questions have been raised about the prospect of the City adopting an ordinance to address problem properties. Generally speaking, the City already has ordinances which prohibit certain types of nuisance activity. The real question relates to how the City can enforce those ordinances. That enforcement question will be equally prevalent with respect to any new ordinances that the City seeks to craft in response to specific concerns.

It is also worth a general comment that code compliance issues are regularly addressed by city councils throughout Minnesota. Typically, the less urbanized a locale, the more prevalent issues with code compliance and enforcement become. Each code enforcement action is a unique undertaking, and the preferred approach will largely be driven by specific facts related to the ongoing activity or violation. At the heart of code compliance activity is the right of property owners to use their property in a reasonable manner, and because of that, there is no general panacea which will address every possible issue that may arise.

What is included below highlights several civil enforcement options that the City may choose to consider. Also included are estimates related to the potential cost, in legal fees, for undertaking such efforts. Again, because each situation is unique, these estimates may differ significantly, depending on a number of factors. This memorandum also does not seek to address the criminal options which may be available to the City. While each violation of the code is typically considered a misdemeanor, prosecution of such violations is often burdensome and reserved for the most egregious cases.

1. Nuisance Abatement Proceeding

a) *Public Nuisance.* Public nuisances are those situations which affect a considerable number of people to the extent that they violate public rights and produce a common or general injury. State law provides a process for seeking an injunction and/or abatement of public nuisances. The City has also adopted an ordinance which prohibits public nuisances, and which offers abatement authority.¹ Additionally, many city ordinances create criminal liability for maintaining public nuisances. However, given the higher threshold for proving criminal offenses and the potential remedy if a public nuisance is proved, such provisions are not regularly invoked when the desire is to have the problem cleaned up.

Under state law, the City is able to seek an injunction which requires the property owner to cease the hazardous condition. State law defines what constitutes a public nuisance.² Such definition includes reference to things that are made illegal by city ordinance, which creates a fairly broad net that the City can use. However, caution must be exercised in defining the nuisance because it must fit within the statutory criteria or risk the injunction being denied by a court.

Under the City's code, there are also provisions which address the City's ability to declare and abate a public nuisance. However, on initial review, it is unclear how successful an action brought under these provisions may be. Should the City desire to undertake this course of action, one of the first steps would be to determine the suitability of the current ordinance to achieve the City's desired goal of abating a particular nuisance.

Seeking an injunction or court-ordered abatement for a public nuisance is similar to the other options outlined herein. Again, it requires a formal court process and can vary dramatically in terms of the amount of time and effort that the City will need to invest, depending largely on whether the property owner disagrees with the City's findings. The costs associated with the process mirror those of a hazardous building proceeding, and like those proceedings, the City also runs the risk that a court may not agree that a certain situation rises to the level of a public nuisance, and therefore bar the City from taking action to alleviate the situation.

Potential Costs – \$2,500-\$5,000 without contest or > \$35,000 or more if a full trial is required.

b) *Private Nuisance.* Private nuisances are those which affect or cause injury only to a small, isolated class of people. Typically, the City does not get involved in the abatement of such nuisances, and instead it is the injured party who brings a private cause of action seeking

¹ Minnetrista City Code, Section 1510.01 – 1501.1510.11

² Minn. Stat § 617.81, subd. 2.

abatement. This right is available to a property owner independent of whether the City undertakes any enforcement action.

Potential Costs – None to the City as this would entail a private cause of action brought by the complaining neighbor(s).

2. Hazardous Building Proceeding

A second option for dealing with some problem properties may be through utilization of the Hazardous Building Act, Minnesota Statutes, chapter 463. That chapter of law provides a process under which the City can deem a property or building to be hazardous and can pursue an abatement proceeding to have it cleaned up.

Under state law, a hazardous building is defined as “any building or property, which because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment, constitutes a fire hazard or a hazard to public safety or health.” Because this is defined in state law, a property would need to meet this definition to be eligible for abatement under the hazardous building section. Establishing these conditions as a matter of law is critical to pursuing this type of action.

The process for abating a hazardous property under state law will vary greatly depending on the circumstances of each particular case. To institute a hazardous building proceeding, the City council would adopt an abatement order which would require the owner either to abate the nuisance or contest the City’s determination. If the property owner contests, the process would move forward similar to any other lawsuit, potentially culminating in a trial.

Some hazardous building proceedings are handled through default proceedings. In those instances, no one appears on behalf of the property owner to contest the City’s findings. If that is the case, the City can pursue a court order allowing for abatement with minimal effort, but the City must still convince the court that a hazardous building or property process is appropriate. However, if the owner challenges the City’s actions, time and expense can increase dramatically.

If successful through this process, the City can abate the nuisance and recover its costs, including potentially recovering any attorneys’ fees that the City incurs in bringing the action.

The costs associated with a hazardous building action can vary dramatically. Costs for carrying out a hazardous building proceeding through a default scenario may fall in the \$2,500-\$5,000 range, while costs for a full trial on a hazardous building can rise significantly to \$35,000 or more. Of course, some or all of those costs may be recoverable, but there is no guarantee that the City will certainly recover all of its legal fees in bringing such an action.

Potential Costs - \$2,500-\$5,000 without contest or > \$35,000 if a full trial is required.

3. Enforcement of Zoning Code. The City also retains its authority to enforce any provisions of the zoning code which are being violated. One of the more common scenarios where this authority may be invoked includes actions related to the use of property in a manner not

permitted by the zoning code, such as the operation of a business in a residential area, unless otherwise allowed by the property owner obtaining the necessary land use approvals (i.e., CUP). Additionally, these actions may be used to seek the removal of non-permitted structures, such as an excessively large structure, or a structure which has been located within an applicable setback.³ The City may do this through a cease-and-desist letter, injunctive legal relief such as a restraining order, or criminal prosecution. Additionally, to the extent that the property owner has any conditional use permits or other revocable land-use permits or licenses, the City may also take action to revoke those permits should it find the owner out of compliance with their terms.

Potential Costs – Difficult to estimate but, like other options mentioned, would generally be proportionate to the resistance the City meets in its enforcement efforts.

4. Towing Authority

The City also has certain statutory authority to tow vehicles. Under state law, the three types of vehicles which may be towed are:

(1) junk vehicles, defined as vehicles which are three years old or older and extensively damaged, to the point that they are apparently inoperable, without current registration, and where the approximate fair market value is equal to only that of the scrap in the vehicle;

(2) abandoned vehicles, defined as a motor vehicle which has remained illegally for a certain period of time, as determined by statute, on private or public property, and which lacks vital components or is inoperable such that it has no substantial potential for further use consistent with its usual functions; and

(3) unauthorized vehicles, defined as a vehicle that is subject to removal and impoundment pursuant to state law.⁴

Should a particular vehicle fit within any of these definitions, the statute provides a process under which the City may tow, impound, and potentially dispose of the vehicle.

Potential Costs – Difficult to anticipate. While the primary work would likely be undertaken by the City's police department, it would be necessary to ensure that the process was carried out in a manner that is compliant with the statutory authorization.

5. Eminent Domain

Under very limited circumstances, a city may exercise its eminent domain authority to condemn a problem property. Under this process, the City would need to pay the owner "reasonable compensation" for the property and it would need to be taken for a public use. In the code compliance area, the City would not be taking the property for a public use but instead would be

³ These examples are representative. Typically, any violation of the zoning code may potentially be remediated by seeking judicial action deeming the particular circumstance a violation and ordering it to be corrected.

⁴ These are general summaries of the definitions for each type of vehicle. The exact definitions can be found in state statute. See Minn. Stat. § 168B.011, subs. 2, 3, and 4.

responding to known or suspected code violations. Invoking eminent domain in such a manner may raise issues with the public-use doctrine. Condemnation also requires that the City Council find the property to be a public nuisance, as defined in state law.⁵

It is typical for there to be disagreement over what constitutes “reasonable compensation” in condemnation proceedings. Condemnation also requires a formal court proceeding. Because of this, there is a potential risk that the process becomes drawn out and the City incurs additional costs. Unlike a hazardous building proceeding, the City would not be entitled to reimbursement for its legal costs associated with such an action.

Unless the City proposes to acquire the subject property for a public use, condemnation is likely not available.

Potential Costs – Changes in state law which have occurred since roughly 2008/2009 have caused the costs to condemning authorities to rise significantly. Potential costs in this case cannot be estimated at this time but may involve payment of the landowner’s attorneys’ fees as well as compensation for the taking.

6. Other Agency Involvement

State law also provides a mechanism whereby a board of health can take actions to remove or abate certain hazard conditions. However, because most cities do not themselves have a board of health, it is often up to the county to step in and take action. The City may wish to contact the county in an effort to involve the county in the matter. Of course, it will be left entirely to the county to determine whether or not it believes that action is necessary and appropriate.

Potential Costs – Minimal to the City as this would be driven largely by county action.

7. Conclusion

Many of the options available to the City involve the potential for formal court proceedings. While many of the avenues described herein follow similar processes, they vary slightly. This memorandum has discussed these options in general terms and without detailed knowledge of the situation at hand. A review of the specifics of this situation would identify the best potential options for the City to consider, should further action be deemed appropriate. It should also be understood that the rough cost estimates offered are for legal and related expenses only and do not include the actual cost of the abatement (clean up).

⁵ Minn. Stat. § 609.74.

CHAPTER 3**POLICE REGULATIONS****330. NUISANCE**

Section 330.01. Public Nuisance Defined. Whoever by an act or failure to perform a legal duty intentionally does any of the following is guilty of maintaining a public nuisance, which is a misdemeanor:

Subd. 1. Maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public; or

Subd. 2. Interferes with, obstructs, or renders dangerous for passage, in public streets, highway or right-of-way, or waters used by the public; or

Subd. 3. Is guilty of any other act or omission declared by law or this ordinance to be a public nuisance, whether or not any sentence is specifically provided therefore; or

Subd. 4. Permits real property under his or her control to be used to maintain a public nuisance, or rents the same, knowing it will be so used.

Section 330.03. Definitions. The following words, when used in this ordinance, shall have the meanings ascribed to them:

Subd. 1. Garbage. All putrescible animal, vegetable or other matter, including the cans, containers, or wrappers wasted along with such materials.

Subd. 2. Rubbish. All non-putrescible wastes such as wood waste, tree trimmings, shavings, paper, rags, clothing, soil, plaster, glass, ashes, tin cans and other metal products, plastics and any other debris, whether combustible or non-combustible.

Section 330.05. Additional Public Nuisances Defined. It is hereby declared to be a public nuisance to permit, maintain, cause, deposit, or harbor any of the following:

Subd. 1. Diseased animals, fish or fowl, wild or domestic, whether confined or running at large.

Subd. 2. Carcasses of animals, fish or fowl, wild or domestic, not buried or destroyed within 24 hours after death.

Subd. 3. Garbage not stored in rodent free and fly-tight containers, or garbage stored so as to emit foul and disagreeable odors, or garbage stored so as to constitute a hazard to public health.

Subd. 4. Accumulations of rubbish as defined herein.

Subd. 5. The dumping of any effluent, garbage, rubbish, wastewater, or other noxious substance upon public or private property.

Subd. 6. Any open well, pit, excavation, structure, barrier or other obstruction which endangers public health, safety or welfare.

Subd. 7. The pollution of any public or private well or cistern, any public stream, lake, canal, or body of water by effluent, garbage, rubbish or other noxious substance.

Subd. 8. Any noxious weeds, or any other vegetation which endangers public health, safety or welfare, or which is contraband within the meaning of State or Federal laws.

Subd. 9. The emitting or production of dense smoke, noxious fumes, gases, soot, cinders or sparks in unreasonable quantities.

Subd. 10. The public exposure of persons having a contagious disease or condition which endangers public health, safety or welfare.

Subd. 11. Accumulation of disused furniture, appliances, machinery, automobiles and parts thereof, which may become a harborage for rats, snakes or vermin, or which may be conducive to fire, or which endangers the health, safety or welfare of the public.

Subd. 12. The placing, setting or maintaining of any steel jawed, leg hold trap within any area posted by the city for no trapping or trapping in violation of section 320.23 of city code.

Subd. 13. Accumulations of animal waste, litter or manure which pose a risk of pollution of ground or surface waters or which endanger public health, safety or welfare.

Subd. 14. Any motor vehicle which is not currently licensed in Minnesota or any other state, or which is not in operable condition, or which is partially dismantled, or which is used for the sale of parts, or as a source of repair or replacement parts for other vehicles, or which is kept for scrapping or dismantling or salvage of any kind, or any abandoned or junk vehicle as those terms are defined in Minn. Stat. Section 168B.011.

Subd. 15. Maintenance of grass or weeds on a property at a height of more than eight inches, except:

- (a) on those portions of a property actively farmed or used for agricultural purposes;
- (b) on residential properties one acre or larger in size and located in the AG, RR, RR-UR, RR1, or RR2 zoning districts, except that those portions of such properties that are maintained as lawn shall be kept in compliance with the above standard;

(c) on residential properties, on slopes in excess of 3:1; wetlands; wetland buffers; areas maintained in prairie or other native vegetation; or areas subject to a conservation or similar easement; and

(d) publicly owned parks, trails or nature areas.

Subd. 16. Barking and other animal noises that are unreasonable and plainly audible from within nearby property:

(a) after 7 a.m. and before 10 p.m. for a continuous period greater than 3 minutes, more than once per hour;

(b) after 10 p.m. and before 7 a.m. for a continuous period greater than 2 minutes, more than once per hour; or

(c) of such magnitude, character, or frequency that is determined to be a nuisance.

Subd. 17. The keeping of any combination of animals of any age kept in such numbers and under such conditions which unreasonably annoy, injure, or endanger the health, safety, comfort, repose or welfare of the public or of said animals.

Subd.18. Anything else declared to be a nuisance by Minnesota statute or by the Medina city code.

Section 330.07. Abatement of Abandoned and Junk Vehicles. The chief of police or his or her designee may take into custody and impound any vehicle described in Section 330.05, subd. 14 in the manner authorized under Minnesota Statutes, Chapter 168B.

Section 330.09. Abatement of Other Nuisances.

Subd. 1. Procedure. Except with regard to the abatement of vehicles described in Section 330.05, subd. 14, whenever a designated city official determines that a public nuisance is being maintained or exists on a property in the city, the official shall notify in writing the owner of record or occupant of the property of such fact and order that the nuisance be terminated or abated. The notice of violation shall specify the steps to be taken to abate the nuisance and the time within which the nuisance is to be abated. If the notice of violation is not complied with within the time specified, the official shall report that fact forthwith to the city council. Thereafter, the city council may, after notice to the owner or occupant and an opportunity to be heard, determine that the condition identified in the notice of violation is a nuisance and further order that if the nuisance is not abated within the time prescribed by the city council, the nuisance be abated by the city.

Subd. 2. Notice. Written notice of the violation; notice of the time, date, place, and subject of any hearing before the city council; and notice of the city council order shall be served by a peace officer or designated official on the owner of record or occupant of the property either

in person or by certified or registered mail. If the property is not occupied, the owner of record is unknown, or if the owner of record or occupant refuses to accept notice, notice of the violation shall be served by posting it on the property.

Subd. 3. Emergency procedure; summary enforcement. In cases of emergency, where delay in abatement required to complete the procedure and notice requirements as set forth in subdivisions 1 and 2 of this section will permit a continuing nuisance to unreasonably endanger public health, safety, or welfare, the city council may order summary enforcement and abatement of the nuisance. To proceed with summary enforcement, the designated official shall determine that a public nuisance exists or is being maintained on property in the city and that delay in abatement will unreasonably endanger public health, safety, or welfare. The designated official shall notify in writing the occupant or owner of the property of the nature of the nuisance, and that public health, safety, or welfare will be unreasonably endangered by a delay in abatement required to complete the procedure set forth in subdivision 1 of this section and may order that the nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the city council may order summary enforcement and abatement of the nuisance.

Subd. 4. Immediate abatement. Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition that poses an imminent and serious hazard to human life or safety.

Subd. 5. Judicial remedy. Nothing in this section shall prevent the city from seeking a judicial remedy in lieu of an administrative remedy.

Section 330.11. Recovery of Cost.

Subd. 1. Personal liability. The owner of the property on which a nuisance has been abated by the city, or a person who has caused a public nuisance on property not owned by that person, shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the city clerk or other city official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the city clerk.

Subd. 2. Assessment. After notice and hearing as provided in Minn. Stat. 429.061, as it may be amended from time to time, if the nuisance is a public health or safety hazard on private property, the accumulation of snow and ice on public sidewalks, the growth of weeds on private property or outside the traveled portion of the streets, or unsound or insect-infected trees, the city clerk shall, on or before September 1 next following abatement of the nuisance, list the total unpaid charges along with all other such charges as well as other charges for current services to be assessed under Minn. Stat. 429.101 against each separate lot or parcel to which the charges are attributable. The city council may then spread the charges against the property under that statute and any other pertinent statutes for certification to the county auditor and collection along with current taxes the following year or in annual installments, not exceeding 10, as the city council may determine in each case.

Amendment History of this Section

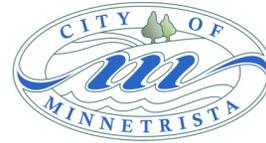
Amended April 15, 1986 (Ord. 229). Amended Subsection 330.25 regarding removal of inoperable or unlicensed motor vehicles.

Amended July 7, 2009 (Ord. 464). Amended Section 330 Police Regulations.

Amended July 19, 2011 (Ord. 506). Added Subd. 16 & 17 to Section 330.05 regarding animal noises and numbers. Deleting Limitation on Keeping of Animals from 330 and moving it to 343.

Amended November 17, 2015 (Ord. 592). Amended Sections 330.05 and 330.07.

CITY OF MINNETRISTA



WORK SESSION DISCUSSION ITEM

Subject: Boulevard/Right-Of-Way Tree Policy
Tree Replacement & Environmental Enhancement Fund

Prepared By: David Abel, Community Development Director

Meeting Date: April 6, 2020

Overview / Background:

As a requirement of a subdivision approval, the city may require that the subdivider plant shade trees (boulevard trees) on the property of the subdivision. Such trees are to be planted within five feet of the right-of-way of the road or roads within and abutting the subdivision, or, at the discretion of the city, within the right-of-way of such roads. One tree will be planted for every 40 feet of frontage along each road unless the city council, upon recommendation of the city engineer, will grant a waiver.

The city accepts the shade trees as part of the public improvements within each new subdivision. Historically, the city has not replaced these boulevard trees after acceptance if they were to perish. Public Works would remove a dead tree but not replace it. It has been up to the home owner or HOA to replace said tree. Public Works does trim/prune boulevard trees within the right-of-way for public safety purposes.

Discussion:

This topic has been brought up by the city council and added to the work session schedule. City staff reached out to neighboring cities and provided their responses below as part of this agenda item. Also included in your packet is city code section 510.07 Subd. 10 (e) which talks about the Tree Replacement and Environmental Enhancement Fund.

Mission Statement:

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City	Do They Replace Trees in ROW?	If Yes, How is it Funded?
Chanhassen	Yes: As part of street project, replaced at 1:1 ratio. In case of poor health at the adjacent homeowner's request if it meets City criteria (spacing, utility conflicts, etc.) No: If a safety hazard, not replaced.	Street projects funded through levies, franchise fees, resident assessments, etc. Forestry Budget, which is funded through stormwater fees.
Excelsior	Yes: Try and Replace in Same Location. Sometimes Moved to Nearby Property.	General Fund.
Medina	No: Discourage Planting in ROW. Exception is Uptown Hamel, their "Downtown Area".	Reforestation Fund, which is funded through fees in lieu of replacement. Otherwise, General Fund.
Minnnetonka		
Mound	Yes: If part of a public project. No: If poor health or end of life.	Funded through the specific project.
Plymouth	No: Do not allow planting in ROW. There is a pre-emptive removal program which does allow the adjacent property owner to pick a replacement tree in return for lessening our ROW ash liability/population.	Tree Preservation restitution and/or fines from new developments. At some point the funding will dry up when the City is fully developed. The replacement trees are installed in the ROW only if they want one. ~40% request a new tree.
St. Bonifacius	No: Do not allow planting in ROW due to possible root issues with utility lines.	N/A.
Waconia	Yes: For boulevard tree removals, plan replacement the same year or the year after. We typically provide species for the Homeowner to choose from. Started a Tree Nursery in 2014 on some Park Open Space and spaded our first trees from that inventory Fall 2019. For this program, typically purchase seed stock from the County Soil and Water.	Balance funding from the Street and Parks Departments.
Wayzata	Yes: Each spring, the City purchases bare root trees, and temporarily stores them in a large irrigated planter until ready to install.	Specific fund in the CIP for tree removal, maintenance, and replacement.

510.07 Subd. 10 (e) Alternatives to Tree Replacement:

(1) In cases in which it can be demonstrated that a property cannot accommodate additional trees on site and replacement trees are required, the city council, at its sole discretion, may also allow an applicant to contribute \$100.00 per Caliper Inch city's Tree Replacement and Environmental Enhancement Fund.

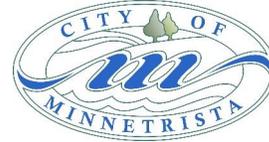
(2) In the case of unplanned tree removal, the City Planner, or his or her designees, may allow an applicant to contribute \$100.00 per caliper inch of unplanned tree removal to the City's Tree Replacement and Environmental Enhancement Fund.

(3) The City may use the funds paid to the Tree Replacement and Environmental Enhancement Fund for the following activities:

- i. Planting additional trees on public property;
- ii. Conducting environmental enhancement projects on public or private property. Projects include:
 - a. Invasive species eradication and native planting restoration;
 - b. Projects associated with the maintenance and monitoring of the city's conservation easements;
 - c. Other city-sponsored/initiated activities regarding tree planting or environmental enhancements;
 - d. Other environmental enhancements, as approved by City Council.

CITY OF MINNETRISTA

WORK SESSION DISCUSSION ITEM



Subject: Storm Damage and Tree Debris policy

Prepared By: Michael Barone, City Administrator
Gary Peters, PW Superintendent

Meeting Date: April 6, 2020

Information

Last year, we had a small tornado go through Minnetrista that produced some significant tree damage in a fairly small area, but did impact some Minnetrista residents to a great extent.

Public Works helped some residents with the clean-up of their downed trees, but as we worked our way through dealing with the storm clean-up, we realized the City did not have a formal storm damage and tree debris policy to fall back on for direction on how to handle this type of event. I believe this was confusing for both the city and its residents. After most of the storm clean-up took place last year, we discussed at a Council meeting about bringing back a storm damage and tree debris policy.

The first step tonight is to find out what a potential policy for Minnetrista would look like. We have provided some information so Council can see what other communities do. Attached are some ideas from other municipalities, both in Minnesota and other places in the upper Midwest. We do have some information from some of the surrounding cities, but most of the policy information is from larger cities.

Staff Recommendations

After speaking with Paul Falls and Gary Peters, our recommendation is to have these three positions (Police Chief-who serves as Emergency Management Director; Public Works Superintendent, and City Administrator) evaluate the extent of the storm damage, on a case-by-case basis, to decide what, if any, assistance to provide to residents. Variables, will include size of the storm, extent of the damage throughout the city, and other factors, such as whether or not city buildings were damaged and how operational the city is, etc. Public Works would remove tree debris from public streets, public ROWs, and city-owned park land. We could open up the Public Works yard for residents wanting to drop off their tree debris only for limited days/hours after the storm.

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Summary from Other Cities

Bloomington, MN

City removes tree debris from city streets and public property only; homeowners are 100% responsible for storm damage to their own property.

Coon Rapids, MN

Same as Bloomington, MN

Janesville, WI

Same as Bloomington, MN and Coon Rapids, MN

Cedar Rapids, IA

Similar to three cities listed above, but uses a Q & A format to answer commonly asked questions

Ames, IA

City staff/leaders determine extent of damage to city, or parts of the city, and based on percentage of damaged area, helps dictate what level of city response will be in helping residents with clean up

Maplewood, MO

Staff makes determination on how much help to provide city residents based on damage seen in city after a storm. City also provided information on insurance coverages for homeowners.

Roseville, MN

Stated that storm damage on private property is 100% the responsibility of the homeowner, but also discussed city trimming boulevard trees, and why. (We have had in the past homeowners complain about city crews trimming trees in the right of way, so this topic could be something to include in our overall policy.)

Minneapolis, MN

Article was from StarTribune, and mostly covered who's responsible for damage (tree landing on car example), and also discusses car insurance coverage.

Albert Lea, MN

For big storms, give residents, with specific dates/times, the option to bring tree debris from storms to a Public Works drop-off site. Fees waived during specific dates/times based on date of storm.

Cities Near Minnetrista

Chanhassen, MN

No policy in place

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Waconia, MN

No policy in place

Mound, MN

No policy in place. In major storms, the City tries to assist where they can.

Victoria, MN

No policy in place. Remove debris from public streets. Have provided residents the ability to drop off storm debris to their yard waste site, but didn't in 2019 (no reason given for 2019 closure)

Watertown, MN

No policy in place

Mayer, MN

No policy in place

Eden Prairie, MN

No formal policy. City picks up tree debris on city streets, ROW's and Parks. Open up yard waste site for residents for specified dates/times to drop off tree debris only, not other yard waste.

Recommended City Council Action: As the City Council can see in the information provided, there are lots of options in creating a storm damage and tree debris policy. Staff has provided a recommendation, but we want to hear Council input on what to include and not include in a policy. Once direction is given, staff can put together and bring back a policy for further action.

Does Recommended Action meet City Mission Statement? Yes No

Does Recommended Action meet City Goals/Priorities? Yes No

Explain:

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City of Bloomington, MN

Storm cleanup information for residents

After a storm, the City's Public Works crew survey the damage and commence cleanup operations on city streets and public property. After opening streets to traffic, crews work to clear streets of debris. Unless the City Council declares a City emergency, City crews do not pick up and haul tree material from the curb. Property owners are responsible for cleanup of privately-owned trees.

Your trash hauler may pick up bundled branches not exceeding 4 feet in length. You will need to contact your individual hauler regarding size of branches and any special arrangements for pick up.

Property owners may choose to remove their own tree damage or hire a service. If you choose to hire a private tree service, remember:

- Get more than one cost estimate.
- Ask for certificates of insurance showing coverage for property damage, personal liability and worker's compensation.
- Clearly define what you expect the contractor to do. For example, removing limbs and hauling the limb to a disposal site or chipping the limb and hauling the chips away.

Contact Information

- Maintenance Division
[952-563-8760](tel:952-563-8760)
maintenance@BloomingtonMN.gov

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City of Coon Rapids, MN Storm Damage Clean-Up Announcement 6-12-17

Storms went through Coon Rapids in the morning hours Sunday, June 11 causing some tree damage and branches down in some areas of the city.

City crews are out cleaning up debris on City streets and on City-owned property. Crews have also been out cleaning storm drains.

Residents are responsible for cleaning up and removing tree damage and debris on private property. The City will not be picking up branches or storm debris placed by the street.

Homeowner options for storm clean up:

1) Check with your garbage hauler to see what their policies are for hauling away tree branches and debris. Haulers often do this as part of yard waste service which is available for an additional fee.

2) Take your tree and other debris to the Anoka County Compost Site, located at 13285 Hanson Blvd, Coon Rapids, MN 55448

Hours of Operation:

April - November, weather permitting

Monday - Friday: 10:00am – 7:00pm or sunset

Saturday: 9:00am – 5:00pm

Sunday: Noon – 5:00pm

For additional questions, visit the [Anoka County website](#).

Boulevard Trees

If you have damage to a boulevard tree, call the City Forester at 763-767-6455 and he will help assess the situation on a case-by-case basis.

If you have further questions, please call Coon Rapids Public Works at 763-767-6462

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City of Janesville WI

Storm Cleanup (Public Right-Of-Way)

Overview

During weather events with heavy rains or strong winds, trees, limbs, or other debris may fall into the street or adjacent right-of-way. When this occurs, the Operations Division will clear the storm debris up to the right-of-way line on private property.

Reporting Damage

To report limbs, downed trees, or debris blocking the street or sidewalk after a storm during normal business hours (Monday - Friday, 7 a.m. - 4 p.m.), please call the City Services Center at 755-3110.

During off hours, please report damage to the Police department via the non-emergency number at 757-2244.

For emergency situations where immediate police, fire, or medical response is needed, call 911.

Non-Storm Damage Related Tree Complaints

It is the responsibility of the adjacent property owner to maintain trees in the terrace on and private properties. For more information regarding tree and/or shrub maintenance requirements in the right-of-way or how to submit a complaint, please visit the Tree Trimming & Removal website.

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City of Cedar Rapids, IA

Tree Storm Damage Information

Please be aware that the City does not remove private debris/limbs unless a tree state of emergency has been issued. The City of Cedar Rapids will only issue a tree state of emergency when an area has received extensive damage to public trees. Private debris left on parkways (City right-of-way) will not be removed.

Call our office at 319-286-5747 with questions and to report. Trees blocking streets or roadways and public tree, limbs or debris that needs to be removed

City owned trees (right-of-way/parkway)

Q: What do I do if a right-of-way (City) tree or limb falls on my house or car?

A: Contact your insurance company to get the debris off of your car or home. After the debris is removed from your car or house, contact us and Forestry will remove it. Please take pictures of any damage.

Q: What do I do if right-of-way (City) limb or debris is in my yard?

A: If tree limbs are small put them near the curb for pickup. Call us and Forestry crews will pick up the debris/limbs. It is not necessary to cut the debris up for us. We have machinery that will handle any size of debris.

Q: What if a City tree, limb or debris has fallen into the street?

A: If you are able, please move the limb to the side of the road and contact Forestry during business hours. If the limb is too large to move, contact Forestry during business hours or the Police department after business hours and a crew will be mobilized. The City will first clear the street and then possibly return at a later time to pick up any debris or leftover city limbs.

Q: When will the crew be around to take care of the tree/limb/debris that is down from a city tree?

A: Timing will vary depending on the severity of the storm. In regards to removing debris, streets will be cleared first for emergency vehicle access. After streets are clear, hanging branches and other hazards will be addressed. Depending on the situation, crews may not be able to remove anything other than the debris in the roadway and may need to come back at a later date to complete the work or to remove the tree if necessary.

Private trees

Q: What do I do if my private tree falls or a limb is loose and hanging?

A: As a homeowner, you are responsible for removing private tree debris and limbs on your property. If you cannot remove it yourself, contact a private tree service.

Q: What do I do if a private tree, limb or debris is blocking the alley?

A: City crews will clear alleys but not remove private debris. You need to contact a tree service to take care of removing limbs and debris from private trees. Each situation is

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different; however, it is likely that you will need to address your part of the fallen tree before Forestry will clear the alley.

Q: How do I dispose of my private tree debris and limbs?

A: Put debris and limbs in your yard cart first. The lid must close for it to be picked up and emptied. Then, cut limbs into 3 foot pieces, no larger than 5 inches in diameter, and secure those pieces into bundles no longer than 2 foot in diameter. Bundles cannot weigh more than 40 pounds. Please refer to Solid Waste (319-286-5897) with more questions. You can also haul the debris to the landfill at the A St location (2250 A St SW) or call a tree service to come and dispose of the debris or limbs.

Q: What if my private tree/limb/debris falls in the street?

A: The process is the same as it is for City owned trees, *however*, the City will only clear the street and sidewalk for vehicles and pedestrians. While Forestry will haul away some of the tree debris from the street, it is very likely the remaining debris will be placed on your property. Once streets and walks have been cleared, contact a tree service to remove the remaining tree branches and pick up the debris.

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Storm Damaged Tree Cleanup Policy

City of Ames, IA

In order to be more responsive to citizens' needs after storm damaging trees on private property, the following guidelines will be utilized to establish the City's response.

Damage Evaluation Team

The City Manager, Public Works Director, Operations Manager, and the Grounds Supervisor shall form an evaluation team to review the damage and establish the City's response based on the extent of damage. The evaluation team will also establish appropriate drop-off site(s) for citizens to use. The decision on the City's response shall be made within 24 hours of the end of the storm.

City Response

Full Collection City Wide

1. If the survey by the evaluation team yields tree damage beyond small limbs and twigs that involve 50% of the residential properties in 4 of the 7 maintenance districts, the City will go into full collection throughout Ames. Timing and standards for placement of the damaged trees will be included in the press release detailing the City's response.
2. A free drop-off site(s) will be designated for citizen use.
3. The Volunteer Center will be contacted to coordinate assistance for citizens that need help.
4. The Director of Public Works will declare an emergency and coordinate the burning of debris at the City's drop-off site only.

Full Collection in Limited Area

If a tornado or other isolated event creates a significant amount of tree damage beyond small limbs and twigs that involves 50% of the residential properties in a limited area, the evaluation team can designate an emergency, such that the City will collect the damaged trees in a limited area, not City wide.

Intermediate City Response

1. If the evaluation team determines that 25% of residential properties, in at least one maintenance district, have tree damage beyond small limbs and twigs, the City will designate a free drop-off site for all citizens to use.
2. The Volunteer Center will be contacted to coordinate assistance for those citizens needing help.
3. The Director of Public Works will declare an emergency and coordinate burning of materials collected at the City's drop-off site only.

If the above conditions related to extent of damage don't occur, private sector businesses and the citizens will address the damaged tree removal and disposal needs.

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Storm Damage Pickup Policy Overview

City of Maplewood, Missouri

If there is a citywide severe storm that has caused damage to households throughout the City of Maplewood, city staff may make a determination that storm damage should be picked up by the city. Please note: Damage must be severe and citywide.

Call City Hall at 314-645-3600 to see if the storm damage policy is in effect. If the determination has been made to enact the storm damage policy, the Public Works Department will pick up limbs that can be moved by one person from the yard to the tree lawn (the lawn between the sidewalk and the curb). Please adhere to the following guidelines:

- This pickup is intended for isolated fallen limbs and not fallen trees; disposal of entire trees is not permitted.
- Limbs should not be more than 8' in length and should not be more than 4" in diameter. Anything longer or larger than specified will NOT be picked up.
- Yard waste will not be collected.
- Limbs should be placed in the tree lawn or front yard; please do not block the sidewalk or street.
- Residents have seven (7) days after the storm to place limbs at the tree lawn.
- Public Works will make one pickup per household. Thereafter, disposal of limbs and brush must be done through Republic (using yard waste tags/bags) on trash pickup days, or the resident may hire a tree-trimming contractor to handle the disposal.

Please call the Public Works Department at 314-645-3600 with any questions

(updated 7/2016)

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Do Homeowners Insurance Policies Cover Storm Damage Removal?

Storm Damage

A major storm can leave a lot more than damaged property and automobiles in its wake. If a storm turned your property into a field of debris, with downed trees, broken limbs and broken patio furniture, the cost of cleanup can be high. In many cases, your homeowner's insurance policy won't help pay the bill.

What if a large tree branch falls onto your roof or yard but there's no damage to the house or other structure? Because there's no damage -- and no need to file an insurance claim -- cost for removal of the branch and any subsequent mess would not be covered by your policy.

Additional Coverage

If you're concerned about the cost of debris and tree removal from your yard, a little advance planning may save you out-of-pocket expenses in the aftermath of a storm. Although many insurers won't offer debris removal as part of their standard homeowner's policies, they allow policyholders to purchase additional levels of coverage, known as endorsements. You can purchase an endorsement that extends coverage to removal of debris on your property or replacement costs for downed trees.

No matter what endorsements you add, you're still have to pay your policy's deductible amount before your insurer helps foot the bill for any qualifying debris removal. In a regular storm, this may not be much of an expense, but when the rubbish was caused by a hurricane, you'll need to cover your hurricane deductible, which is typically much larger than the standard deductible, as it's based on the total replacement value of your home.

Covered Structures

Because your insurance will likely only help pay for removal costs of debris that's touching an insured structure, you should know what you can expect to be covered. In addition to your residence, most policies also protect stand-alone garages, sheds, gazebos and covered decks. Some policies also cover fencing, although the fence must be attached to your home to receive coverage.

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Tree Policies & Programs

City of Roseville, MN

Pests

- Emerald Ash Borer Fact Sheet
- What is EAB?
- Japanese Beetles

Legitimate Tree Services

Caution: Do not hire tree services or tree removal contractors that come to your door, call you, or contact you through the mail unsolicited, without checking their licensing with the city. They may not be legitimate. View a list of currently licensed tree removal contractors.

Tree removal contractors who are interested in obtaining a license to remove trees on private property in Roseville may apply online. For more information, contact Community Development at 651-792-7080 or follow this link:
<http://www.cityofroseville.com/1813/Contractor-Licenses>.

Diseased & Hazardous Tree Program

The City of Roseville, under Ordinance 706, operates a Diseased and Hazardous Tree Program. The major aspects of this program are disease and hazardous tree management on public property, disease management on private property and to provide community outreach by responding to resident inquiries. Public property includes city-owned parks, easements and rights-of-way, and boulevards. A boulevard is defined as "that property between the edge of the street and the property line (right-of-way line)." In other words, the boulevard is that property between the edge of the curb, next to the grass, up to the property line and can vary from approximately 7 to 20 feet wide.

Boulevard Trees

Trees in the right of way or on the boulevard are considered boulevard trees and are the responsibility of the city. Residents may not plant a tree or shrub on the boulevard without first obtaining a permit from the city. In addition, residents may not trim, remove, spray, cable, attach any contrivance or apply insecticides / fungicides to any boulevard tree without first obtaining a permit from the city. Street Tree Permit form (PDF).

The 2018 City Tree Removal Agreement has been awarded to Upper Cut Tree Services, Forest Lake, MN. Upper Cut Tree Services will assist the City park staff with tree maintenance. Under the direction of city staff, they have been hired to remove diseased and or hazardous trees from public property: city parks and boulevards. In addition to working on public property, Upper Cut Tree Services is willing to give the residents of Roseville a special rate to remove infected ash trees on private property. Ash trees can be difficult to remove depending the progression of the insect damage to the ash tree. Upper Cut Tree Services offers disease prevention services, including pesticide injections and treatments. Upper Cut Tree Services also stands out as a company that utilizes the wood waste that they accumulate.

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Some of the wood is used to make log furniture. The brush is taken to St Paul-District Energy and is used to produce electricity. Wood chips are taken to the City compost site and is available to the residents there for free. Wood is also delivered to customers for home wood boilers.

Tree Removal on Public Land

The city will remove diseased or hazardous trees from the boulevards, or other city owned property. The stumps will be ground down to a few inches below the grass line, then black dirt and grass seed will be applied. Homeowners are asked to water the newly seeded areas.

Tree Removal on Private Property

It is the responsibility of the residents to remove trees on their own property that are diseased and/or a hazard. If a resident hires a contractor to remove a tree on private property, they must hire a tree removal contractor who has a current tree removal license from the City of Roseville. View a current list of licensed tree removal contractors.

A resident may choose to remove the tree themselves. In this case, the wood and brush may be taken to the Ramsey County Brush and Yard Waste site. Ramsey County is under a quarantine. Wood and brush may not be moved out of the county. When a tree's branches cross a property line, refer to these guidelines to determine what you can cut down: [Winter Tree Maintenance and Tree Ownership \(PDF\)](#).

Trimming Boulevard Trees

The Street Maintenance crew trims boulevard trees annually, mostly during the winter months. Proper pruning keeps the city's trees healthy and strong and prevents possible damage from falling branches. Regularly trimming trees also helps maintain visibility along city streets. More information is available on our tree trimming webpage. The Street Maintenance crew will also trim broken branches and storm damaged trees as time and resources allow.

Tree City USA

The City of Roseville has participated in the Tree City USA Program for many years. The Arbor Day Foundation sponsors the Tree City USA program along with the USDA Forest Service and the National Association of State Foresters. The Tree City USA program provides direction, technical assistance, public attention, and national recognition for urban and community forestry programs in thousands of towns and cities across the United States.

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Tree Trimming – City of Roseville, MN

Right-of-way or Boulevard Area

Most trees and shrubs need pruning at some time, and plantings in the right-of-way are no exception. City staff maintains the right-of-way and is trained and experienced in the latest pruning techniques. Staff also prunes trees or shrubs on private property that cause either a visibility or safety concern on public property.

Please contact us if you have a visibility or safety concern.

Tree branches obstructing vision at a traffic control sign.

Safety Concerns (Before Trimming)



Improved Visibility (After Trimming)



Tree branches extending past curb lines

Safety Concerns (Before Trimming)



Improved Visibility (After Trimming)



Tree branches affecting vision at intersection

Safety Concerns (Before Trimming)



Improved Visibility (After Trimming)



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Tree Facts

- Trimming improves the health and appearance of trees
- Trimming corrects defective form that can result in branch failure during windstorms
- Removing broken or damaged limbs encourages wound closure
- Trees respond well to dormant season pruning
- Pruning in the dormant period maximizes wound closure in the growing season and reduces the chance of transmitting disease
- Dormant pruning gives a better idea of how pruning will affect the shape of the tree

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When trees crush homes and cars, who's responsible?

Elizabeth Dunbar, MPR News

June 24, 2013.



Twin Cities car and homeowners have been flooding their insurance companies' phone lines since Friday evening to report damage from fallen trees. One of the most common questions is:

Who is responsible for fixing it?

In the vast majority of cases, it doesn't matter if it's your tree, the neighbor's tree or the city's. If it damaged your home, garage or car, your own insurance policy covers it.

"People always think if it's your tree, you're responsible for it. But it's actually where the tree lands," said Mike Kress, an insurance adjuster with State Farm in the Twin Cities.

If it lands on a car, the car owner's comprehensive insurance policy covers the damage after the owner has paid the deductible. But comprehensive auto insurance is optional in Minnesota, so some owners are likely finding out the hard way that the damage isn't covered, said Mark Kulda, a spokesman for the Insurance Federation of Minnesota.

"Many people don't have comprehensive because it's an extra expense," Kulda said. Megan Kellerman, of Minneapolis, said she's glad her 2004 Volkswagen Passat was covered — the car looks to be totaled after being hit by a tree in Uptown Minneapolis, a few blocks east of Lake Calhoun.



"It's still sitting there," Kellerman said Monday. "I had just bought it. It's so sad."

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Kellerman is borrowing a car while she looks for a new one.

A few miles east in the city's Powderhorn neighborhood just west of Hiawatha Avenue, Adam Duininck was waiting to hear from his insurance company how much it will cost to have his garage repaired. A neighbor's tree damaged the garage's roof and rafters.

Duininck looked on the Internet for information about who was responsible for the damage. "It said the property owner is responsible for their own property," he said. "That was a little bit of a surprise."

Fallen trees are affecting both his and his neighbor's properties, so Duininck said they'll work together and have a contractor treat it as one job to save money. Although it isn't clear how much it will cost to repair all the damage, including some electrical work, Duininck said he expects he'll pay the \$1,000 deductible on his homeowner's insurance policy.

Across the river in St. Paul's Highland Park neighborhood, Mary Harens was bracing herself for estimates on what it would cost to fix three of her family's cars plus windows, electrical wiring and plumbing on her house after the boulevard tree in front was struck by lightning early Saturday morning.



"The thing just exploded. The tree is totally stripped," she said.

Harens figures the total will be in the tens of thousands, and she said she expects to pay \$6,000 or more out of pocket to cover the deductibles — the cars and home were all on different policies.

"I was really surprised that we have to pay for all these different deductibles for this one thing happening," she said.

In the case of trees falling onto structures, most insurance companies will cover the costs of removing the tree from the structure and repairing the damage. But the company might not cover the full cost of removing the tree from the yard.

"Trees are considered landscaping, and that's temporary," Kulda said.

If it's a boulevard tree in Minneapolis, the city will remove the tree, officials said.

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Fences are another thing that might not be covered, Kulda said. And determining who is responsible for storm damage can get tricky if a homeowner doesn't have insurance, which isn't required in Minnesota if you no longer have a mortgage. Homeowners have gone to court blaming neighbors for failing to take care of a tree that then fell and caused damage, Kulda said.

"There was an awful lot of tree damage to property with this storm. It's a little unusual," he said. "I have to think there will be many cases where neighbors are going to get into a dispute about the damage from a fallen tree."

Tree Removal in Minneapolis/St. Paul

Minneapolis: The city plans to collect tree debris placed on boulevards July 1-12.

Minneapolis residents can also drop off tree debris at two sites: Metro Wood Recycling Site at 33rd Ave and Second Street in north Minneapolis and 6200 Bloomington Road at Fort Snelling.

St. Paul: Residents should call the city and place tree debris on the curb by June 28.

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City of Albert Lea Accepting Tree Debris Free at Transfer Station

KAAL-TV Rochester, MN July 22, 2019 11:19 AM

(ABC 6 News) - The City of Albert Lea has extended the hours and is waiving the fee for tree debris drop off at the transfer station following Saturday's storm.

According to the city, the transfer station will not be charging for tree and brush disposal; all trees and brush on private property are the responsibility of the homeowner to remove and bring to the station.

The city did note that stumps, including roots, will still be at normal cost to dispose of.

July 22 through 26 the station will be open for extended hours from 11 a.m. until 7 p.m., after that normal hours will resume and the free drop off will remain until August 3.

Regular transfer station hours are:

Monday & Wednesday – 3:00 p.m. – 7:00 p.m.

Tuesday & Friday – 11:00 a.m. – 3:00 p.m.

Saturday 9:00 a.m. – 4:00 p.m.

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