

**SECTION 1050  
WETLANDS AND MARSHES**

**SECTION 1050.01 STATEMENT OF POLICY**

The City of Tonka Bay is a community of homes located on and among bays, inlets, harbors, wetlands, woods and valleys lying near the center of Lake Minnetonka. Those who settled the Lake Minnetonka area in the mid 19<sup>th</sup>-century were quick to recognize the natural beauty of the area; it was one of the first communities settled and developed on Lake Minnetonka. The city has a historical heritage and it has an obligation to preserve that which nature has given to its citizens for the benefit of those who will live here in the 21<sup>st</sup> century. It is in the public interest to protect against haphazard, uncoordinated and unplanned land development which affects lowlands, marshes, wetlands, swamps, lakes and watercourses within the City of Tonka Bay. Recognizing the obligation to protect these assets and natural resource gifts from destruction and pollution of all kinds and in order to carry out a program of coordinate land and water management, the following standards, prohibitions, and regulations and requirements are hereinafter set forth. ***The basis for decisions on allowing disturbances within the Wetland District shall be the Wetland Conservation Act.***

In addition to the general purposes the specific intent of this Ordinance is:

Subd. 1       Reduce danger to health by protecting surface and ground water supplies from the impairment which results from incompatible land uses by providing safe and sanitary drainage.

Subd. 2       Permit and encourage planned development land uses which will not impede the flow of flood water or cause danger to life or property.

Subd. 3       Permit and encourage land uses compatible with the preservation of the natural vegetation and marshes which are a principal factor in the maintenance of constant rates of water flow through the year and which sustain many species of wildlife and plant growth.

Subd. 4       Avoid fast runoff of surface waters from developed areas to prevent polluttional materials such as animal feces, motor oils, paper, sand, salt and other debris, garbage and foreign materials from being carried directly into the nearest natural stream, lake or other public waters.

Subd. 5       Prevent the development of structures in areas which will adversely affect the public passage and use of creeks, marshes, lowlands, and watercourses within the city.

## **SECTION 1050.02 DEFINITIONS**

For the purpose of this Ordinance, the terms defined in this Section shall have the following meanings:

Subd. 1 Artificial obstruction. “Artificial Obstruction” means any dam, wall, wharf, embankment, levee, dike pile, abutment, projection, excavation, bridge, conduit, pole, culvert, building, wire fence, fill, other structure or matter in, along, across or projecting into the protected wetland conservation area.

Subd. 2 Natural obstruction. “Natural Obstruction” means any rock, tree, gravel or analogous natural matter that is an obstruction and has been located within the wetland conservation area by a non-human cause.

## **SECTION 1050.03 DEFINITION AND ESTABLISHMENT OF WETLAND CONSERVATION AREA**

The wetland conservation area within the City of Tonka Bay hereinafter referred to as the protected area is defined and established to be the shoreline of Lake Minnetonka and the low areas adjoining any water course and drainageway or body of water subject to meandering, flowing or overflow, including areas of marsh, wooded marsh, submerged marsh, inundation area as shown upon the attached wetlands map. A copy of the wetland map shall remain on file in the office of the City Clerk for public inspection.

## **SECTION 1050.04 DEVELOPMENT REGULATION**

Landowners or developers desiring to develop land or construct any dwelling or any other artificial obstruction on land located within the wetland conservation area or change the shoreline of Lake Minnetonka within the City of Tonka Bay shall first submit a plan of development hereinafter referred to as “an earth change plan,” to the City Council which shall set forth proposed provisions for sediment control, water management, maintenance of landscaped features, and any additional matters intended to improve or maintain the quality of the environment. Such a plan shall set forth proposed change requested by the applicant and affirmatively disclose what, if any, change will be made in the natural condition of the earth, including loss or change of earth ground cover, destruction of trees, grade changes and its effect, if any, upon lakes, streams, water courses and marshes, lowlands and wetlands in the area. The plan shall minimize tree removal, ground cover change, loss of natural vegetation, and grade changes as much as possible, and shall affirmatively provide for the relocation or replanting of as many trees as possible which are proposed to be removed. The purpose of the earth change plan shall be to eliminate as much as possible potential pollution, erosion and siltation.

**SECTION 1050.05 DEVELOPMENT PROHIBITED**

No filling, grading, dredging, excavation or construction shall be allowed within the wetland conservation area if such activity is incompatible with the policies expressed in this ordinance and the preservation of those wetlands in their natural state. The shoreline of Lake Minnetonka shall not be changed in any way by fill or excavation without an earth change plan being filed by the applicant to do so and a permit issued hereunder by the City Council for such change.

**SECTION 1050.07 LAND AREA CREDIT AND SPECIAL ASSESSMENTS**

Land area, if within the wetland conservation area designated as an easement, shall not be credited as part of the area complying with the land use density or building unit to land area ratio, or other similar requirements of the zoning ordinance of this City. The exempt land area which is not to be developed and which is designated as an easement shall not be subject to special assessment to defray cost of municipal improvement projects including and not limited to water, sanitary and storm sewer improvements.

1:1 mitigation for any excavation impacts not regulated by the Wetland Conservation Act is required.

***Buffer strips around all wetlands shall be required. Buffer widths shall be as follows:***

<b><i>0-1 acre</i></b>	<b><i>16.5 feet</i></b>
<b><i>1-2.5 acres</i></b>	<b><i>20 feet</i></b>
<b><i>2.5 – 5 acres</i></b>	<b><i>25 feet</i></b>
<b><i>&gt; 5 acres</i></b>	<b><i>35 feet</i></b>

***Activities such as mowing, yard waste disposal, and fertilizer application shall not occur within the buffer zone.***

**SECTION 1050.08 VARIANCES**

Variations may be granted by the City Council upon application therefore in extraordinary cases, but only when the proposed use is determined to be in the public interest and no variance shall be granted which the council determines will or has a tendency to:

Subd. 1 Result in the placement of an artificial obstruction which will restrict the passage of storm and flood water in such a manner as to increase the height of flooding, except obstructions approved by the Minnehaha Creek Watershed District in conjunction with sound flood plain management.

Subd. 2 Result in incompatible land uses or which would be detrimental to the protection of surface and ground water supplies.

Subd. 3 Be not in keeping with land use plans and planning objectives for the City of Tonka Bay or which will increase or cause danger to life or property.

Subd. 4 Be inconsistent with the objectives of encouraging land uses compatible with the preservation of the natural landforms, vegetation and the marshes and wetlands within the City of Tonka Bay.

#### **SECTION 1050.09 REQUIREMENTS FOR VARIANCE**

No permit or variance shall be issued unless the applicant has submitted an earth change plan as required and set forth in Section 1050.08, Subd. 4. In granting any variance the council may attach such conditions as it deems necessary to insure compliance with the policy and intent of this ordinance.

#### **SECTION 1050.10 REMOVAL OF ARTIFICIAL OBSTRUCTION**

If an artificial obstruction is found within the wetland conservation area, an order shall be issued to the owner of the parcel following ten days written notice and hearing thereon, for removal within a reasonable time as may be prescribed by the condition and type of artificial obstruction. If the owner shall fail to remove the artificial obstruction, or if the owner cannot be found or determined, the City shall have the power to make or cause such removal to be made, the cost of which shall be borne by the owner or specially assessed against the lands in the same manner as prescribed by law for the levy of special assessments for municipal improvements notwithstanding Section 1050.07 herein. The special assessment shall be certified to the county auditor for collection in the same manner as the ad valorem real property tax of the city.

#### **SECTION 1050.11 PENALTY**

Any person violating any of the provisions of this ordinance shall be guilty of a misdemeanor.