

**Falcon Heights Environment Commission
March 12
Agenda**

- 1) Approval of Minutes of February 13, 2012, and March 12, 2012
- 2) Prairie Gardens – Continued Discussion
- 3) PACE - Staff
- 4) Community Garden Update - Staff
- 5) Information and Announcements



Falcon Heights Environment Commission

ITEM: **Prairie Gardens in Falcon Heights**
SUBMITTED BY: **Deborah Jones, Staff Liaison**

Description: Fairview resident Todd Miller has approached the City about converting part of his yard to a prairie garden. Because the Falcon Heights city code does not address this kind of landscaping specifically (other than a restriction of grass height to six inches), and because there is potential for abuse and neighborhood disagreement, staff suggested that Mr. Miller look for support from the Environment Commission and the City Council.

The Commission took up this discussion at the March, 2012, meeting, which Mr. Miller attended. Those Commissioners present were definitely in favor or providing for this type of natural landscaping in the City of Falcon Heights. Specifics were discussed, but the Commission did not arrive at a final recommendation for the City Council. If the Commission recommends adoption of some ordinance covering this issue, and if the Council agrees to go ahead, the matter may have to go through the Planning Commission, if amendments are made to the zoning chapter.

Background:

Please refer to background material and attachments accompanying the staff report on this top for the March 12, 2012, meeting of the Environment Commission. This material was emailed to Commissioners prior to the meeting. Please contact staff if you need the material sent again.

Commissioners requested sample ordinances from other cities. Please see those attached. In addition, Commissioners are welcome to seek out ordinances and other material to share with the rest of the Commission and staff.

Attachments:

- City of Golden Valley – web page and ordinance
- City of Eden Prairie – information brochure and ordinance
- City of Minnetonka - ordinance

ACTION REQUESTED:

- Advise City Council on the desirability of prairie gardens in the Falcon Heights and make recommendations for possible code changes that would allow this type of landscaping.

Staff Recommendation: Because code amendments resulting from this discussion may end up in the zoning chapter, the Planning Commission may be the body putting together the final language for an ordinance. Therefore, staff recommends that the Environment Commission concentrate on goals and objectives (“What do we Want?”) rather than ordinance specifics at this time.

YOU ARE HERE: [Home](#) > [Your Home & Yard](#) > [Yards & Gardens](#) > Native Landscaping & Rain Gardens

Native Landscaping & Rain Gardens

Native Landscaping

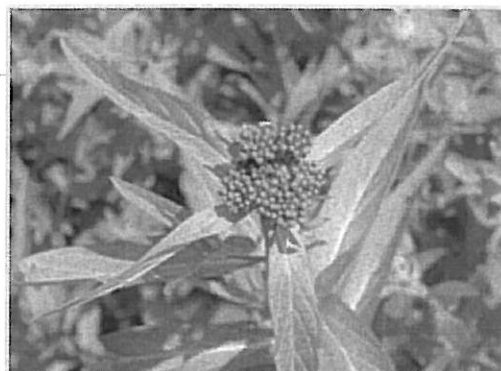
Golden Valley's [lawn maintenance ordinance \(City Code Chapter 10\)](#) allows residents to cultivate native plants in residential lawns.

According to the ordinance, residents who want to vary their landscape need to apply for a "Native Vegetation Permit" at City Hall (fee: \$65). The permit requires property information along with a description of the work, including:

- purpose and intent (eg, general yard landscaping or water source buffer zone)

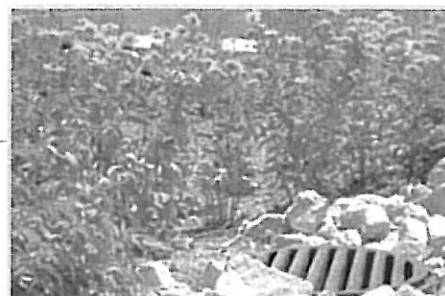
- detailed site plan, planting plan, and maintenance plan with contact information for responsible person(s)

For more information, contact Public Works at 763-593-8030.



Rain Gardens

A rain garden can cure a dip in your yard, help manage storm water run-off, attract some beautiful visitors (such as butterflies and birds) to your yard, and more. Rain gardens eliminate standing water, make lawns more attractive, reduce lawn maintenance time and costs, and improve water quality. Also called storm water or water quality gardens, rain gardens help water quality by keeping run-off from reaching local waterways and by recharging groundwater supplies.



Rain garden in front of City Hall

[Understanding A Rain Garden](#)

[The Mosquito Myth](#)

[Planning A Rain Garden](#)

[City Rain Gardens](#)

Attend A Rain Garden Workshop For Clean Water

POSTED 2-23-12

Get ready for spring by planning a garden that beautifies your yard and helps keep our water clean. Register now for a two-part workshop series, taught



by landscape design specialists from the nonprofit group Metro Blooms.

Whether you are an experienced gardener or have never tried gardening before, these eco-friendly gardening workshops, will help you learn how to:

- Use native plants in your garden landscape

- Limit fertilizers and pesticides without compromising a beautiful yard

- Capture rainwater on site with rain gardens

- Redirect your downspouts to address drainage problems

- Plan your own garden with one-on-one assistance from landscape designers and Hennepin Master Gardeners.

- Participants are also eligible for a low-cost onsite consultation and design drawing.

Date and location information is available on the [Metro Blooms website](#).



Golden Valley Public Works Department

7800 Golden Valley Rd
Golden Valley, MN 55427

Phone: 763-593-8030

Fax: 763-593-3988

TTY: 763-593-3968

[Email Us](#)

Office Hours

Monday - Friday

8 am - 4:30 pm

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7800 Golden Valley Road, Golden Valley, MN 55427

763-593-8000 | TTY: 763-593-3968

Section 10.51: Lawn Maintenance

Subdivision 1. Purpose

The purpose of this Section is to establish minimum standards for lawn maintenance while recognizing that a variety of landscapes within a community adds diversity and richness to the quality of life for all residents. Turf grass lawns continue to be recognized as the dominant feature in the landscape; however, alternatives to this traditional type of lawn are recognized as important parts of a diverse and successful landscape.

Subdivision 2. Definitions

- A. **Maintenance Plan:** A document submitted with an application for a Native Vegetation Permit demonstrating a precise course of maintenance for numerous individual plants in a landscape over months and seasons.
- B. **Native Vegetation:** Those indigenous trees, shrubs, wildflowers, grasses and other plants that have naturally adapted themselves to the climate and soils of the area but require cultivation and maintenance to remain viable.
- C. **Native Vegetation Permit:** A permit issued by the City pursuant to this Section allowing an owner or occupant to cultivate Native Vegetation upon his/her property, subject to the restrictions of this Section. A Native Vegetation Permit exempts an owner or occupant from Subdivision 3(C) of this Section.
- D. **Natural Habitat:** Specially uncultivated valued and sensitive habitat whereupon native vegetation exists in a pristine state and provides habitat for a variety of species native to the area. Such vegetation shall maintain itself in a stable condition with minimal human intervention.
- E. **Noxious Weeds:** An annual, biennial, or perennial plant designated by the MN Commissioner of Agriculture or the Council as injurious to public health, the environment, public roads, crops, livestock, or other property.
- F. **Rank Vegetation:** Uncultivated vegetation growing at a rapid rate due to unplanned, unintentional, or accidental circumstances.
- G. **Turf Grass:** Cultivated vegetation consisting of a highly maintained surface of dense grass underlain by a thick root system.
- H. **Weeds:** Unsuitable, unwanted, or uncultivated vegetation, often causing injury to the desired vegetation type.

Subdivision 3. General Requirements

- A. All lot areas not designated for buildings, pedestrian or vehicle, parking, recreation, and storage shall be provided with Turf Grass, Native Vegetation, or combined ground cover of cultivated vegetation, garden, hedges, trees, and shrubbery.
- B. No owner or occupant of any lot shall allow to grow any Noxious Weeds on any part or portion of said lot as designated by Minn. Stat. Sec. 18.78.
- C. No owner or occupant shall allow any Turf Grass, Weeds, Native Vegetation or Rank Vegetation to grow to a height greater than eight (8) inches on a majority of any lot or parcel of land.

Subdivision 4. Exemptions

- A. Vacant Land. The owner of vacant and unoccupied land consisting of a contiguous tract of one (1) acre or more is exempt from Subdivision 3(C) of this Section, provided that Weeds, Turf Grass, Native Vegetation, and Rank Vegetation thereon are cut twice annually. The first cutting shall not be later than June 1, and the second cutting shall be made between July 15 and September 15.
- B. Natural Habitat.
 - 1. All private lands designated by the Council as Natural Habitat shall be exempt from Subdivision 3(C) of this Section.
 - 2. All public lands designated in the City's Comprehensive Plan as Natural Habitat shall be exempt from Subdivision 3(C) of this Section.
- C. Native Vegetation.
 - 1. Native Vegetation Permit. Upon satisfaction and completion of all the requirements of this Section, the City Manager or designee shall approve all applications for a Native Vegetation Permit and issue such permit. A Native Vegetation Permit shall grant any property owner or occupant so interested the ability to cultivate Native Vegetation on his/her property and exempt the owner and occupant from the requirements of Subdivision 3(C) of this Section. A Native Vegetation Permit shall be valid for five (5) years from the date of approval. The City Manager or designee shall approve no Native Vegetation Permit for any owner or occupant having unresolved City code violations or administrative citations.
 - 2. Application. The Application for a Native Vegetation Permit and Renewal Application, which shall be provided by the City Manager or designee shall contain the following:

- a. Statement of intent and purpose in cultivating Native Vegetation;
 - b. Site plan showing lot lines, buildings, location of proposed Native Vegetation, the property's legal description, corner visibility requirements as defined by Section 7.04 of City Code, and right-of-way requirements as defined by Section 7.05 of City Code.
 - c. Latin and common names of the species the property owner or occupant plans to cultivate;
 - d. Maintenance requirements for said species;
 - e. Name and address of a Professional Landscaping Company which has been hired to perform maintenance on the Native Vegetation; or the name, address, and qualifications of the person(s) who will be responsible for maintenance of the Native Vegetation.
 - f. A Maintenance Plan, which shall contain the following:
 - 1.) Planting diagram showing the location and mature height of all specimens of Native Vegetation; and
 - 2.) Detailed information on the upkeep of each specimen; and
 - 3.) Details of any long-term maintenance required for the Native Vegetation.
3. Revocation. The City Manager or designee may regularly inspect any property holding a Native Vegetation Permit for compliance with the Maintenance Plan on file with the City for the property. For any property out of compliance with the Maintenance Plan, the City Manager or designee shall give notice to the holder of the Native Vegetation Permit by US Mail stating that the property must be in compliance with the Maintenance Plan within thirty (30) days. Should that period pass without action by the holder of the Native Vegetation Permit, the City Manager or designee shall:
- a. Revoke the Native Vegetation Permit;
 - b. Remove all improperly maintained Native Vegetation;
 - c. Declare the property ineligible for a Native Vegetation Permit, unless sold, for a period of two (2) years; and
 - d. Assess the property for all fees associated with inspection of the property and any removal of improperly maintained Native Vegetation in accordance with Subdivision 5 of this Section.

Subdivision 5. Violations

- A. On or before May 1 of each year, the Clerk shall publish once in the official newspaper a notice directing owners and occupants of property within the City to remove all Turf Grass, Weeds, Noxious Weeds, Rank Vegetation, and Native Vegetation not covered by a Native Vegetation Permit exceeding eight (8) inches in height. Said notice shall state that if such vegetation is not removed within ten (10) days after publication of said notice, it may be removed by the Weed Inspector or his/her designee at the expense of the property owner which may be assessed against the property in accordance with Minn. Stat. Sec. 429.101.

*Source: Ordinance No. 324, 2nd Series
Effective Date: 3-25-05*

- B. The Weed Inspector or his/her designee shall, seven (7) days prior to removing any Turf Grass, Weeds, Noxious Weeds, Rank Vegetation, or and Native Vegetation not covered by a Native Vegetation Permit send by U.S. Mail a letter notifying the property owner of the upcoming removal and stating that unless such is removed in accordance with this Section, such shall be removed and the costs of removal shall be assessed against the property in accordance with Minn. Stat. Sect. 429.101. Notwithstanding the foregoing, any failure of the Weed Inspector or his/her designee to send such a letter or for such a letter to be received by the property owner shall not make notice ineffective. For properties for which there have been two (2) or more notices issued within the prior twelve (12) month period, a mailed notice is not required. For those properties, the second notice issued within a twelve (12) month period shall contain a general notice that the City may abate future violations without providing additional specific notice of violation.

*Source: Ordinance No. 407, 2nd Series
Effective Date: 8-29-08*

- C. Property owners shall be notified by U.S. Mail immediately thereafter of any work performed and all administrative and removal work costs involved and that such will be assessed against the property. The Weed Inspector or his/her designee shall keep a record of all properties whereupon removal was necessary and the number of times it was necessary, and, by October 1 of each year, he/she shall give copies of such records to the Clerk to file as special assessments against each said property which shall become liens on such lots or lands. This shall be an additional remedy and not in lieu of any other penalty provided for in City Code or state law.

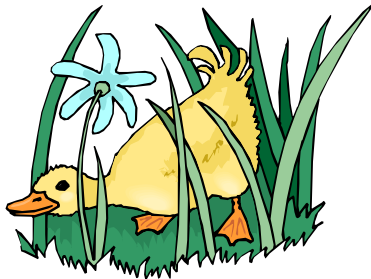
*Source: Ordinance No. 324, 2nd Series
Effective Date: 3-25-05*

Landscaping of Herbaceous Vegetation Guidelines

Planting native plants that are natural to Minnesota helps maintain floral diversity of the city. Native plants also provide shelter, food, and habitat for the wild life of Eden Prairie.

Native plant landscaping is less intrusive than hybrid or traditional landscaping. It also allows less fertilizer and pesticide applications and reduces the need for watering and irrigation. This benefits the city as it leads to conservation of our groundwater and lowers the amount of sediments, chemicals, nutrients, and other non-point source pollutants that run off into local surface waters and degrade them.

Native plants also function as buffers between valuable and highly sensitive landscaping such as wetlands, meadows, woodlands, creeks, and lakes with landscapes that increase surface runoff, like paved surfaces and intensively managed lawns and gardens. If these plants are used appropriately they can also act as a filter and help minimize the movement of stormwater pollutants thus minimizing the impact of surrounding land uses on local water supplies.



City of Eden Prairie

8080 Mitchell Road
Eden Prairie, MN 55344

Environmental Coordinator

Phone: 952-949-8327

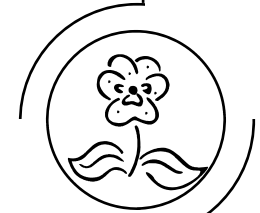
Fax: 952-949-8390

www.edenprairie.org

Email: lstovring@edenprairie.org

*Environmental Education for the
Outdoors*

Native Plant Landscaping (City Code Section 9.71)



City of Eden Prairie

Tel: 952-949-8300

Important Definitions

In order to understand the management of herbaceous vegetation several definitions must be understood. *Refer to City Code 9.41 for the full definition.*

Garden: A cultivated area dedicated to growing vegetables, fruits, flowers, ornamental grasses, groundcovers, shrubs and similar plants that were planted in a well defined location.



Native Plant Landscape Area: An area where native plants are being or have been planted in a designated area. A Native Plant Landscape Area does not include gardens.

Natural Area: A natural area is an area that was purposely left to grow in a natural state and can maintain itself in a stable condition without human intervention and contains trees, shrubs, and native plants, excluding weeds and turfgrass areas that contain more than 50% turfgrass.

“Native” Plants: Native plants are those grasses (including prairie grasses), sedges (solid, triangular-stemmed plants resembling grasses), forbs (flowers, broadleaf plants), trees and shrubs that are species native to or naturalized to the state of Minnesota, excluding prohibited exotic species. Native plants do not include weeds.

Weeds: The City Weed Inspector shall maintain a current list of volunteer plants that are prohibited.

Restrictions and Exemptions

An owner or occupant of a lot or parcel of land in the city can not have any herbaceous vegetation growing over a height of ten inches.

Exemptions are where vegetation is located:

- On Steep Slopes
- In Natural Areas
- In a Garden
- In a Scenic or Conservation Easement
- Within Fifty Feet of Natural Area
- In a Flood Plain
- Within a Drainage Pond or Ditch

Native Plant Landscape Area Guidelines:

- Set back not less than 20 feet from the front lot line
- Set Back not less then 5 ft from the side and/or rear lot lines. No set back is required on the side or rear lot if (1) there is fully opaque fence at least five ft in height and (2) the native plants abut a neighboring native plant landscape area.
- Native plant landscape is cut once annually between April 15 and July 15.
- Turfgrass is eliminated and the native plants, trees and shrubs are planted through transplanting or seed by humans or mechanical means.

The Native Plant Landscape Area, Garden or Natural Area must not obscure, block, or impede visual sight lines; regulatory, warning or street identification signs; or street light illuminations.

The Setback area required in the exemptions should be regularly mowed turfgrass, garden beds, trees, shrubs, mulch, wood chips, rock, and/or gravel



References

City Contacts:

Weed Inspector

Jeff Cordes 952-949-8463

Environmental Coordinator

Leslie Stovring 952-949-8327

Web Sites

City of Eden Prairie Web Site
www.edenprairie.org

Environmental Protection Agency Native Plants Web Site Green Landscaping with Native Plants
www.epa.gov/greenacres/

Native Wildflower Web site that includes: Wild flower forums, dealers, Native plant gardens, collections and societies.
www.wild-flowers.com/

The Dept. of Natural Resources and Hennepin County have information on native plant landscaping also.
www.dnr.state.mn.us/gardens/nativeplants/index.html

www.hennepin.us
(go to Environmental Services web page)

Or try the Green Guardian site

www.greenguardian.com

Subd. 8. Spraying and Pruning Trees. Whenever it is determined that any tree or wood within the City is infested by any disease or insects as described in Subdivision 2, the Forester may order the owners (as determined by the tax records of the County of Hennepin) of all nearby high value trees to prune and to spray the same with an effective preventive concentrate in a manner approved by the City Manager. Upon failure to comply with such an order, the City may proceed forthwith to take appropriate action. Spraying activities authorized by this Subdivision shall be conducted in accordance with technical and expert methods and plans of the Commissioner of Agriculture, with the approval of appropriate City officials, and under the supervision of the Commissioner and his agents whenever possible. Notice shall be given as provided in Subdivision 6, Subparagraph E.

Source: Ordinance No. 11-85
Effective Date: 9-26-85

Subd. 9. Transporting Certain Types of Wood Prohibited. It is unlawful for any person to transport within the City any bark-bearing elm wood or wood infested by disease or insects without having obtained a permit from the City Manager, who shall grant such permits when the purposes of this Section will be satisfied.

Subd. 10. Reporting Discovery of Tree Disease. Any owner or occupier of land or any person engaged in tree trimming or removal who becomes aware of the existence of a tree disease as defined in Subdivision 2 shall report the same to the City.

Subd. 11. Interference Prohibited. City personnel may enter upon private premises at any reasonable time to carry out the purposes of this Section. It is unlawful for any person to prevent, delay or interfere with City personnel while they are engaged in the performance of duties imposed by this Section.

Source: City Code
Effective Date: 9-17-82

SECTION 9.71. MAINTENANCE OF VEGETATION.

Subd. 1. For the purposes of this section, the following terms shall have the following meanings:

- A. “Garden” means a cultivated area dedicated to growing vegetables, fruits, flowers, ornamental grasses, groundcovers, shrubs and similar plants that were planted in a well defined location.
- B. “Native plants” are those grasses (including prairie grasses), sedges (solid, triangular-stemmed plants resembling grasses), forbs (flowering broadleaf plants), trees and shrubs that are plant species native to or naturalized to the state of Minnesota, excluding prohibited exotic species, as defined by Minnesota Statutes Chapter 84D. Native plants do not include weeds.
- C. “Native Plant Landscape Area” means an area where native plants are being or have been planted in a designated area. A Native Plant Landscape Area does not include gardens.
- D. “Natural Area” means a natural area is an area that was purposely left to grow in a natural state and can maintain itself in a stable condition without human intervention and contains trees, shrubs, and native plants, excluding weeds and turfgrass areas that contain more than 50% turfgrass.
- E. “Ornamental Grasses” means grasses that are not indigenous to the state of Minnesota that are intended to add beauty to a garden. Ornamental grasses do not include turfgrasses or weeds.
- F. “Turfgrass” means commercially available cultured turfgrass varieties, including bluegrass, fescue and ryegrass blends, commonly used in regularly cut lawn areas.
- G. “Weeds” are (i) noxious weeds as defined and designated pursuant to the “Minnesota noxious weed law”,

Minnesota Statutes, Sections 18.76-18.88, as amended from time to time, or (ii) any volunteer plants, such as but not limited to garlic mustard (Alliaria petiolata), spotted knapweed (Centaurea maculosa), or burdock (Arctium minus). For the purposes of this definition, weeds do not include dandelions or clover. The City Weed Inspector shall maintain a current list of volunteer plants that are prohibited.

Subd. 2. An owner or occupant of any lot or parcel of land in the City, other than land in the rural district, or agent of any such owner or occupant, shall not allow any herbaceous vegetation growing upon such lot or parcel of land or growing upon City right-of-way which abuts the lot or parcel of land, including the area between any sidewalk or trail and the curb of the street to grow to a height greater than ten (10) inches or to allow such vegetation to go to seed.

Subd. 3. The provisions of Subd. 2 shall not apply on private property:

A. To vegetation that is located:

1. On slopes equal to or steeper than three feet horizontal to one foot vertical (3:1);
2. In Natural Areas;
3. Within fifty feet of a Natural Area;
4. In a scenic or conservation easement;
5. In a garden;
6. In City park lands;
7. In a floodplain area designated on the official zoning map; or
8. Within a drainage pond or ditch which stores or conveys stormwater.

B. To Native Plant Landscape Areas provided that:

1. They are set back not less than twenty feet from the front lot line. For the purposes of this ordinance, corner lots shall be deemed to have two front yards;
2. They are set back not less than five feet from the side and/or rear lot lines to provide a transition zone. No set back is required on the side or rear lot lines if (1) there is a fully opaque fence at least five feet in height installed between the native plants and the side or rear lot lines or (2) the native plants abut a neighboring Native Plant Landscape Area;
3. The Native Plant Landscape Area is cut at least once annually between April 15 and July 15 to a height no greater than ten (10) inches;
4. Turfgrass is eliminated and the native plants, trees and shrubs are planted through transplanting or seed by human or mechanical means. Soil erosion should be controlled while the ground is bare of plant growth that is sufficient to inhibit erosion and is the sole responsibility of the owner or occupant;
5. Written authorization from the City Manager or his/her designee is obtained for work within conservation or scenic easement areas, including planting, mowing or cutting.

C. To Native Plant Landscape Areas subject to a landscape plan:

1. An owner or occupant of a lot or parcel of land may apply for a permit to install Native Plant Landscape Areas within the twenty foot set back required by Subd. 3.B.1. of this Section. The permit shall be issued by the City Manager or his designee. To obtain the permit the owner or occupant, or agent of such owner or occupant, of the lot or parcel of land shall submit an application on a form provided by the City and a landscape plan that includes the following information:
 - a. General: Name and address of developer/owner; Name and address of landscape architect/designer; Date of plan preparation; Date and description of all revisions; Name of project or development.
 - b. Site Map: One (1) scale drawing of the site based upon a survey of property lines with indication of scale and north point; Name and alignment of proposed and existing adjacent on-site streets; Location of all proposed utility easements and right of ways; Location of existing and proposed buildings; Topographic contours at two foot contour intervals; Existing and proposed location of parking areas; Water bodies; Proposed sidewalks; Percent of site not covered by impervious surface.
 - c. Landscape Proposal: Two (2) scale drawings of the proposed project area(s) to a minimum scale of one inch equals 50 feet of proposed landscaping for the site based upon a survey of property lines with indication of scale and north point; Existing and proposed topographic contours using mean sea level datum at two foot contour intervals; Details of proposed planting beds and foundation plantings; Delineation of both sodded and seeded areas; Location and identification of proposed landscape or man made materials used to provide screening from adjacent and neighboring properties, a separate cross section drawing of which shall be provided at legible scale illustrating the effectiveness of proposed screening; Location and identification of trees; Details of fences, tie walls, planting boxes, retaining walls, tot lots, picnic areas, berms, and other landscape improvements, including a separate drawing of typical sections of these details in legible scale; Location of landscape islands and planter beds with identification of plant materials used, including separate drawings of typical sections of these areas in legible scale.
 - d. Planting Schedule: A table containing the common names and botanical names, average size of plant materials, root specifications, quantities, special planting instructions, and proposed planting dates of all plant materials included in the Landscape Proposal.
 - e. Maintenance Plan: A description of how the Native Plant Landscape Area will be maintained, including all activities necessary to sustain the plantings in the Native Plant Landscape area.
2. Permits issued to install Native Plant Landscape Areas in the set back required by Subd. 3.B.1. of this Section shall be subject to the following conditions:
 - a. No landscaping is placed within any drainage utility easement, road right-of-way, or immediately adjacent to any driveway or road intersection when it would interfere with motorists' views of the street or roadway.
 - b. The right-of-way between the curb and gutter or pavement edge (boulevard) to the Native Plant Landscape Area is at least 25 feet wide.
 - c. The right-of-way boulevard is composed of regularly mowed turfgrass, trees, shrubs, mulch, wood chips, rock and/or gravel.

- d. The City Manager or his designee approves the Landscape Plan.
 - e. The Native Plant Landscape Area must meet the requirements of Subd. 3B.2-3B.5 of this Section.
 - f. The applicant provides such other information as the City Manager requests and complies with any other conditions deemed appropriate by the City Manager for the Native Plant Landscape Area.
 - g. Plans shall be prepared by a registered landscape architect / designer.
3. Revocation: The Permit shall expire and be of no force and effect if the Native Plant Landscape Area is not completed pursuant to the approved Landscape Plan within three months of issuance of the permit.

Source: Ordinance No. 15-2010
Effective Date: 8-26-2010

Subd. 4. The setback area required by Subd. 3 of this Section shall be composed of regularly mowed turfgrass, garden beds, trees, shrubs, mulch, wood chips, rock and/or gravel.

Subd. 5. The Native Plant Landscape Area, Garden or Natural Area shall not obscure, block or impede visual sight lines; regulatory, warning or street identification signs; or street light illumination required to ensure the safe and efficient circulation of vehicles and pedestrians on streets, intersections, trail, pathways and sidewalks.

Subd. 6. The City may require the owner or occupant who has planted, or has allowed to be planted, native plants or other vegetation within a drainage or utility easement or a right-of-way of a City street to remove the native plants or other vegetation from the right-of-way or drainage and utility easement at no expense to the City. The City will not be responsible for damage to turfgrass and/or any landscaped areas resulting from public works improvements or snow removal activities within rights-of-ways or drainage and utility easements.

Subd. 7. Notice.

- A. Notice. Once a failure to comply with the height, setback, maintenance, weed, and annual cutting requirements as required by this Section is identified, notice of such failure shall be given by the City to the affected property owner. The notice shall state and describe the property affected; order and allow seven (7) days for the property owner to cause such vegetation to be cut, removed, treated for weeds, and/or maintained pursuant to an approved Landscape Plan required by Subd. 3.C. of this Section; that if such vegetation is not cut, removed, treated for weeds, and/or maintained pursuant to an approved Landscape Plan required by Subd. 3.C. of this Section, the City as a remedial action will cause such vegetation to be cut, removed and/or treated for weeds; that all costs thereof will be billed to the property owner payable within thirty (30) days; that if payment is not received within thirty (30) days, the costs will be assessed against the property from which such vegetation has been removed pursuant to and in accordance with Minn. Stat. § 429.101 or any similar provision hereinafter enacted; inform the property owner of the right to a hearing before the Council to appeal the notice in accordance with Subd. (C); and inform the property owner that upon filing of a timely appeal the time to comply with the notice is stayed pending a decision by the Council on the appeal. The notice shall be served in the same manner as set forth in Section 9.70, Subd. 6(E).

Source: Ordinance No. 15-2010
Effective Date: 8-26-2010

Previous: Ordinance No. 16-2008
Effective Date: 6-26-2008

- B. Assessment. In all cases in which vegetation is cut, removed and/or treated for weeds or caused to be by the City, the costs, if not paid by the owner as provided herein, shall be assessed against the property from which such vegetation is cut, removed and/or treated for weeds pursuant to and in accordance with Minnesota Statutes Section 429.101 or any similar provision hereafter enacted. Such assessments shall be paid with interest, in installments, and within a period not to exceed one (1) year from the date of assessment. The City will not be responsible for damage to turfgrass and/or any landscaped areas resulting from enforcement of this ordinance.

Source: Ordinance No. 29-2002
Effective Date: 11-21-02

- C. The person served with the notice set forth in Section 9.71, Subd. 7 (A) is entitled to a full hearing before the Council to appeal the notice upon serving a written request therefore upon the City Clerk prior to expiration of the date by which the vegetation is to be cut, removed and/or treated for weeds as set forth in the notice. At such hearing the person may present any evidence he deems pertinent to the appeal, but the City shall not be required to keep a verbatim record of the proceedings. The Mayor, or other officer presiding at the hearing, may, in the interest of justice or to comply with time requirements and on his own motion or the motion of the party appealing, the City Manager, or a member of the Council, adjourn the hearing to a more convenient time or place; but such time or place shall be fixed and determined before adjournment so as to avoid the necessity for formal notice of reconvening. The Council may affirm, amend or reverse the all or any portion of the notice and shall set a new deadline for compliance if the order that the vegetation be cut, removed and/or treated for weeds is affirmed.

Source: Ordinance No. 16-2008
Effective Date: 6-24-2008

SECTION 9.72. EMERGENCY SECURING OF BUILDINGS.

Subd. 1. 'Secure' may include, but is not limited to, installing locks, repairing windows and doors, boarding windows and doors, posting 'no-trespassing signs', installing exterior lighting or motion-detecting lights, fencing the property, installing a monitored alarm or other security system.

Subd. 2. Upon a determination by the City's building official that a building presents an immediate danger to the health and safety of persons in the City such that the emergency securing of the building is appropriate to eliminate or reduce the immediate danger the City may secure the building as authorized by Minnesota Statutes, 1994, Section 463,251, Subd. 4 and this Section.

Source: Ordinance No. 32-96
Effective Date: 8-30-96

(Sections 9.73 through 9.98, inclusive, reserved for future expansion.)

SECTION 9.99. VIOLATION A MISDEMEANOR.

Every person violates a section, subdivision, paragraph or provision of this Chapter when he performs an act thereby prohibited or declared unlawful or fails to act when such failure is thereby prohibited or declared unlawful, or performs an act prohibited or declared unlawful or fails to act when such failure is prohibited or declared unlawful by a Code adopted by reference by this Chapter, and upon conviction thereof shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

Source: City Code
Effective Date: 9-17-82

Minnetonka Code of Ordinances

845.030. Special Provisions - Lawn Maintenance.

1. Preamble. The city council finds that there are a variety of landscapes in the city that add diversity and a richness to the quality of life. Certain areas in the city have been left, or allowed to go, unmaintained. These have been accepted by the vast majority of the city residents as appropriate and as part of the unique quality of life in this community. There are community expectations, however, that once an area has been disturbed, landscaped, or otherwise maintained, that area will continue to be maintained in a consistent manner. When vegetation in that area is not continually maintained, it becomes aesthetically unpleasing and violates community standards. Property that appears neglected may decrease the value of adjacent properties. In addition, if vegetation is not properly maintained, there may be the following adverse impacts on public health, safety, and welfare:

- a. undesirable vegetation such as common buckthorn, quackgrass, and other weeds may invade and threaten to supplant other more desirable vegetation;
- b. vegetation that causes allergic reactions, such as ragweed, may develop; and
- c. tall vegetation along driveways and public roads may impair visibility when entering or exiting public roads.

The city council also finds that it is in the public interest to allow citizens to choose the type of landscaping on their properties and to make changes in that vegetation. As a protection for the larger community, however, this change in vegetation must be properly managed and maintained and the length of the transition period must be minimized.

The council finds that the establishment of prairie and meadow plant communities is an acceptable landscape treatment in the city. This requires special consideration, however, because weeds will grow during the first few years of transition before the new vegetation predominates and will appear like neglect. Therefore, the council finds that this type of vegetation is acceptable if it is properly maintained to shorten the transition period and if notice is given of the intended result.

In contrast, the transition to trees and other woody species does not require special consideration because untended grass or weeds are not a necessary part of that transition period. Rather, the transition period is shortened by eliminating competition around the seedlings through such techniques as organic mulch.

The city council enacts this ordinance to balance the public interest in a variety of vegetation with the public need to ensure proper maintenance of that vegetation. The council finds that establishing a height limitation for certain vegetation is in the best interest of the public health, safety, and welfare as outlined above and is a reasonable maintenance standard.

2. Definitions. For purposes of this section the following words have the meanings specified below.

- a. "Meadow vegetation" is grasses and flowering broad-leaf plants that are native to, or adapted to, the state of Minnesota, and that are commonly found in meadow and prairie plant communities, except weeds.
- b. "Noxious weeds" are those plants so designated by the state of Minnesota under Minn. Stat. §

18.171, subd. 5.

c. “Regularly cut” means mowing or otherwise cutting the vegetation so that it does not exceed 10 inches in height.

d. “Turf grasses” are grasses commonly used in regularly cut lawn areas, such as bluegrass, fescue and rye grass blends, and non-woody vegetation interspersed with them.

e. “Weeds” include all noxious weeds, buffalobur, burdock, common cocklebur, crabgrass, dandelions, jimsonweed, quackgrass, common and giant ragweed, field sandbur, velvetleaf, and wild sunflower. Weeds also include anything that is horticulturally out of place. For example, a tree seedling is a weed in a vegetable garden. A property owner may establish that a plant or plants are not horticulturally out of place by providing a written landscape plan for the area in question, complete with a listing and locations of plant species. The plants specifically listed above may not be included within the landscape plan. Vegetation that does not comply with this plan are weeds.

3. Maintenance standard. The maintenance standard in this section applies to property that has been developed with a building as defined in the building code, including vacant property combined with developed property for tax purposes, and a parcel of property that has been completely or partially disturbed by demolition, grading or other means in preparation for development or redevelopment.

a. All turf grasses and weeds must not exceed a height of 10 inches, measured from the base at ground level to the tip of each stalk, stem, blade, or leaf.

b. This requirement does not apply to the following:

(1) a wetland or floodplain designated in the zoning ordinance and required wetland buffers or those voluntarily created by a private land owner when compatible with the character of the neighborhood and the intent of the wetland ordinance, Section 300.23;

(2) a drainage pond or ditch that stores or conveys stormwater;

(3) a pasture that is (a) currently being used only for the exercise or feeding of domestic hoofed animals, (b) physically surrounded by a permanent fence that separates the pasture from property used for other purposes, (c) at least one-half acre in size, and (d) undeveloped with any habitable buildings;

(4) an area in which the land and vegetation appears not to have been graded, landscaped, mowed, or otherwise disturbed by human or mechanical means at any time. Determination of what constitutes this type of area will be based on a reasonable judgment of the present appearance of the area. The recent history of the area may be relevant to this determination; and

(5) an area established with meadow vegetation if:

(a) the prior vegetation is eliminated and the meadow vegetation is planted through transplanting or seed by human or mechanical means;

(b) the area is cut at least once per year to a height of no more than 10 inches, if weeds cover more than 25 percent of the area; and

(c) a sign is posted on the property in a location likely to be seen by the public, advising that

a meadow or prairie is being established. This sign is required only if the meadow vegetation is in an area likely to be seen by the public. This sign must be in addition to any sign permitted by the sign ordinance but must be no smaller than ten inches square, no larger than one square foot, and no higher than three feet tall. The sign is no longer required when weeds cover 25 percent or less of the area.

4. Declaration of public nuisance. The following are public nuisances subject to abatement under this chapter:

- a. noxious weeds;
- b. vegetation that does not meet the maintenance standard specified in paragraph 3 above; and
- c. vegetation that violates the sight-distance standards in section 300.15, subd. 9(e) and section 300.28, subd. 20 of this code.

(Amended by Ord. #99-28, adopted November 8, 1999)

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ITEM: Property Assessed Clean Energy Financing (PACE)
SUBMITTED BY: Deborah Jones, Staff Liaison

Description: Under Minnesota Statute 216C.345 (2010), cities are authorized to establish programs to fund certain renewable energy and conservation programs proposed by property owners by means of voluntary assessment to the property. The Mayor has requested that the Environment Commission receive background on this opportunity in order to consider how Falcon Heights could take advantage of it to help the City move toward its environmental goals for efficient and renewable energy.

Background:

Property Assessed Clean Energy Financing (PACE) programs are intended to make conservation and energy efficiency improvements more affordable for property owners. Projects are required to meet certain guidelines from the United States Department of Energy (see the attached). PACE programs require a high standard of monitoring for quality and guaranteed savings over the lifetime of the assessment in utility bills. The City of Edina is one Minnesota Community that has a PACE program in place (see attached).

Attachments:

- PACE Guidelines – U.S. Department of Energy
- Edina Emerald Energy Program summary

ACTION REQUESTED:

This item is for Commissioner education and discussion, considering what kind of program might suit Falcon Heights, what resources are available and where to start.



Department of Energy
Washington, DC 20585

Guidelines for Pilot PACE Financing Programs

May 7, 2010

This document provides best practice guidelines to help implement the Policy Framework for PACE Financing Programs announced on October 18, 2009.¹ Property Assessed Clean Energy (PACE) financing programs allow state and local governments, where permitted by state law, to extend the use of land-secured financing districts to fund energy efficiency and renewable energy improvements on private property.² PACE programs attach the obligation to repay the cost of improvements to the property, not to the individual borrower. After consultation within the federal government and with other stakeholders, the Department of Energy has prepared the following Best Practices to help ensure prudent financing practices during the current pilot PACE programs.

These best practice guidelines are significantly more rigorous than the underwriting standards currently applied to land-secured financing districts. Especially in light of the exceptionally challenging economic environment and recovering housing market, the following best practice guidelines for pilot PACE financing programs are important to provide an extra layer of protection to both participants who voluntarily opt into PACE programs, and to lenders who hold mortgages on properties with PACE tax liens. These best practice guidelines may evolve over time as we learn more about the performance of PACE programs and are able to identify new best practices.³ All pilot PACE financing programs are strongly encouraged to follow these best practice guidelines. This document is divided into two sections: Program Design Best Practice Guidelines and Assessment Underwriting Best Practice Guidelines.

¹ The Policy Framework for PACE Financing Programs is available here:
http://www.whitehouse.gov/assets/documents/PACE_Principles.pdf.

² For more information on PACE programs, please visit:
<http://www1.eere.energy.gov/wip/solutioncenter/financialproducts/PACE.html>. PACE programs are paid through a tax lien on the property. Lien priority is a matter of state law, and these best practices do not (and cannot) preempt state law.

³ These best practice guidelines are primarily for the residential market. Different standards may be appropriate in non-residential markets.

Program Design Best Practice Guidelines:

Local governments should consider the following program design features to increase the reliability of energy and economic performance for the benefit of program participants, mortgage holders, and investors.

1. Expected Savings-to-Investment Ratio (SIR) Greater Than One⁴

The primary rationale for PACE programs is to pursue a legally-defined “public purpose”, which generally includes environmental, health, and energy independence benefits.⁵ Although traditional land-secured assessment districts do not require projects to “pay for themselves”, PACE financing should generally be limited to cost effective measures to protect both participants and mortgage holders until PACE program impacts become more widely understood.

The financed package of energy improvements should be designed to pay for itself over the life of the assessment. This program attribute improves the participant’s debt-to-income ratio, increasing the participant’s ability to repay PACE assessments and other debt, such as mortgage payments. Local governments should consider three program design features to ensure that the expected SIR is greater than one:⁶

- An energy audit and modeling of expected savings to identify energy efficiency and renewable energy property improvement measures that are likely to deliver energy and dollar savings in excess of financed costs over the assessment term. Local governments should limit investment to those identified measures.

⁴ SIR = [Estimated savings over the life of the assessment, discounted back to present value using an appropriate discount rate] divided by [Amount financed through PACE assessment]

Savings are defined as the positive impacts of the energy improvements on participant cash flow. Savings can include reduced utility bills as well as any payments for renewable energy credits or other quantifiable environmental and health benefits that can be monetized. Savings should be calculated on an annual basis with an escalator for energy prices based either on the Energy Information Agency (EIA) U.S. forecast or a substantiated local energy price escalator.

⁵ Specific public purposes are defined by the state’s enabling legislation, which may vary somewhat between states. Existing legislation is available here:

<http://www.dsireusa.org/incentives/index.cfm?EE=1&RE=1&SPV=0&ST=0&searchtype=PTFAuth&sh=1>

⁶ These program options are not mutually exclusive and programs should consider deploying them in concert. In addition, these measures could be coordinated with the proposed HOMESTAR’s Silver and Gold guidelines. More Information on HOMESTAR is available here:

<http://www.whitehouse.gov/the-press-office/fact-sheet-homestar-energy-efficiency-retrofit-program>

- In lieu of audits, programs may choose to limit eligibility to those measures with well-documented energy and dollar savings for a given climate zone. There are a number of energy efficiency and renewable energy investments that are most likely to yield a SIR of greater than one for most properties in a region.
- Encourage energy efficiency before renewable energy improvements. The economics of renewable energy investments can be enhanced when packaged with energy efficiency measures. The SIR should be calculated for the entire package of investments, not individual measures.

2. The Term of the Assessment Should Not Exceed the Useful Life of the Improvements

This best practice guidelines document is intended to ensure that a property owner's ability to repay is enhanced throughout the life of the PACE assessment by the energy savings derived from the improvements. It is important to note that the useful life of the measure often exceeds the assessment term.

3. Mortgage Holder of Record Should Receive Notice When PACE Liens Are Placed

Mortgage holders should receive notice when residential property owners fund improvements using a PACE assessment.⁷

4. PACE Lien Non-Acceleration Upon Property Owner Default

In states where non-acceleration of the lien is standard for other special assessments, it should also be standard for PACE assessments. After a foreclosure, the successor owners are responsible for future assessment payments. Non-acceleration is an important mortgage holder protection because liability for the assessment in foreclosure is limited to any amount in arrears at the time; the total outstanding assessed amount is not due in full.

5. The Assessment Should Be Appropriately Sized

PACE assessments should generally not exceed 10% of a property's estimated value (i.e. a property value-to-lien ratio of 10:1). In addition, because of the administrative requirements of administering PACE programs, assessments should generally not be issued for projects below a minimum cost threshold of approximately \$2500. These measures ensure that improvements are "right-sized" for properties and for the administrative costs of piloting PACE programs. PACE programs may also choose to set the maximum assessment relative to median home values.

⁷ A different standard may apply to non-residential properties.

6. Quality Assurance and Anti-Fraud Measures

Quality assurance and anti-fraud measures are essential protections for property owners, mortgage holders, investors, and local governments. These measures should include:

- Only validly licensed auditors and contractors that adhere to PACE program terms and conditions should be permitted to conduct PACE energy audits and retrofits. Where feasible or necessary, auditors and contractors should have additional certifications appropriate to the installed measures.
- Inspections should be completed on at least a portion of participating properties upon project completion to ensure that contractors participating in the PACE program are adequately performing work.
- If work is not satisfactorily completed, contractor payment should be withheld until remedied. If not satisfactorily remedied, programs should disqualify contractors from further PACE-related work.
- Property owners should sign-off before payment is issued for the work.

7. Rebates and Tax Credits

The total amount of PACE financing should be net of any expected direct cash rebates for the energy efficiency or renewable energy improvements chosen. However, other non-direct cash incentives can be more difficult to manage. For example, calculating an expected income tax credit can be complicated, as not all participants will have access to the tax credit and there will be time lags between project completion and tax credit monetization. Programs should therefore consider alternative structures for financing this gap, including assignment of rebates and tax credits to repay PACE assessments, short-term assessment additions, and partnering with third party lenders that offer short-term bridge financing. At the minimum, programs should provide full disclosure to participants on the implications and options available for monetizing an income tax credit.

8. Participant Education

PACE may be an unfamiliar financing mechanism to program participants. As such, it is essential that programs educate potential participants on how the PACE model works, whether it is a property owner's most appropriate financing mechanism, and the opportunities and risks PACE program participation creates for property owners. Programs should clearly explain and provide disclosures of the following:

- How PACE financing works

- Basic information on other financing options available to property owners for financing energy efficiency and renewable energy investments, and how PACE compares
- All program fees and how participants will pay for them
- Effective interest rate including all program fees, consistent with the Good Faith Estimate (GFE) of the Real Estate Settlement Procedure Act (RESPA) and the early and final disclosure of the Truth in Lending Act (TILA).
- PACE assessment impact on escrow payments (if applicable)
- Risk that assessment default may trigger foreclosure and property loss
- Information on transferring the assessment at time of sale
- Options for and implications of including tax credits in the financed amount

9. Debt Service Reserve Fund

For those PACE programs that seek third party investors, including investors in a municipal bond to fund the program, an assessment reserve fund should be created to protect investors from late payment or non-payment of PACE assessments.

10. Data Collection

Pilot programs should collect the data necessary to evaluate the efficacy of PACE programs. Examples of typically collected data would include: installed measures, investment amount, default and foreclosure data, expected savings, and actual energy use before and after measures installation. To the extent possible, it's important that programs have access to participant utility bills, ideally for 18 months before and after the improvements are made. The Department of Energy will provide more detailed information on collecting this data, obtaining permission to access utility bills, and how to report program information to enable a national PACE performance evaluation.

Assessment Underwriting Best Practices Guidelines:

Local governments should design underwriting criteria to reduce the risk of default and impairment to the property's mortgage holders. Many best practices for reducing these risks are included in the previous section. In addition, underwriting criteria for individual assessments should include the following:

1. Property Ownership

- Check that applicant has clear title to property and that the property is located in the financing district.

- Check the property title for restrictions such as details about power of attorney, easements, or subordination agreements.

2. Property-Based Debt and Property Valuation

- Estimated property value should be in excess of property owner’s public and private debt on the property, including mortgages, home equity lines of credit (HELOCs), and the addition of the PACE assessment, to ensure that property owners have sufficient equity to support the PACE assessment. Local governments should be cautious about piloting the PACE model in areas with large numbers of “underwater” mortgages.
- To avoid placing an additional tax lien on properties that are in distress, have recently been in distress, or are at risk for distress, the following should be verified:
 - There are no outstanding taxes or involuntary liens on the property in excess of \$1000 (i.e. liens placed on property for failure of the owner to comply with a payment obligation).
Property is not in foreclosure and there have been no recent mortgage or other property-related debt defaults.
- Programs should attain estimated property value by reviewing assessed value. This is typically used in assessment districts. If assessed value appears low or high, programs should review comparable market data to determine the most appropriate valuation. If programs believe the estimated value remains inaccurate or there is a lack sufficient comparable market data to conduct an analysis, they should conduct a desktop appraisal.⁸

3. Property Owner Ability to Pay

PACE programs attach the obligation to repay the cost of improvements to the property (not to the individual borrower). The standard underwriting for other special assessments only consists of examining assessed value to public debt, the total tax rate, and the property tax delinquency rate. However, we deem certain precautions important due to the current vulnerability of mortgage lenders and of the housing market in many regions. These precautions include:

- A Savings-to-Investment Ratio (SIR) greater than one, as described above, to maintain or improve the property owner’s debt-to-income ratio.
- Property owner is current on property taxes and has not been late more than once in the past 3 years, or since the purchase of the house if less than three years.⁹

⁸ A desktop appraisal involves a licensed appraiser estimating the value of a property without a visual inspection. These appraisals cost approximately \$100.

⁹ Applicants that have purchased the property within 3 years have recently undergone rigorous credit analyses that compensate for the short property tax payment history.

- Property owner has not filed for or declared bankruptcy for 7 years.

These best practice guidelines will evolve over time with continued monitoring of the performance of pilot PACE financing programs.

I. INTRODUCTION

In 2010, the Minnesota State Legislature approved 216C.345, authorizing cities and counties to establish voluntary contractual assessment programs to fund an array of conservation and renewable energy projects proposed by property owners. The State Legislature declared that a public purpose will be served by such programs, giving local governments the authority to finance the installation of distributed generation renewable energy sources – such as solar – and energy efficiency improvements that are permanently affixed to residential, commercial, industrial, or other real property.

To make energy efficiency and conservation improvements more affordable and to promote their installation, the bill [bill #] provides procedures for authorizing **voluntary assessments** to finance the cost of these improvements. The Edina Emerald Energy Program ("EEEP" or "Program") works at the request and with the consent of owners of the property on which the energy and water conservation improvements are to be made.

The program will provide financing ("EEEP financing") to property owners within the City to finance the installation of energy efficiency and conservation improvements under contractual assessment agreements. Property owners will repay EEEP financing through an assessment levied against their property which is payable in semi-annual installments on property tax bills.

A. Goals

EEEP will help property owners of improved real property make principled investments in the long-term health of the local, state, and national economy and global environment by providing a long-term financing mechanism for energy efficiency and conservation improvements.

EEEP provides multiple benefits. By enabling property owners to take responsible energy efficiency and conservation actions, the Program will reduce their utility bills. At the same time it boosts the local economy, supports the City's Green Steps Cities Program, and makes it possible for the City of Edina to fulfill energy efficiency and conservation and climate protection goals.

B. Program Benefits

From the City's perspective, the program will be a key element in achieving greenhouse gas reduction goals. EEEP provides a significant tool for funneling more resources into the shift to greater efficiency and renewable energy. Lower energy use translates directly into reduced greenhouse gas emissions and helps secure our energy future.

For property owners, EEEP offers a no-money-down means of financing energy efficiency and conservation improvements, fixed-rate financing over a number of years, financing without requiring a property appraisal, a streamlined financing and repayment process, and access to financing that may not readily be available through traditional means, such as home equity loans.

C. Program Administration

The City Manager shall designate an EEEP Program Administrator. The EEEP Program Administrator is authorized to enter into contractual assessments on behalf of the City. The Program Administrator will oversee professionals from the City's Finance Department. EEEP staff responsibilities will include: Community outreach; responding to property owners inquiries; Processing applications; Managing and tracking funds available for EEEP; Tracking individual and collective energy conservation; and Working and coordinating with participating jurisdictions.

EEC responsibilities include: public promotion and community education of the Program and review of Program administration activities and performance.

II. PROGRAM REQUIREMENTS

A. Program Report

In order to establish this program, the City must prepare this report setting out how the program will function (the "Program Report"). The Program Report is the guiding document for EEEP and fulfills the statutory requirements that this report contain:

- A map showing the boundaries of the territory within which contractual assessments are proposed
- A draft assessment contract between a property owner and the City
- Program policies concerning contractual assessments, including: a list of eligible improvements; identification of the City official authorized to enter into contractual assessments on behalf of the City; maximum aggregate dollar amount of contractual assessments; and a method for setting priority for applications in the event that requests appear likely to exceed the authorization amount
- A plan for funding the program
- Information on the City's cost of placing assessments on the tax roll.

B. Geographic Parameters

All property within the corporate limits of the City of Edina is geographically eligible to participate in the Program. A map showing the City boundaries is attached as Appendix B.

C. Eligible Property Owners and Eligible Properties

Property owners may be individuals, associations, business entities, cooperatives, and virtually any owner which pays secured real property taxes. Only property classified as commercial/industrial by the City Assessor is eligible to participate in the Program. Certain eligibility criteria must be satisfied. Financing may be approved if the following criteria are met:

- Property Title is vested in the applicant(s), without federal or state income tax liens, judgment liens or similar involuntary liens on the property.
- Property owner is current on property taxes.
- Property owner is not in bankruptcy, and the property is not an asset in a bankruptcy proceeding.
- Property owner is current on mortgage(s).
- The lender has signed an acknowledgement regarding EEEP financing Improvement costs are reasonable to property value.

EDINA EMERALD ENERGY PROGRAM
Program Report and Administrative Guidelines

As a guideline, proposed improvements should not exceed 10 percent of assessed value. If the proposed project exceeds this guideline or otherwise does not appear prudent when compared to the property's value, the Program Administrator may require additional information supporting both the reasonable relationship of the improvements to the property, and information related to the ability of the property owner to repay the assessment.

These applications are reviewed on a case-by-case basis; and if property owner has been in bankruptcy in the past three years, the bankruptcy must have been concluded at least one year before application was filed. In addition, all mortgage payments due on the property must have been timely paid during the six months preceding the application. If property is subject to loan modification because of default or delinquency, the loan modification must have been completed at least one year before application was filed. In addition, all mortgage payments due on the property must have been timely paid during the six months preceding the application.

EEEEP financing is not currently available for properties that are not subject to secured property taxes, such as governmental entities and certain non-profit corporations, or for mobile homes that are not affixed to real property and subject to secured property tax. Property owners may make more than one application for funding under the program if additional energy and water conservation improvements are desired by the owner.

D. Eligible Equipment

EEEEP affords property owners in the City of Edina the opportunity to take advantage of a wide range of energy-savings and conservation measures, consistent with the following provisions:

(1) EEEP financing is intended principally for retrofit activities to replace outdated inefficient equipment and to install new equipment that reduces energy consumption, produces renewable energy, or reduces energy use.. However, EEEP financing is also available for purchasers of new businesses that wish to add energy efficiency, renewable energy, and energy conservation improvements after taking title to the property.

(2) EEEP provides financing only for improvements that are permanently affixed to real property.

(3) EEEP provides financing only for improvements specified in Appendix A. Broadly, these include:

(a) Energy Efficiency Improvements;

(b) Solar Systems; and

(c) Custom Measures, such as large-scale commercial or industrial projects requiring engineering design and meeting the financing threshold (\$500,000) requiring approval by the City Council **or** projects involving emerging technologies for improvements that provide new ways to save or generate energy will be evaluated on a case-by-case basis.

A detailed list of Improvements is set out in EEEP's Eligible Improvements list.

EEEEP financing is also available for projects that combine eligible improvements, such as bundling of, energy efficiency and renewable energy measures. For instance, a property

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owner may choose to replace an aging and inefficient furnace, install weather stripping, and install a photovoltaic system.

E. Eligible Costs and Program Fees

(1) **Project Costs.** Eligible costs of the energy efficiency and conservation improvements include the cost of equipment and installation. Installation costs may include, but are not limited to, energy evaluation consultations, labor, design, drafting, engineering, permit fees, and inspection charges. All improvements, including those normally exempt from permit requirements, will require a permit from the City. Final inspection by a building inspector will ensure that the Improvements were completed and compliant with all applicable building codes..

The installation of energy savings and conservation improvements can be completed by a qualified contractor of the property owner's choice. Eligible costs do not include labor costs for property owners that elect to do the work themselves.

Property owners who elect to engage in broader projects may only receive EEEP financing for that portion of the cost of retrofitting existing structures with energy and conservation improvements. Repairs and/or new construction do not qualify for EEEP financing except to the extent that the construction is required for the specific approved improvement.

The value of expected rebates but not the value of expected tax credits will be deducted from EEEP financing. "Expected rebates" do not include rebates (1) that are contingent on performance or (2) that are not available to the property owner at or shortly after completion of the project, so as to be available for use to pay for the project.

EEEEP staff will determine whether the estimated equipment and installation costs are reasonable. EEEP staff will evaluate market conditions and may require the property owner to obtain additional bids to determine whether costs are reasonable. While the property owner may choose the contractor, the amount available for EEEP financing will be limited to an amount determined reasonable by EEEP staff, and may be reviewed by the Program Administrator.

(2) **Program Fees.** The following program fees will be the responsibility of the property owner. The annual assessment fee will be included on the annual tax statement. The other fees must be paid at the time they are incurred.

(a) Title costs, including title insurance, where required

(b) Recording fee for documents required to be recorded by State law, which includes the Notice of Assessment, Assessment Contract, and Disclosure Notification

(c) Legal fees and underwriting fees incurred by the City for the project financing

(3) **Escrow fees.** Some large projects, or projects with multiple contractors, may benefit from funding through an escrow process. If this process is selected by the property owner, the owner would select an escrow agent, and after the Assessment Contract is signed, the amount requested would be funded into the escrow account. Escrow instructions governing release of the funds would need to be approved by the Program Administrator. All fees related to this process would be the responsibility of the property owner but could be requested as part of Program funding. As in the Multiple Disbursement Assessment Contract, interest on the full amount of the requested disbursement will begin to accrue as

EDINA EMERALD ENERGY PROGRAM
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soon as the escrow is funded. Any amount not needed at the completion of the project must be returned to the Program, and will be deducted from the amount of the assessment lien. All projects over \$500,000 must utilize an escrow process.

F. Administrative Costs

The Program may elect to cover all or a portion of its costs through the “spread” between its interim funding source interest rate and the EEEP financing interest rate offered to the property owner. Similarly, it may elect to recover EEEP costs through a spread between bond rates and assessment rates, or the spread between interest rates of any financial vehicle. The Program shall charge a \$100 administrative fee at the time of submission of the EEEP application.

III. TRACKS FOR PARTICIPATION

There are three categories or “tracks” of technologies under which property owners may participate in the program. Eligible improvements must meet specified minimum efficiency standards. A complete list of approved improvements is set out in the Eligible Improvements list.

A. The Energy Efficiency Track.

The Energy Efficiency Track covers a wide range of energy efficiency fixtures from windows and doors, attic insulation and HVAC equipment that is Energy Star rated. Packaged and central air conditioning systems must meet specified minimum efficiencies.

B. The Solar Track.

The Solar System Track covers solar energy generation and solar hot water systems.

C. The Custom Measure Track.

The development of technologies is encouraged by EEEP as a means of diversifying the City’s energy sources. The Custom Measure Track will evaluate and provide funding, if appropriate, for these innovative projects.

Applicants for the Custom Measure Track should consult with EEEP staff to determine eligibility and will be required in most cases to submit engineering plans and specifications. The Program Administrator, or designated staff, will approve the Custom Measure Track application on a case-by-case basis, and may request consultation from outside technology experts in making this decision. The applicant would be expected to bear the cost of such consultation. Cost reimbursement would be discussed with the applicant before the project was reviewed.

IV. ENERGY AUDITS, EVALUATIONS AND SOLAR SITE CHECKS

An onsite energy audit or evaluation is required for to participate in the Program. Your energy providers (Xcel Energy or CenterPoint Energy) may offer a energy audit or evaluation services for commercial properties to help property owners determine the most cost-effective and efficient route to maximize investment and energy savings. Commercial

property owners may include the cost of the energy audit or evaluation in the application for EEEP financing.

V. PROGRAM PARAMETERS

A. Minimum Energy Financing Amount and Duration of Assessment

EEEEP Assessment Contracts are available for up to 10-year terms to accommodate a wide range of efficiency measures and renewable energy investments. The minimum amount for an EEEEEP Assessment Contract is \$2,500. All Assessment Contracts below \$5,000 are subject to a five- or ten-year assessment repayment period. Assessments over \$5,000 are subject to a 10- assessment repayment period, requested by the property owner, and agreed to by the Program Administrator or designated Program staff. The Program Administrator may approve a five-year term for a Contract exceeding \$5,000 after discussion with the property owner and in the Program Administrator's discretion after considering such factors as cost to value ratio, and the marketability of bonds relying on the Assessment Contract for security.

B. Maximum Energy Financing Amount

Improvement costs must bear a reasonable relationship to assessed value of the property. All contracts for amounts up to \$20,000 may be approved by the Program Administrator. Amounts over \$20,000 must be reviewed and approved by the Edina City Council.

EEEEP financing will be disbursed directly to the property owner after improvements are completed and final documentation is submitted to EEEEEP Staff.

C. Maximum Portfolio

The City intends to initially fund EEEEEP with a commitment of up to \$1 million of its total statutory debt capacity. The City will explore other financing opportunities, with the goal of expanding the Program to \$10 million of its total statutory debt capacity.

D. Assessment Interest Rate

The Program Administrator will set the interest rate for an EEEEEP Assessment Contract at the time the Program and property owner enter into the contract. The interest rate will be fixed at that point and will not go up, although the City may reduce the rate for all Program participants if it is able to negotiate long term financing on sufficiently favorable terms to allow it to do so while still funding the program costs.

The interest rate for the EEEEEP program will be determined by the negotiated market rate of the special assessment revenue bonds. The Program will recover its administrative and overhead costs through the spread between the market rate of the revenue bonds and the interest rate charged to the applicant in the special assessment contract. Initially, the Program Administrator is recommending the interest rate for the program be set at a fixed interest rate spread of 2.00 percent.

E. Property Assessment Lien

All property owners must sign and notarize the EEEEEP Assessment Contract and Implementation Agreement ("contract documents"). Upon execution of the contract

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documents, the program will place a lien for the full amount of the assessment on the property that secures the assessment, including capitalized interest being the amount of interest accrued from the date of disbursement through September 1 of the first tax year. If funds are disbursed to property owners by the first business day in September, the assessment will appear on the next tax bill. For disbursements made after the first business day of September, the assessment will not appear on the tax bill until the following tax year, but interest will accrue on the outstanding amount.

F. Delinquent Assessment Collections

Delinquent assessments will be collected using the laws and powers authorized under state statutes for collecting property taxes and assessments. Delinquent assessments will be collected and allocated, in accordance with state statutes. Where bonds have been sold to finance assessments, state law also allows delinquent assessments to be collected through foreclosure proceedings to protect bondholders.

VI. THE FINANCIAL STRATEGY

The City Finance Director will establish the Edina Emerald Energy Program Fund (the "EEEEP Fund") and may accept funds from any available source and may disburse the funds to eligible property owners for the purpose of funding energy efficiency and conservation improvements. Repayments will be made pursuant to Assessment Contracts between the property owners and City of Edina and will be collected through the property assessment mechanism in the Edina City property tax system.

The City will manage the EEEP in one enterprise fund with multiple sub-funds. It is necessary to ensure that financings equal the City's receivables. Likewise, it is necessary to separate City's funds for repaying bonds, etc. to ensure funds are available when payment is due. The Program Administrator has the authority to develop the necessary accounting structure needed to run the EEEP.

Each year, the City may use assessment revenues in excess of the amounts needed to repay the loan to fund a reserve account and a program expense account. Moneys in the reserve account will provide additional security for the repayment of the loan. Moneys in the program expense fund may be used to pay or reimburse the City for expenses to administer the EEEP. The City may use surplus funds, which remain after the payment of the Bond at maturity or upon early redemption for any lawful purpose for the program.

The City will use revenues from the annual administrative assessment provided for in each assessment contract to pay for the administrative expenses of the City in connection with the bond and the collection of the assessments. It is anticipated the administrative assessment will be a nominal amount, to cover the cost of the assessment administrator and the Program Administrator cost in placing the charge on the tax roll.

For long-term and additional financing, the Program Administrator will explore funding opportunities from a number of other potential funding sources, and combinations of sources, which may include but are not limited to additional funding from any funds under the control of the City of Edina, the issuance of notes, bonds, or agreements with utilities or

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public or private lenders, other governmental entities and quasi-governmental entities, or any financing structure allowed by law.

Program Administrator will report on program progress to the EEC on a quarterly basis and the City Council on an annual basis with the information necessary to further adjust the Program to encourage participation and effectiveness, with recommendation from the Program Administrator.

The Program Administrator shall have the authority to establish an EEEP budget to be ratified by the City Council.

VII. CHANGES TO REPORT

The Program Administrator may make changes to this Report that the Program Administrator reasonably determines are necessary to clarify its provisions. Any changes to this report that materially modify the EEEP shall only be made after review and recommendation of the EEC and approval by the City Council

The Program Administrator may modify from time to time the eligible improvements List, Assessment Contract and Application attached hereto as Appendix A, Appendix D and Appendix C, respectively, as deemed necessary by the Program Administrator to effectuate the purposes of the program.

APPENDIX A – ELIGIBLE IMPROVEMENTS

The Edina Emerald Energy Program offers EEEP funds for a number of equipment types, including energy efficiency measures, solar systems, and other innovative, energy-saving and energy generation custom measures. In each case, if a rebate is available to the property owner to be applied to the purchase price, that amount must be deducted from the amount of financing requested. A comprehensive list of eligible improvements is available on the EEEP website.

I. ENERGY EFFICIENCY MEASURES

The EEEP provides services and funding for a wide range of Energy Star-rated efficiency measures, including many Energy Efficiency measures for which property owners can get rebates as well as EEEP funding. Excepting the HVAC equipment as noted below, efficiency measures must meet the performance criteria stated in the list of eligible improvements or the Energy Star minimum efficiency levels. For all packaged and central air conditioning systems funded in this Program, the minimum efficiency levels shall be as required by the current minimum requirements set forth in list of eligible improvements. All other proposed efficiency measures will be considered in the Custom Measure Track. The City of Edina anticipates that Energy Star requirements will “ratchet up” to greater efficiency levels over time. Energy Star will also become more inclusive of technologies over time. Thus, the EEEP will evolve with Energy Star and the market for energy-efficient technologies. The following Energy Star measures – among others – are eligible in the Efficiency Track.

A. Commercial Energy Efficiency Measures

- (1) Heating, ventilating and air conditioning systems (“HVAC”)
 - (a) Minimum efficiencies
 - (i) Split **systems** with 14 SEER or 12 EER
 - (ii) Package systems with 13 SEER or 11 EER
- (2) Geothermal exchange heat pumps
 - (a) Minimum efficiencies
 - (i) Ground source exchange open loop system 17.8 EER or higher
 - (ii) Ground source exchange closed loop system 15.5 EER or higher
- (3) High efficiency electric hand dryer
- (4) All applicable energy efficiency measures listed in “Residential” section

B. Commercial Energy Efficiency *Custom* Measures

- (1) Building energy management systems,
- (2) Lighting control systems, which shall include occupancy sensors and other energy saving measures
- (3) HVAC duct zoning control systems
- (4) Motors and controls (processing or manufacturing equipment)
- (5) Customer electric vehicle plug-in station

II. SOLAR EQUIPMENT

Solar track funding is available for a wide range of solar equipment. EEEP funding will be available for photovoltaic equipment and installers listed by the Minnesota Energy Commission. Solar thermal equipment must be rated by the Solar Rating Certification Council (SRCC). As with efficiency measures, if a rebate is available to the property owner to be applied to the purchase price, that amount must be deducted from the amount of financing requested. Eligible solar equipment for both residential and commercial properties includes:

- (1) Solar thermal systems (hot water)
- (2) Solar thermal systems for pool heating
- (3) Photovoltaic systems (electricity)
 - (a) Battery back-up systems will be allowed
 - (b) Funding for off-grid systems will be allowed
 - (c) PV systems can be sized to accommodate plug-in electric vehicles
 - (d) Plug in stations
- (4) Emerging technologies – following the Custom Measures Track
 - (a) Nano/thin film photovoltaic
 - (b) High intensity (parabolic solar panels)

III. CUSTOM MEASURES

The Custom Measures Track is a process by which EEEP Staff can evaluate and fund projects that are not “off the shelf” improvements listed in the eligible Water Conservation, Energy Efficiency or Solar Measures. These custom projects may involve large scale industrial or commercial energy efficiency improvement projects, such as process or industrial mechanical systems, renewable energy sources and energy generation, other than the solar system (photovoltaic), such as geothermal, and potentially fuel cells, as well as more complex and cutting edge energy management solutions and emerging technologies. The Custom Measure Track will evaluate and provide funding, if appropriate, for these innovative projects.

Applicants for the Custom Measure Track should consult with EEEP staff to determine eligibility and will be required in most cases to submit engineering plans and specifications. An EEEP Custom Measure’s Track review/technical panel will meet to review the engineering documents and data for custom and emerging technology projects. EEEP may require an additional administrative fee for project evaluation by the technical review. In all cases, the City reserves the right to decline funding of a custom measure. The following types of measures – among others – will be considered for EEEP funding through the Custom Measure Track:

A. Energy Efficiency Custom Measures

- (1) Alternative energy generation (other than photovoltaic)
- (2) Building energy management controls
- (3) HVAC duct zoning control systems
- (4) Lighting controls

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(5) Industrial and process equipment motors and controls

As these "Custom Measures" become Energy Star rated they will be included in the list of eligible improvements.

B. Energy Generation Custom Measures

- (1) Fuel Cells
- (2) Natural gas
- (3) Hydrogen fuel
- (4) Other fuel sources (emerging technologies)
- (5) Co-generation (heat and energy)

Other documents including the Application, Petition for Special Assessments, Summary of Financing Process, Flowchart, and list of eligible improvements can be found online at www.edinaCityenergy.org or can be obtained at Edina City Hall (4801 W. 50th Street) or at the Edina Public Works Facility (7450 Metro Blvd).