

## 300. LAND USE

300.010. INTRODUCTION. Chapters 300 through 399 regulate the use of land, the location, bulk, height and use of buildings, the arrangement of buildings on lots, and the subdivision of land in the City of Birchwood Village. These regulations, which may be referred to as "Land Use Regulations," are put forth in order to promote the public health, safety and welfare, and to implement the Comprehensive Plan for Birchwood Village, Minnesota.

A majority of the City falls within the State of Minnesota's definition of shoreland. Since uncontrolled use of shorelands adversely affects the public health, safety and welfare by contributing to the pollution of public waters and by impairing the local tax base, the City's Land Use regulations meet or exceed the requirements of the Minnesota Statewide Standards for "Management of Shoreland Areas", (effective date July 3, 1989). These Standards are administered by the Minnesota Department of Natural Resources.

This ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 103F, Minnesota Regulations, Parts 6120.2500-6120.3900, and the planning and zoning enabling legislation in Minnesota Statutes, Chapter 462.

300.015. NOTIFICATIONS TO THE DEPARTMENT OF NATURAL RESOURCES.

1. Copies of all notices of any public hearings to consider variances, amendments or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked at least ten (10) days before the hearings. Notices of hearings to consider proposed subdivision/plats must include copies of the subdivision/plat.

2. A copy of approved amendments and subdivisions/plats, and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked within ten (10) days of final action.

300.020. DEFINITIONS. For the purpose of Chapters 300 through 399 certain terms and words are hereby defined as follows:

1. Accessory Structure. A non-habitable one-story detached accessory structures (e.g., tool sheds, storage sheds) provided the floor area does not exceed 144 square feet and a maximum wall height of 12 feet measured from the ground to the top of the top plate.

**“AMENDED BY ORDINANCE 2020-02-01; APRIL 14, 2020.”**

2. Basement. A story partly underground but having less than 1/2 of its clear height above finished grade.

3. Best Management Practices (BMPs). Erosion and sediment control and water quality management practices that are the most effective and practicable means

of controlling, preventing, and minimizing the degradation of surface water, including construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, and other management practices published by state or designated area-wide planning agencies.

Examples of BMPs can be found in the current versions of:

- a. The Minnesota Pollution Control Agency publications, “Protecting Water Quality in Urban Areas”, and “Storm-Water and Wetlands: Planning and Evaluation Guidelines for Addressing Potential Impacts of Urban Storm-Water and Snow-Melt Runoff on Wetlands”
  - b. The Metropolitan Council “Urban Small Sites BMP Manual” (available on disk or at:  
[www.metrocouncil.org/environment/watershed/BMP/manual.htm](http://www.metrocouncil.org/environment/watershed/BMP/manual.htm)  
(address current January 2005)),
  - c. The United States Environmental Protection Agency “Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices” (as a reference for BMPs)
  - d. The Minnesota Department of Transportation “Erosion Control Design Manual”.
4. Board. The Board of Appeals established in Section 304.010.
  5. Boathouse. A structure designed and used solely for the storage of boats or boating equipment.
  6. Building. Any structure which is built for the support, shelter or enclosures of persons, animals, chattels or movable property of any kind, which is permanently affixed to the land.
  7. Building Line. A line parallel to the front lot line or the ordinary high water level at the required setback beyond which a structure may not extend.
  8. Business. Any occupation, employment or enterprise wherein merchandise is exhibited or sold, or which occupies time, attention, labor and materials or where services are offered for compensation.
  9. Clearcutting. Complete removal of trees or shrubs or woody ground cover in a contiguous patch, strip, row, or block.
  10. Conventional Energy System. Any energy system, including supply elements, furnaces, burners, tanks, boilers, related controls, and energy-distribution components, which uses any source(s) of energy other than solar energy. These sources include, but are not limited to gas, oil and electric heating but exclude windmills.
  11. Deck. A horizontal, unenclosed platform with or without attached railings, seats, trellises or other features, either attached or functionally related to a principal use.
  12. Driveway. See Parking Space.

13. Dwelling. Any building or structure, or part thereof, which is used or intended to be used for living or sleeping.
14. Dwelling Unit. A room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping and cooking.
15. Easement. An interest in land owned by another that permits the owner of such interest the right of limited use or enjoyment of the land in which the interest exists.
16. Easement, Lake. Any tract of land running to and abutting the shoreline of White Bear Lake which is owned by the City, subject to the right of City residents to use for access to White Bear Lake.
17. Family. A family is:
  - a. An individual or 2 or more persons related by blood, marriage or adoption, living together or
  - b. A group of not more than 5 persons who need not be related by blood, marriage or adoption, living together as a single housekeeping unit in a dwelling unit.
18. Fence. A permanent partition, structure, wall or gate erected as a dividing marker or enclosure.

**“AMENDED BY ORDINANCE 1997-3; AUGUST 12, 1997.”**

19. Final Plat. The final map, drawing or chart on which the subdivider's plan or subdivision is presented to the City Council for approval, and which, if approved, will be submitted to the County Recorder or Registrar of Deeds for recording.
20. Garage. A building or portion of a building used by the tenants of the building on the premises which is designed primarily for the storage of motor vehicles. A detached garage is an accessory structure.

**“AMENDED BY ORDINANCE 2000-1; FEBRUARY 8, 2000.”**
21. Ground floor area. The ground floor area of any dwelling shall be the sum of the gross horizontal areas of the first floor of living area for each dwelling unit. However, the ground floor area shall not include the basement.
22. Home Occupation. A lawful occupation carried on solely or primarily within a dwelling unit. The occupation is clearly incidental and secondary to the use of the building for dwelling purposes, and does not change the character of the dwelling or accessory structure.
23. Impervious Surface. A ground surface covered or compacted with material so as to substantially retard the entry of water into the soil, and to cause water to remain on the surface or to run off the surface in greater quantities or at an increased rate of flow than would occur if there was a natural soil surface.

Impervious surfaces shall include improvements utilizing concrete, asphalt, gravel, or other non-porous materials. Examples of impervious surfaces include, but are not limited to, roads, driveways, parking areas, swimming pools, sidewalks, patios, rooftops, and covered decks. Examples of impervious surfaces resulting from compacting are unpaved or ungraveled driveways and parking areas.

EXCEPTIONS 1: Open decks and walkways with open joints at least ¼ inch wide per 8 inch wide board, and areas beneath overhangs less than 2 feet wide, if bare or vegetated soil is beneath the decks or walkways or overhangs, shall not be considered impervious surfaces.

EXCEPTION 2: Any surface approved by the City Engineer using applicable industry standards to be given credit as a “pervious surface” shall be given appropriate credit (as a %) therefore.

**“AMENDED BY ORDINANCE 2018-08-01; OCTOBER 9, 2018.”**

24. Land Disturbance Activity (LDA). Any land change that may result in soil erosion from water or wind and the movement of sediments including, but not limited to, grading, excavating, and filling of land, and removal of vegetation.

EXCEPTION: Gardening or the planting of trees or shrubs shall not be considered to be a land disturbance activity.

25. Lodging Room. A room rented as sleeping and living quarters without cooking facilities either with or without an individual bathroom. In a suite of rooms without cooking facilities, each room which provides sleeping accommodations shall be counted as one lodging room.
26. Lot. A parcel of land designated by plat, metes and bounds, registered land survey, auditors plot or other accepted means and separated from other parcels or portions by said description for the purpose of sale, lease or separation
27. Lot of Record. A parcel of land, whether subdivided or otherwise legally described, as of January 1, 1975, or approved by the City as a lot subsequent to such date and which is occupied by or intended for occupancy by one principal building or principal use, together with any accessory buildings and such open spaces as required by Chapters 301 through 399, and having its principal frontage upon a street or the lake.
28. Lot, Corner. A lot situated at the junction of and abutting on 2 or more intersecting streets.
29. Lot Line. A property boundary line of any lot.
30. Lot Line, Front. That lot boundary abutting a public street. The owner of a lot abutting two streets may select either street as the front lot line.
31. Lot Width. The shortest distance between lot lines measured at the midpoint of the building line

32. Master Plan. Is a comprehensive plan and includes all plans of the City for land use, transportation facilities and community.
33. Nominal Structure. A non-habitable one-story detached accessory structure (e.g., tool sheds, storage sheds, playhouses, dog house) provided the floor area does not exceed 25 square feet and a maximum wall height of 10 feet measured from the ground to the top of the top plate.

**“AMENDED BY ORDINANCE 2020-02-01; APRIL 14, 2020.”**

34. Non-Conforming Use. **Non-Conforming Pre-Existing Structure or Use:** Any building or structure which was legally existing on January 1, 1975, or authorized by variance thereafter, which would not conform to the applicable conditions if the building or structure were to be erected under this Code. **Non-Conforming Illegal Structure, Use, or Lot:** A lot, building, structure, premises, or use illegally established when it was initiated, created, or constructed, which did not conform with the applicable conditions or provisions of the City Code for the area in which the structure or use is located.

**“AMENDED BY ORDINANCE 2018-05-02; OCTOBER 9, 2018.”**

35. Official Map. The map established by the City Council showing the streets, highways and parks theretofore laid out, adopted and established by law and any amendments thereto adopted by the City Council and the subsequent filing of such approved plats.
36. Open Space. Land with no structures upon it.
37. Open Space Site. Any park, beach, open area, special use area, lake easement or other area owned, improved, maintained, operated or otherwise controlled by the City of Birchwood Village for recreational and natural resource preservation purposes.
38. Ordinary High Water Level. An elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.
39. Owner. Any individual, firm, association, syndicate, co-partnership, corporation, trust or any other legal entity having a proprietary interest in land, including a sufficient proprietary interest in land sought to be subdivided and/or to commence and maintain proceedings to subdivide the same under this ordinance.
40. Parking Space or Driveway. A suitably surfaced and permanently maintained area on privately owned property either within or outside of a building of sufficient size to store one standard automobile or which provides ingress or egress to the principal or accessory structure of a suitable width for an automobile.
41. Preliminary Plan. The preliminary map, drawing, or chart indicating the proposed layout of the subdivision to be submitted to the City Council for its consideration.

42. Public Utility Use. Transmission facilities of electric power, gas, water, telephone and cable TV.

43. Public Waters. "Public waters" means any waters as defined in Minnesota Statutes, section 105.37, subdivision 14 and 15. In Birchwood, these waters and their shoreland classifications are:

DNR ID #82-167, White Bear Lake, General Development

DNR ID #82-134, Lost Lake, Recreational Development

DNR ID #82-480W, Hall's Marsh, General Development

44. Roadway. The paved portion of the street.

45. Setback. The minimum horizontal distance between a structure and an ordinary high water level, street, road or highway right-of-way or property line.

46. Shoreland. Land located within 1,000 feet of the ordinary high water level of a lake, pond, or wetland.

47. Significant Tree. A healthy coniferous tree six (6) feet or more in height or a healthy deciduous tree eight (8) inches or more in diameter.

48. Solar Energy. Radiant energy (direct, diffuse, or reflected) received from the sun.

49. Solar Energy System. A set of devices whose primary purpose is to collect solar energy and convert or store it for useful purposes including heating and cooling buildings or other energy-using processes, or to produce generated power by means of any combination of collecting, transferring, or converting solar-generated energy.

50. Storage Shed. A storage shed is a detached accessory structure used to shelter household items as well as tools and machinery used for yard maintenance. A trailer, truck box or other vehicle with or without its wheels or in operable or inoperable condition shall not be allowed as a storage shed.

**“AMENDED BY ORDINANCE 2000-1; FEBRUARY 8, 2000.”**

51. Storm Water. Precipitation runoff, storm water runoff, snow melt runoff, and any other surface runoff and drainage.

52. Street. The land between the road right-of-way lines. "Street" is also a way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place or however otherwise designated. The City Council shall determine when a given street is an "arterial street", "collector street", "cul-de-sac", "local

a. "Arterial Street" is a fast or heavy traffic street of considerable continuity and used primarily as a traffic artery for intercommunication among large areas.

b. "Collector Street" is a street which carries traffic from minor streets to arterial streets, including the principal entrance streets of a residential development and streets for circulation within such a development.

- c. "Cul-de-sac" or "Dead-end Street" is a minor street with only one outlet.
  - d. "Local Street" is a street used primarily for access to abutting properties.
  - e. "Private Street" is a street serving as vehicular access to two or more parcels of land which is not dedicated to the public but is owned by one or more private parties.
  - f. "Width, Street" is the shortest distance between the lines delineating the right-of-way of a street.
53. Structure. Anything which is built, constructed or erected: an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner whether temporary or permanent in character including, but not limited to decks, buildings, cabins, manufactured homes, factories, sheds, screen porches, gazebos, platforms, shelters, pergolas, pools, whirlpools, detached garages, car ports, lean-tos, greenhouses, ice fishing houses, towers, and other similar items, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, poles and other supporting facilities.
- “AMENDED BY ORDINANCE 2013-08-01; AUGUST 13, 2013.”**
54. Structural Alteration. Any change in the supporting members of a building, such as bearing walls, columns, beams or foundation.
55. Subdivider. Is an individual, firm, association, syndicate, co-partnership, corporation, trust or any other legal entity commencing proceedings under this Code to effect a subdivision of land hereunder for himself or for another.
56. Subdivision. Is the division of a parcel of land into two or more lots or parcels for the purpose of transfer of ownership or building development, or, if a new street is involved, any division of a parcel of land; provided that a division of land which may be ordered or approved by a court or effected by testamentary or intestate provisions, or a division of land for agricultural purposes into lots or parcels of ten acres or more and not involving a new street shall not be deemed a subdivision. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.
57. Variance. The same as that term is defined or described in Minnesota Statutes, Chapter 462. (Procedures and criteria for obtaining variances are provided in The Zoning Code, Chapter 304.)
58. Walkway. An unenclosed area used primarily for foot traffic. A walkway may be paved or covered by a platform which is constructed at grade level and which is at no point more than 1 foot above grade or 4 feet wide.
59. Wetland. An area where water stands near, at, or above the solid surface during a significant portion of most years, saturating the solid surface and supporting a predominantly aquatic form of vegetation. "Wetland" is further defined as a surface water feature which can be classified as a Type 2, 3, 4, 5, 6, 7, or 8 wetland per definitions in the United States Fish and Wildlife Service Circular

No. 39 (1971 edition). White Bear Lake is not included as a "wetland" within this definition.

**“AMENDED BY ORDINANCE 1995-2; MAY 9, 1995.”**

60. Yard, Front. That open space which extends along at right angles to the front line to a depth or width specified in the set-back regulations.
61. Yard, Rear. That open space on the same lot with the principal building located between the rear line of the building and the rear lot line or the ordinary high water level of a lake, pond or wetland, and extending for the full width of the lot.
62. Yard, Side. The open space extending along the side lot between front and rear yards.

**“AMENDED BY ORDINANCE 2005-1; APRIL 12, 2005.”**

**“AMENDED BY ORDINANCE 1995-2; MAY 9, 1995.”**

**“AMENDED BY ORDINANCE 1997-3; AUGUST 12, 1997.”**

**“AMENDED BY ORDINANCE 2000-1; FEBRUARY 8, 2000.”**

**“AMENDED BY ORDINANCE 2005-1; APRIL 12, 2005.”**

**“AMENDED BY ORDINANCE 2013-08-01; AUGUST 13, 2013.”**

**“AMENDED BY ORDINANCE 2018-05-02; OCTOBER 9, 2018.”**

**“AMENDED BY ORDINANCE 2018-08-01; OCTOBER 9, 2018.”**

**“AMENDED BY ORDINANCE 2020-02-01; APRIL 14, 2020.”**