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Date: December 10, 2014

To: Planning Commission

From: Cary Teague, Community Development Director

Re: City Code Amendment Consideration – Tree Preservation

Based on feedback from the October 21st Work Session with the City Council, attached is a draft of the Tree Preservation Ordinance that the Planning Commission has been working on over the past several months. The text highlighted in green is based on feedback from the City Council.

The Planning Commission is asked to hold a public hearing and make a recommendation on the Ordinance to the City Council.

The following is a summary of the proposed Ordinance:

- This ordinance applies to all demolition permits; building permit applications for a structural addition; and building permits for accessory structures including a garage, deck or a pool.
- All such permits are required to include a tree inventory plan indicating where Protected Trees are located and, their species, caliper, health, approximate height and canopy width. The plan must show how Protected Trees are preserved and protected during construction. The plan must also show if any Protected Trees are proposed to be removed and the location, species and size of all replacement tree(s).
- Trees to be protected under this Ordinance include all deciduous trees at least 8 inches dbh, except box elder, elm, poplar, willow, silver maple, black locust, fruit tree, and mulberry; and coniferous trees at least 20 feet in height.
- Any healthy protected tree that is removed within a 10 foot radius of a building pad, deck or patio or within 5 feet of a driveway and parking area does not have to be replaced.



- Any healthy protected tree that is removed as part of a demolition permit; building permit application for a structural addition; or building permits for accessory structure that is outside of the building pad, deck or patio area or within the driveway or parking area must be replaced 1 to 1.
- Protected Trees to remain must be protected during construction.
- Replacement trees that die within three years of planting would need to be replaced.
- The subdivision ordinance has been revised to reflect the new ordinance.

The proposed Ordinance would add an expense to a building permit for inclusion of the tree inventory. The Ordinance would also require a longer building permit review time and additional staff time.

Ordinance Enforcement

While the proposed ordinance would not have the impact on staffing that the previous ordinance did, the amount of staff time required to enforce this ordinance will still increase. As mentioned previously, the city forester is currently a part time position (34 hours per week on average). The forester has reviewed the proposed Ordinance, and believes that an additional staff person (possibly part time) would be required to adequately enforce the Ordinance or the city forester position become full time to still maintain the level of service that they currently provide. The primary focus of the forester is on the city's 600-800 acres of public land; although he does occasionally work with residents regarding tree issues on private property.

The new ordinance would require the following additional staff review:

- Review of the "tree plan" as part of the building permit. This is the review of the survey showing existing trees, those that would be removed, and those proposed to be planted. Given the last couple years of permit activity, this could be between 150-200 permits per year; this would include new home construction after a tear down and additions to existing homes.
- Respond to complaints regarding trees that die during the three year new growth period.

This would ultimately be a decision of the City Council in regard to staffing.

ORDINANCE NO. 2014-__
AN ORDINANCE AMENDMENT REGARDING TREE PRESERVATION

The City Council Of Edina Ordains:

Section 1. Chapter 10, Article III of the Edina City Code is amended to add Division 3 as follows:

DIVISION III. TREE PROTECTION

Sec. 10-82. Preservation, protection and replacement of Protected Trees: This ordinance applies to all demolition permits; building permit applications for a structural addition; and building permits for accessory structures including a garage, deck or a pool.

(1) Purpose: Edina is fortunate to have a robust inventory of mature trees that form an integral part of the unique character and history of the city, and that contribute to the long-term aesthetic, environmental, and economic well-being of the city. The goal of this Section is to preserve as much as practical Edina's high valued trees, while allowing reasonable development to take place and not interfere with how existing property owners use their property. The purpose of the ordinance is to:

- a. Preserve and grow Edina's tree canopy cover by protecting mature trees throughout the city.
- b. Protect and enhance property values by conserving and adding to the distinctive and unique aesthetic character of Edina's tree population.
- c. Protect and enhance the distinctive character of Edina's neighborhoods
- d. Improve the quality of life for all stakeholders, including city residents, visitors and wildlife.
- e. Protect the environment by the filtering of air and soil pollutants, increasing oxygen levels and reducing CO2; prevent and reduce managing erosion and stormwater by stabilizing soils; reducing heat convection; decreasing wind speeds; reducing noise pollution and decreasing the urban heat island effect.
- f. Protect and maintain healthy trees in the development and building permit processes as set forth herein; and prevent tree loss by eliminating or reducing compacted fill and excavation near tree roots.

Existing text – XXXX

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Added text – XXXX

Added text after May 6 - XXXX

~~g. Prevent or reduce soil erosion and sedimentation and stormwater runoff.~~

h. Maintain buffers between similar land uses and establishing and maintaining buffers between conflicting land uses.

(2) Definitions:

a. Protected Tree: Any tree that is structurally sound and healthy, and that meets one of the following:

i. a deciduous tree that is at least ~~8~~ 15 inches dbh, except box elders, elm, poplar, willow, silver maple, black locust, fruit tree species, and mulberry.

ii. a coniferous tree that is at least 20 feet in height.

b. Removable Tree. Any tree not defined as a Protected Tree, and/or as defined as an invasive species by the Minnesota Department of Natural Resources.

c. Critical Root Zone. The minimum area around a tree that must remain undisturbed. The critical root radius is calculated by measuring the tree's diameter at breast height. For each inch of tree diameter, 1.5 feet of root zone radius must be protected. For example, if a tree's dbh is 10 inches, then its critical root zone radius is 15 feet (10 x 1.5 = 15).

(3) Demolition and building permit applications must include a certified tree inventory plan indicating where Protected Trees are located and, their species, caliper, health, and approximate height and canopy width. The plan must show how Protected Trees are preserved and protected during construction. The plan must also show if any Protected Trees are proposed to be removed and the location, species and size of all replacement tree(s).

(4) If a Protected Tree is removed, except as allowed for in paragraph (5), it must be replaced with one (1) tree, subject to the following conditions:

a. Protected trees must be replaced with species of a similar type that are normally found growing in similar conditions and that are included on the list of acceptable replacement species on file with the city.

b. Replacement trees must be varied by species. ~~and are limited to the species listed above in (2) Definitions.~~

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- c. Replacement trees must not be subject to known epidemic diseases or infestations. Disease or infestation resistant species and cultivars are allowed.
- d. Replacement trees must be at least two and one-half inches (2.5") in caliper for deciduous trees and a minimum of seven feet (7') tall for coniferous trees.
- e. Replacement tree plans are subject to approval by the City Forester before implementation.
- f. ~~If a replacement tree location cannot be found on the property, it must be placed in a public area, subject to approval by the City Forester.~~
- g. The city may allow larger balled and burlapped or spade moved trees if these trees are accompanied with a three year guarantee. Other size substitutions, based on site characteristics, may be allowed at the reasonable discretion of the city. Any replacement tree that dies within three years after planting must be replaced by the property owner.
- h. If the city determines in its reasonable discretion that there is no appropriate location for some or all the required replacement trees, those trees may not be required. The city also has the discretion to place the replacement trees on public property if there is no appropriate location.

(5) Protected Trees may be removed without mitigation, in the following areas:

- a. Including, and within a ten-foot (10') radius of, the building pad, deck or patio of a new or remodeled building.
- b. Within a five-foot (5') radius of driveways and parking areas.

~~(6) During the demolition and building permit processes, the permit holder shall not leave any Protected Tree without sufficient guards or protections to prevent injury to the Protected Tree, in connection with such construction. The survey must indicate how the Protected Tree would be protected during construction, subject to staff review and approval.~~ Before construction, grading or land clearing begins, city-approved tree protection fencing or other method must be installed and maintained at the critical root zones of the trees to be protected. The location of the fencing must be in conformance with the approved tree preservation plan. The fencing must be inspected by city staff before site work begins. **The fencing must remain in place until all demolition and construction is complete.**

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Added text after May 6 - XXXX

(7) No construction, compaction, construction access, stock piling of earth, storage of equipment or building materials, or grading may occur within the critical root zone areas of trees to be protected, unless there are no other on-site alternatives. If there are no other alternatives, this activity would need to be reviewed and approved by the city forester. A reasonable effort must be made when trenching utility lines to avoid the critical root zone.

(8) When construction is complete all trees to remain must have the soil out to their drip line aerated and de-compacted. Aerating must include multiple concentric circles of 2-3" holes, 18" deep, or as recommended by an arborist.

(9) If Protected Trees were removed within one (1) year prior to the date the development, demolition and building permit applications were submitted, these Protected Trees are also subject to the replacement policy set forth in paragraph (4) above.

Section 2. Chapter 32. Article III. Evaluation of Plats and Subdivisions is hereby revised as follows:

Subsection 32-7. (Subdivisions.) Variances are hereby amended as follows:

Sec. 32-7. Variances.

(a) *Grant by Council.* In connection with the preliminary or final approval of a plat or subdivision the Council may grant variances from the provisions of this Section. The Council shall grant variances only upon finding that an unusual hardship exists as to the land within the plat or subdivision, and specifically that:

~~(1) The hardship is not a mere inconvenience;~~

~~(2) The hardship is due to the particular physical surroundings, shape or topographical condition of the land;~~

~~(3) The condition or conditions upon which the request for a variance is based are unique to the property being platted or subdivided and not generally applicable to other property;~~

~~(4) The hardship is caused by this Section and not by the applicant;~~

~~(5) The variance will result in an improved plat or subdivision; and~~

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Added text after May 6 - XXXX

~~(6) —The variance, if granted, will not alter the essential character of the land within the plat or subdivision or in the neighborhood.~~

(1) That there are special circumstances or conditions affecting the property such that the strict application of the provisions of this title would deprive the applicant reasonable use of their land.

(2) That the granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which property is situated.

(3) That the variance is to correct inequities resulting from an extreme physical hardship such as topography, etc.

A grant of a variance by the Council shall be deemed to include a favorable finding on each of the variance grounds set out above even if not specifically set out in the approval resolution or the minutes of the Council meeting.

(b) *Conditions.* In granting a variance the Council may impose conditions to ensure compliance with the purpose and objectives of this Section and other applicable provisions of this Code and to protect adjacent properties. The conditions may be made a part of any Development Contract required by article IV of this chapter.

(c) *Variations from Section 36.* When Variations are requested from Section 36, requirements for lot areas and dimensions, the Planning Commission and City Council may consider the following criteria in addition to Section 36-98:

(1) The impact of the proposed plat or subdivision, and proposed development, on the character and symmetry of the neighborhood as evidenced and indicated by, but not limited to, the following matters:

a. The suitability of the size and shape of the lots in the proposed plat or subdivision relative to the size and shape of lots in the neighborhood; and

b. The compatibility of the size, shape, location and arrangement of the lots in the proposed plat or subdivision with the proposed density and intended use of the site and the density and use of lots in the neighborhood.

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- (2) The impact of the proposed plat or subdivision, and proposed development, on the environment, including but not limited to, topography, steep slopes, vegetation, naturally occurring lakes, ponds and streams, susceptibility of the site to erosion and sedimentation, susceptibility of the site to flooding and water storage needs on and from the site.
- (3) The consistency of the proposed plat or subdivision, and proposed development, and compliance by the proposed plat or subdivision, and the proposed development, with the policies, objectives, and goals of the Comprehensive Plan.
- (4) The compliance of the proposed plat or subdivision, and the proposed development with the policies, objectives, goals and requirements of chapter 36 including, without limitation, the lot size provisions and the floodplain overlay district provisions of chapter 36.
- (5) The impact of the proposed plat or subdivision, and proposed development on the health, safety and general welfare of the public.
- (6) The relationship of the design of the site, or the improvements proposed and the conflict of such design or improvements, with any easements of record or on the ground.
- (7) The relationship of lots in the proposed plat or subdivision to existing streets and the adequacy and safety of ingress to and egress from such lots from and to existing streets.
- (8) The adequacy of streets in the proposed plat or subdivision, and the conformity with existing and planned streets and highways in surrounding areas. Streets in the proposed plat or subdivision shall be deemed inadequate if designed or located so as to prevent or deny public street access to adjoining properties, it being the policy of the City to avoid landlocked tracts, parcels or lots.
- (9) The suitability of street grades in relation to the grades of lots and existing or future extension of the City's water, storm and sanitary sewer systems.

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(10) The adequacy and availability of access by police, fire, ambulance and other life safety vehicles to all proposed improvements to be developed on the proposed plat or subdivision.

(11) Whether the proposed plat or subdivision, or the improvements proposed to be placed thereon are likely to cause substantial environmental damage.

Section 4. Chapter 32. Article III. Evaluation of Plats and Subdivisions is hereby revised as follows:

Sec. 32-130. Considerations.

~~The Commission in reviewing proposed plats and subdivisions and in determining its recommendation to the Council, and the Council in determining whether to approve or disapprove of any plat or subdivision, may consider, among other matters, the following:~~

- ~~(1) The impact of the proposed plat or subdivision, and proposed development, on the character and symmetry of the neighborhood as evidenced and indicated by, but not limited to, the following matters:
 - ~~a. The suitability of the size and shape of the lots in the proposed plat or subdivision relative to the size and shape of lots in the neighborhood; and~~
 - ~~b. The compatibility of the size, shape, location and arrangement of the lots in the proposed plat or subdivision with the proposed density and intended use of the site and the density and use of lots in the neighborhood.~~~~
- ~~(2) The impact of the proposed plat or subdivision, and proposed development, on the environment, including but not limited to, topography, steep slopes, vegetation, naturally occurring lakes, ponds and streams, susceptibility of the site to erosion and sedimentation, susceptibility of the site to flooding and water storage needs on and from the site.~~
- ~~(3) The consistency of the proposed plat or subdivision, and proposed development, and compliance by the proposed plat or subdivision, and the proposed development, with the policies, objectives, and goals of the Comprehensive Plan.~~

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- ~~(4) The compliance of the proposed plat or subdivision, and the proposed development with the policies, objectives, goals and requirements of chapter 36 including, without limitation, the lot size provisions and the floodplain overlay district provisions of chapter 36.~~
- ~~(5) The impact of the proposed plat or subdivision, and proposed development on the health, safety and general welfare of the public.~~
- ~~(6) The relationship of the design of the site, or the improvements proposed and the conflict of such design or improvements, with any easements of record or on the ground.~~
- ~~(7) The relationship of lots in the proposed plat or subdivision to existing streets and the adequacy and safety of ingress to and egress from such lots from and to existing streets.~~
- ~~(8) The adequacy of streets in the proposed plat or subdivision, and the conformity with existing and planned streets and highways in surrounding areas. Streets in the proposed plat or subdivision shall be deemed inadequate if designed or located so as to prevent or deny public street access to adjoining properties, it being the policy of the City to avoid landlocked tracts, parcels or lots.~~
- ~~(9) The suitability of street grades in relation to the grades of lots and existing or future extension of the City's water, storm and sanitary sewer systems.~~
- ~~(10) The adequacy and availability of access by police, fire, ambulance and other life safety vehicles to all proposed improvements to be developed on the proposed plat or subdivision.~~
- (11) Whether the physical characteristics of the property, including, without limitation, topography, vegetation, susceptibility to erosion or siltation, susceptibility to flooding, use as a natural recovery and ponding area for storm water, and potential disturbance of slopes with a grade of 18 percent or more, are such that the property is not suitable for the type of development or use proposed.
- (12) Whether development within the proposed plat or subdivision will cause the disturbance of more than 25 percent of the total area in such plat or subdivision containing slopes exceeding 18 percent.

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(3) Comply with Section 10-82.

~~(13) Whether the proposed plat or subdivision, or the improvements proposed to be placed thereon are likely to cause substantial environmental damage.~~

Section 3. This ordinance is effective immediately upon its passage and publication.

First Reading:
Second Reading:
Published:

ATTEST:

Debra A. Mangen, City Clerk

James B. Hovland, Mayor

Please publish in the Edina Sun Current on:
Send two affidavits of publication.
Bill to Edina City Clerk

CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Ordinance was duly adopted by the Edina City Council at its Regular Meeting of _____, 2014, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this _____ day of _____, 2014.

Existing text – XXXX
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Added text after May 6 - XXXX

City Clerk

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FROM REFINED:

1. The extensive "purpose" cited indeed seems to be well intentioned. Therefore, if this is such a high priority of the City then why is it not for all property in the City (existing homes, new homes, remodels, golf courses, commercial properties, etc...)? I know one of the local golf courses took down 90 trees last winter. I suggest if the City wants to "preserve the canopy" then let's take it seriously and include all trees, City wide.
2. The "Critical Root Zone"? What does a homeowner do on the narrow lot that has a 15" tree in the middle of their front yard? The "critical Root Zone" would prevent them from getting any workers and/or equipment to the home for remodel, rebuild, or other....right? Doesn't this immediately dramatically reduce the value of someone's property if they were to want to sell and the buyer might want to consider a new addition or other?
3. Paragraph 4g.....Who police's this? Doesn't this add a covenant to the property at sale? Do we have an issue in the City with trees being planted and them dying? Or is this a complication to title and other due to speculation on intent of the homeowner planting a tree? I don't understand the logic here...is this a common occurrence, or are we creating a solution to a problem that doesn't exist?
4. Paragraph 5 should include the replacement of utilities. Many of the homes in Edina have old sewer/water lines from the street to the home. Unfortunately many of the trees that we desire to "protect" were planted right on top of these utilities. When a new sewer line is brought from the street to the home a 4' to 6' wide trench is dug to a depth of +/- 10'. Essentially you have a 10 foot deep trench 5 feet wide from the curb to the foundation. Obviously a problem for any tree or "Critical Root Zone" area in its path.
5. Paragraph 9....How is this going to work in reality? Who is going to police this? What is the intent here? Is this a common occurrence, or are we creating a solution to a problem that doesn't exist again? If a buyer buys a property and then decides to do a remodel 6 months after moving in, how do they know what was there before they bought?

Cary Teague

From: Scott Busyn <scott@greatneighborhoodhomes.com>
Sent: Wednesday, December 03, 2014 1:42 PM
To: Cary Teague
Cc: 'Andy Porter'
Subject: Re: Draft Tree Ordinance

Hi Cary,

Thanks for the draft. I am all for protecting trees for all the reasons in the draft plus they're expensive to remove! I don't know any builder that removes trees unless they are in the way of the building pad, or the client/neighbor wants to see them go. For what its worth, here are my thoughts:

1. Will this apply to commercial projects as well?
2. Include Ash in trees not protected as these are all susceptible to emerald ash borer and MPLS is removing all of their blvd ash.
3. The critical root zone is impractical on tighter building sites. This needs to be reworded to allow contractor discretion to reduce the protection radius for reasons of construction access and worker safety. A 24" diameter tree will require a 36' protection radius. This will completely cut off access to building site and force workers to intersect closer to each other, heavy equipment, etc. I think this needs to be reworded to give contractor discretion to adjust the recommended protection radius. For example, an addition in the Country Club district's tight lots would require protection perimeters that would completely eliminate use of front yards with the many large diameter trees in the yards (although most are elms and would be exempted I guess).
4. I don't like the idea of the city getting into the private matters of a homeowner's warranty on the tree they purchased. Requiring homeowners to only buy trees with three year warranties is a "nanny state" clause that should be eliminated. Now homeowner wants to pay for installing a new tree that is going to die. Requiring people to install replacement trees is a big enough win and should end at that.
5. Requiring aeration and compaction is another "nanny state" requirement that should be eliminated. What's next, someone's grass is brown so we force them to fertilize?
6. Requiring variances for exemptions is a excessive and would just burden our planning commission with busy work that detracts them from accomplishing bigger and better things. I think requiring the tree plan, protecting trees, and requiring replacement trees is a solid ordinance. However, contractor/owner should be allowed discretion based on site conditions whereby they would work with the city forester to show them issues with compliance without having to go through a burdensome variance process. This would also cut verbiage out of this excessively wordy ordinance.

Thanks,

SCOTT BUSYN Project Manager

