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Date: January 8, 2014

To: Planning Commission

From: Cary Teague, Community Development Director

Re: Zoning Ordinance Amendment Consideration – Tree Preservation

Attached is a draft ordinance, drafted by Claudia Carr and Michael Platteter regarding tree preservation. This Ordinance has been circulated through staff, and the following comments and considerations are provided:

- **Enforcement.** General enforcement of the ordinance, including monitoring newly planted trees in the first three years of their life may require additional staffing. The city forester is a part time position.
- **Two for one replacement.** This may be restrictive?
- **Requirement of native trees.** The forester is concerned that a limitation to native species would take away options for property owners to make individual decisions.
- **Violation Penalties.** The city attorney recommends that number (13) be eliminated. Violations are covered in another section of the code. Additionally, the city attorney does not believe that the city has statutory authority to impose this type of penalty. In practice, the city would not issue a Certificate of Occupancy until the violations have been corrected.
- **Preservation Easement.** The city attorney recommends number (8) be eliminated as it is only a recommendation.
- **Added cost for residents.** With additional information required on a survey, there will be an added cost.

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

The City Council Of Edina Ordains:

Section 1. Chapter 36. Division 5. is amended to add Section 36-1440 to read as follows:

Sec. 36-1440. Tree Protection

(1) Purpose: Edina is graced by the presence of Significant Mature Trees that contribute long-term aesthetic, environmental, and economic benefits to the city. Aesthetically, trees offer dimensions in the form of color, shape, texture, scale and variety. Significant Mature Trees are often integral components of many historic areas and their presence contributes to the city's cultural and historic significance. The purpose of the ordinance is to:

- a. Preserve and grow Edina's tree canopy cover by protecting Significant 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. Improve the quality of life for all stakeholders, including city residents, visitors and wildlife.
- d. Enhance environmental benefits: filtering of air and soil pollutants, increasing oxygen levels and reducing CO₂; erosion and stormwater control by stabilizing soils; reducing heat convection; decreasing wind speeds, reduce noise pollution and decrease the urban heat island effect.
- e. Protect and maintain healthy trees in the development and building permit processes as set forth herein. Prevent tree loss by eliminating or reducing compacted fill and excavation near tree roots.

(2) Definitions:

- a. **Significant Mature Tree.** Any tree of the birch, balsam fir, black walnut, buckeye, cedar, elm, hemlock, hickory, ironwood, linden, locust, maple (except silver maple), Norway pine, oak, spruce and white pine varieties. A Significant Mature Trees shall be measured as 8" at 4.5' above the ground, at Diameter at Breast Height (DBH).

b. Removable Tree. Any ash, aspen, buckthorn, box elder, cottonwood, silver maple, willow and dead, diseased or hazardous tree (as approved by the City Forester)

(3) Preservation, protection and replacement of Significant Mature Trees: This ordinance applies to all demolition and building permit applications, both public and private.

(4) Demolition and building permit applications must include a certified tree inventory plan indicating where Significant Mature Trees are located, the species, their diameter and approximate height. Plan must show how Significant Mature Trees are preserved and protected during construction. The plan must also show if any Significant Mature Trees are proposed to be removed and the replacement tree(s) location, species and size.

(5) If a significant mature tree is less than 5" in caliper it must be moved to another location on the property, if impacted by areas in paragraph (7) below.

(6) If a significant mature tree is removed, except as allowed for in paragraph (7) it is subject to a "two for one" replacement policy:

a. Replacement trees must be varied by species and native to the area, subject to the species listed above in (2) definitions.

b. Replacement trees must not be subject to known disease epidemic

c. Replacement trees must be at least 2-1/2 inches in caliper for deciduous trees and a minimum of seven feet tall for coniferous trees.

d. Replacement tree plans are subject to approval by the City Forester before implementation.

e. 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.

(7) Significant Mature Trees may be removed, without replacement, in the following areas:

a. Within the footprints of new or remodeled building(s) and up to 10 feet around the new or remodeled building(s).

b. Within driveways and parking areas meeting all other city ordinance requirements.

(8) Consider placing significant mature tree areas into a preservation easement. If a preservation easement is used the tree inventory nor the tree replacement policy in paragraph (2) above is not required.

(9) Removable trees may be removed for any development or building permit, without replacement. If a Significant Mature Tree is dead, diseased or hazardous it must be approved by the City Forester before removal without replacement.

(10) During the demolition and building permit processes, the permit holder shall not leave any Significant Mature Tree without sufficient guards or protections to prevent injury to the protected tree, in connection with such construction. City staff monitoring is required for all projects with affected Significant Mature Trees and/or replacement trees to ensure that all such trees are properly established and maintained for three (3) years. Tree protection during construction is subject to the city's Construction Management Plan (CMP).

(11) If Significant Mature Trees were removed within one (1) year prior to the date the development, demolition and building permit applications were submitted, these are also subject to the replacement policy set forth in paragraph (2) above.

(12) Exemptions from Tree Preservation Ordinance: Tree removal on property with an existing building structure that is not being modified is exempt from this section, subject to the conditions above in paragraph (11).

(13) Violations of Tree Preservation Ordinance:

a. Violation Defined. Any act or omission contrary to the requirements or directives of this ordinance, or any breach of any duty imposed by this ordinance shall constitute a violation hereof. In addition to enforcement by the City Forester, this section shall be enforceable by and pursuant to the authority provided in section XXXX of this chapter.

b. Penalty. Any person who commits a violation of this ordinance shall be subject to a civil penalty of up to one thousand dollars (\$1,000.00) per violation or a criminal penalty of up to two hundred dollars (\$200.00) per violation per day. For the purpose of calculating penalties, each day on which a violation is found to exist shall constitute a separate and sanctionable offense.

Section 2. 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.

City Clerk

Existing text – XXXX
Stricken text – ~~XXXX~~
Added text – XXXX