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Date: March 12, 2014

To: Planning Commission

From: Cary Teague, Community Development Director

Re: City Code Amendment Consideration – Tree Preservation

The Planning Commission tabled this item at the February 26, 2014 meeting, and requested that some revisions be made to the proposed Ordinance. Additionally, the Commission requested additional information on staffing required for enforcement of the Ordinance.

Revisions have been made to the Ordinance as recommended by the Commission; those changes are underlined on the attached Draft Ordinance. Information in regard to staffing concerns, are highlighted on page 2 of this memo.

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 certified tree inventory plan indicating where Protected Trees are located and, their species, caliper, 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).
- Trees to be protected under this Ordinance include: 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.
- Any healthy protected tree that is removed within a building pad, or a 10-foot radius of the building pad or within a driveway or parking area must be replaced 1 to 1.



- 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, within 10 feet of the building pad or within the driveway or parking area must be replaced 2 to 1.
- Protected Trees to remain must be protected during construction.
- Staff is required to monitor all construction projects with Protected Trees and/or replacement trees to ensure that all trees are properly established for three years.

The proposed Ordinance would add an expense to a building permit for inclusion of the certified tree inventory. This would be done by the surveyor either on the main survey submitted with the building permit, or on a separate survey. In either case, the surveyor would be responsible for siting trees on the property and developing a plan for relocation and placement of new trees, and showing them on the survey.

Ordinance Enforcement

Enforcement of the Ordinance would likely require additional staffing. 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, and 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.
- Inspection of each of these construction sites. To ensure compliance with the proposed plans and protection of existing trees on site.
- On-going monitoring. The code requires staff monitoring for three years. Potentially, that could mean that up to 600 sites would be actively monitored.

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 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; 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

Stricken text – XXXX

Added text – XXXX

(2) Definitions:

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

(3) Demolition and building permit applications must include a certified tree inventory plan indicating where Protected Trees are located and, their species, caliper, 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 less than five inches (5") in caliper it must be moved to another location on the property, if impacted by areas in paragraph (7) below, subject to review of the city forester. The caliper of Protected Trees shall be measured at four and one-half feet (4.5') above the ground.

(5) If a Protected Tree is removed, except as allowed for in paragraph (7), it must be replaced with two (2) trees, subject to the following conditions:

- a. Replacement trees must be varied by species and are limited to the species listed above in (2) Definitions.
- b. Replacement trees must not be subject to known epidemic diseases or infestations. Disease or infestation resistant species and cultivars are allowed.
- c. 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.
- 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.

Existing text – XXXX

Stricken text – ~~XXXX~~

Added text – **XXXX**

(6) Protected Trees may be removed, in the following areas:

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

Protected Trees removed in subparagraphs a. and b. above must be replaced with one (1) tree, subject to the species listed above in (2) Definitions and the conditions listed in subparagraphs a. through e. of paragraph 5 above.

(7) Removable trees five inches (5") or less in caliper may be removed for any development or building permit, without replacement. Removable trees greater than five inches (5") must be replaced at a 1 to 1 ratio. If a Protected Tree is dead, diseased or hazardous it must be approved by the City Forester before removal.

(8) 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. City staff monitoring is required for all projects with affected Protected 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).

(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. This ordinance is effective immediately upon its passage and publication.

Existing text – XXXX

Stricken text – ~~XXXX~~

Added text – **XXXX**

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**

To: Cary Teague
From: Scott Busyn – Great Neighborhood Homes
Subject Proposed Tree Protection Ordinance
Date: February 19, 2014

Hi Cary,

I wanted to pass on my feedback on the proposed tree protection ordinance from the perspective as a 25 year resident as well as a builder who has built over 40 infill homes in Edina over the past 7 years. Before I begin, I have to disclose that I like trees and as a builder dislike the large expense of removing them! In other words, I will do whatever I can to keep as many trees as I can when building a new home.

1. The tree ordinance seems to single out property owners who pull demo or building permits. If we are really concerned about tree protection, why are we only tasking this subgroup with tree protection? Seems discriminatory against those that are already investing in adding value to the community. Why not have it apply to all property owners? Based on the feedback for the Residential Development Coordinator, concerns about tree removal recorded a paltry 2% of all complaints. Is the Planning Commission once again trying to come up with a solution without a problem? In doing an informal drive around last week, it seems that most teardown/rebuilds keep most of the existing trees on the site. Trees are expensive to remove, and most builders try to work around the existing tree inventory on the site.
2. It seems odd that the Planning Commission is putting all this energy into protecting trees on construction sites when nothing is being done to date regarding the larger city wide tree preservation issues in Edina. Dutch Elm and Emerald Ash Borer are a looming threat to our tree canopy, much greater of a threat than residential construction. Many stretches of France Avenue, 50th Street, Valley View, etc have huge stretches where there are no boulevard trees in the city easements. Other cities around us seem smarter about focusing their energy on the strategies that will have more impact than just the construction sites. Builders

are easy targets since they need to pull a permit, but is this where we should be focusing our energies?

3. The proposed tree ordinance is just one more layer of regulation Edina is adding onto the many layers of regulation on building and remodeling in Edina. In the past few years, we have added over \$10,000 to the cost of a home for the increased cost of demo permits, surveys, stormwater management plans, soil tests, residential development coordinators, etc. In addition, these added layers of bureaucracy have increased the time it takes to get a permit approved as well as the amount of communication between builder and the new building bureaucracy in Edina. This has distracted good builders from being on the site and working with neighbors/clients on executing the project. Now you want to add another layer of regulation, fees, costs, etc for tree preservation and it sounds like you want to hire more regulators to make it more expensive and cumbersome. The net affect of all this regulation to good builders like us is zero changes to how we run our business except the distraction and workload of paperwork which keeps us away from doing the best we can on jobsites. With upcoming changes to building code including mandatory sprinklers I don't know how these out of control costs will affect the demand for new housing in Edina.
4. The ordinance as written is overly complex and hard to execute. If you must have an ordinance it should be simplified and not require all the steps, documentation, and expense. For example, we already provide tree inventories on existing conditions surveys for demo permits. We don't need the added expense of a certified tree inventory plan. The added layers of inspection (up to three years out!) seem impractical.
5. Tree protection during construction: This needs to be defined. I am sure an arborist will want fencing at the dripline. As the dripline on many sites may cover the entire site, this is not feasible. Not only do we need access to the site, but worker safety needs to trump tree protection if we are not giving workers adequate room to work. Contractor should have final call on this

as he is responsible for building the home and the safety of the workers.

6. Tree inventory plan: It is unrealistic that we will know what species replacement trees will be when we apply for a demo permit. You are asking us to alter our design process with clients. We don't typically do landscape plans until later in the project and the house is framed up.
7. Moving Trees: This is a very bad idea. Moving trees rips out 80% of the absorbing root system. Plus most small caliper trees are usually volunteer trees that were poorly planned allowed to grow in a random location. Plus moving a bad tree on a construction site that will have a lot of activity will further threaten its survival. Finally, to force a homeowner to keep a tree they may not like is just too much government control.
8. I don't like the added layers of inspections. You are requiring the City Forester to approve replacement tree plans. This just adds more time and workload for the builder/homeowner, as well as requiring the obvious need to hire more city staff.
9. Other areas you need to allow protected trees to be removed: patios, utilities (gas, sewer, water, electrical).
10. Staff monitoring of trees for three years: Again, very cumbersome and requiring adding forestry staff. Not necessary. If a homeowner pays someone to install a new tree on their site, they expect that the tree survives. Plus, the installer typically provides a warranty on the tree. These are the market forces that will promote the health of our trees. We don't need a nanny state to watch over our trees.

Again, this seems like a very complex ordinance, requiring a lot of staff and expense/workload for homeowners/builders. After driving around looking at jobsites this doesn't seem to be a problem needing a solution. I recommend scrapping this ordinance and shifting the Planning Commission's focus on more comprehensive tree programs for the city. This ordinance is extreme, punitive against property owners, and not in the interests of our citizens.

Thanks,

Scott Busyn
4615 Wooddale Avenue
Edina, MN 55424

Cary Teague

From:
Sent: Wednesday, February 19, 2014 10:37 AM
To: Cary Teague
Subject: RE: Tree Ordinance

Cary,

Thanks for your email. I zipped through the proposed ordinance quickly...but here are my initial thoughts:

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 this winter. I suggest if the City wants to "preserve the canopy" then let's take it seriously and include all trees, City wide.
2. Wouldn't this ordinance, as drafted, essentially create covenants that would be required to travel with properties as they are sold based on paragraph 8? What will this do to property values for this singled out homes that now have "covenants"?
3. How many properties a year would this affect? How much strain does it put on the City Forrester? How much does the City Forrester staff need to grow? How does this get paid for?
4. How much cost will this add to the permitting homeowner to do a required certified tree inventory?
5. Per paragraph #4, what if a homeowner "moves" a tree and it doesn't survive? Who is going to police this? How will enforcement be paid for?
6. If I want to add a play-set in my backyard for my kids to improve the quality of their life and take a tree down can I? What about a shed? What about removing a tree for a vegetable garden? Or to allow sunlight to reach a vegetable garden?

My quick two cents. Feel free to contact me if you need to.

Thanks again for reaching out to me.

Andy Porter
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Fax: 952.303.3170
Email: aporter@RefinedLLC.com
www.RefinedLLC.com

Cary Teague

From: aporter@refinedllc.com
Sent: Friday, February 28, 2014 9:24 AM
To: Cary Teague; Cary Teague
Subject: Planning Commissioner correction

Cary,

I viewed the most recent Planning Commission meeting related to the possible tree preservation ordinance. I would like to point out one correction that needs to be made. Commissioner Platteter spoke about the newly constructed home next to his personal home. He mentioned that he thought the home was a "spec" home and that the builder had clear cut the yard of many mature trees (3:51:55 on the video). The home, in fact, was not a "spec" home. Our company built the home specifically for a homeowner. Our Client decided they wanted to have the largest open backyard possible for their kids to play and they decided to have the trees removed.....not unlike a homeowner of an existing home anywhere in Edina. We also built the home next to that one specifically for a homeowner. On that project we spent a lot of money to re-nourish and protect the mature chestnut tree in the front yard per our Clients direction.

The Planning Commission should understand that the majority of the new homes we, and others, build are at the direction of our Homeowners. Same goes for the protection, trimming, or removal of their trees.

Please make sure to ask the planning commission to make a correction to the Commissioner's statement.

Thank you,

Andy Porter
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