

Topic: Tree Preservation

Date Introduced: February 10, 2010

Why on the list: This issue has been brought up by the Planning Commission, the Energy and Environment Commission, and residents during this process. Tree preservation has also been brought up as an issue on individual development process, and during the comprehensive plan update.

History: The City Council considered a "tree ordinance" back in 2002; which was not adopted. (See proposed ordinance attached.) The ordinance recommended requiring a permit to remove a tree, but did not require tree replacement. Staffing to enforce the new ordinance was a concern of the Council, as they did not support the ordinance change. (See attached minutes.)

Decision Points:

1. Is a tree ordinance above and beyond the City's landscape requirements necessary?
2. Are the City's current standards adequate?
3. Staffing/budget concern to support a tree preservation ordinance.

Options:

1. Recommend creating a tree preservation ordinance.
2. Make no changes to the City's regulations regarding tree preservation; but further examine the City's landscaping requirements on new development.
3. Refer the issue to the Energy and Environment Commission.

ORDINANCE NO. 2002-8

AN ORDINANCE AMENDING THE CITY CODE BY ADDING A NEW
CHAPTER 820 RELATING TO THE PLANTING, MAINTENANCE AND
REMOVAL OF TREES
ON PUBLIC AND PRIVATE PROPERTY

THE CITY OF EDINA ORDAINS:

Purpose. The Edina City Council has determined the preservation of trees growing on public and private property are necessary to maintain the general welfare of the public. In order to maintain and enhance the quantity and quality of trees growing within the City, this Ordinance is adopted to regulate the planting, maintenance, and removal of trees within the City of Edina by: (1) Defining the duties and responsibilities of the City Forester as the agent enforcing regulations relating to the planning, planting, maintenance and removal of trees within the City of Edina; (2) Providing for the issuing of permits and/or licenses for any maintenance and/or removal of trees within the City of Edina; (3) Providing for the pruning and removal of trees on private property that endanger public safety; (4) Providing for standards and specifications of all policy concerning trees on public property; (5) Providing for standards and specifications of a care protection policy concerning trees in subdivision properties; and (6) Providing for standards and specifications for care protection policy concerning trees within project construction limits.

Definitions. The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

1. "Applicant" shall mean any person applying for any City permit or approval that would result in the construction or improvements on land within the City that contains Significant Trees.
2. "Forester" shall mean that person appointed as City Forester by the City Manager.
3. "Preservation Plan" shall mean a plan prepared for a proposed development or redevelopment project by a Minnesota registered surveyor which sets forth the project area, locates proposed improvements and locates all Significant Trees located in the project area. It shall indicate which Significant Trees are to be preserved and which are to be removed as a result of the construction of the project. Significant Trees' diameters, heights (where applicable) and species shall be noted in the Preservation Plan.
4. "Code Enforcement Officer" shall mean the City Manager or designee.

5. "Significant Trees" shall mean healthy trees (as determined by the City Forester) which are six (6) inches in diameter (DBH) for deciduous trees or greater than eight (8) feet in height for coniferous trees.
6. "Preservation" shall mean maintaining in its natural condition and location any tree.
7. "DBH" shall mean diameter of trees at breast height. It is that point 4½ ft. (54 inches) above the ground at which the diameter of a tree shall be measured.
8. "Drip Line" shall mean the outermost extension of any branches of any tree.

Duties and Qualifications of the Forester

- A. Duties. The Forester, as appointed by the City Manager, for the purposes of this Chapter shall identify diseased and hazardous trees that threaten the health and safety of the public and coordinate all activities of the City relating to the control and prevention of tree diseases. It shall further be the duty of the Forester to identify and describe significant trees in any proposed subdivision or development project and to assist planners, developers, and architects in the development of a tree preservation plan for each construction development project.
- B. Qualifications of the Forester. The qualifications of the Forester shall be, as a minimum, those qualifications prescribed for certified arborists by the Minnesota Society of Arboriculture or by the Commissioner of Agriculture.

Disease Control Program. It is the intent of the City to conduct a program of plant pest control pursuant to the authority granted by Minnesota Statutes, Section 18.022. This Chapter provides full power and authority over all trees, plants and shrubs located within the street rights-of-way, parks and public places of the City; and to trees located on private property that constitute a hazard or threat as described herein; and trees that fall under the tree protection standards.

710.05. Nuisances Declared. The following things hereby are declared to be public nuisances whenever they may be found within the City:

- A. Any living or standing elm tree or part thereof infected to any degree with the Dutch Elm disease fungus *Ceratocystis Ulmi* (Buisman) Moreau or which harbors any of the elm bark beetles *Scolytus Multistriatus* (Eichh.) or *Hylurgopinus Rufipes* (Marsh).
- B. Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm materials from which the bark has not been removed or sprayed with an effective Dutch Elm insecticide, or disposed of in a manner prescribed by the Commissioner of Agriculture.

- C. Any living or standing oak tree or part thereof infected to any degree with the Oak Wilt disease fungus *Ceratocystis Fagacearum*.
- D. Any infected oak tree or part thereof, including logs, branches, stumps, firewood or other oak material unless all bark material is removed and disposed of in a manner prescribed by the Commissioner of Agriculture.
- E. Any living or standing tree or shrub or part thereof infected to any degree by any organism to be controlled as set forth and described by the Commissioner of Agriculture.
- F. Any dead, dying, decaying or living tree, shrub or parts thereof that interferes with the public use of any public thoroughfare or right-of-way.

It shall be unlawful for any person to permit any public nuisance as defined in this Section to remain on any property owned or controlled by him within the City. Such a nuisance shall be abated in the manner prescribed by this Chapter. Abatement shall be at the discretion of the City Forester in accordance with all State Law and the City Code.

Inspection and Investigation. The City Forester shall inspect all premises and places within the City as often as practicable to determine whether any nuisances as described in this Chapter exist thereon. The Forester shall investigate all reported incidents of diseased trees within the City. The Forester or duly authorized representative(s) may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned under this Chapter. The City Forester shall, upon finding conditions indicating disease infestation, immediately send appropriate specimens or samples to the Commissioner of Agriculture for analyses or take such other steps for diagnosis as may be recommended by the Commissioner. No action to remove infected trees or wood shall be taken until positive diagnosis of the disease has been made.

Abatement of Nuisances. In abating the nuisances the Forester shall cause the infected tree or wood to be sprayed, removed, burned or otherwise effectively treated so as to destroy and prevent as fully as possible spread of the disease. Such abatement shall be carried out in accordance with current technical and expert opinions and plans as may be designated by the Commissioner of Agriculture.

Abatement Procedure. Whenever the Forester finds with reasonable certainty that an infestation defined in this Chapter exists in any tree or wood on any public or private property within the City, shall proceed to abate said nuisance as follows:

- A. If the Forester finds that the danger of infestation of other trees is not imminent the Forester shall notify in writing the person(s) owning or controlling the property upon which the nuisance is located that the nuisance must be abated within fifteen (15) days from the date of the mailing. If no action to abate the nuisance is taken within this period the Forester then shall make a written report of findings to the City Council. The Council shall take action to abate the nuisance, and it may proceed to recover the costs.
- B. If the Forester finds that the danger of infestation of other trees is imminent the Forester shall notify in writing the person(s) owning or controlling the property upon which the nuisance is located that the nuisance must be abated within five (5) days from the date of the mailing, and shall report findings to the City Manager. If no action to abate the nuisance is taken within this period the Forester then shall make a written report of actions to the City Council, which may proceed to recover the costs of such abatement.
- C. If the Forester finds that the danger of infestation of other trees is imminent the Forester shall notify in writing all persons owning or controlling property upon which is located trees in danger of becoming infested. Within this notice the Forester shall state that action, if any, which should be taken to protect the trees in danger of becoming infested and the period within which such action must be taken. If no such action is taken within this period the Forester then shall take appropriate action to protect these trees as an emergency measure and shall make a written report of this action to the City Council, which may proceed to recover the costs of such action.

Special Assessment Procedure. Upon receipt of a report from the Forester the City Council may pass a resolution to provide for recovering the costs of abatement of a nuisance and/or for recovering the costs of protecting threatened trees by a special assessment procedure. Before such a resolution may be approved the City Manager shall notify all affected property owners by mail that such a procedure is under consideration prior to the meeting thereon. This notice shall state the time and place of the meeting, the abatement action proposed to be taken or already taken, the estimated or actual cost of such abatement and the proposed basis of assessing such cost. At this meeting all affected property owners shall have the right to be heard with reference to the proposed assessments and assessment procedure. The Council thereafter by resolution may approve such special assessments for the purpose specified herein.

The Forester shall keep a record of all abatement activities and all abatement costs for which special assessments are to be made or may be made, stating the description of the properties involved and the amounts chargeable to each property. On or before October 10th of each year the City Manager shall list the total unpaid charges for such abatement activities against each separate property to which they are attributable under this Chapter. The City Council then may spread the charges or any portion thereof against the property involved as a special assessment for certification to the Hennepin County Auditor and for collection the following year along with current taxes.

Transporting Diseased Wood. It shall be unlawful for any person to transport within the City any diseased wood without first having obtained a permit therefore from the Forester. The Forester may grant such a permit only when the purposes of this Chapter will be served thereby.

Interference Prohibited. It shall be unlawful for any person to prevent, delay or interfere with the Forester or duly authorized representative (s) while they are engaged in the performance of duties imposed by this Chapter.

Establishment of Tree Preservation Zone. A tree preservation zone is hereby established and applies to all property within the City of Edina in order to aid in the stabilization of soil by the prevention of erosion and sedimentation; reduce storm water runoff and the costs associated therewith and replenish ground water supplies; aid in the removal of carbon dioxide and generation of oxygen in the atmosphere; provide a buffer and screen against noise pollution; provide shade and the significant environmental benefit of counteracting the so-called "heat-island" effect; provide protection against severe weather; aid in the control of drainage and restoration of denuded soil subsequent to construction or grading; protect and increase property values; conserve and enhance the City's physical and aesthetic environment; provide a haven for birds, animals and flora to thrive; and generally protect and enhance the quality of life and the general welfare of the City.

Application. A Tree Preservation Zone shall be applied to and superimposed upon all property contained herein existing or amended by the text and map of the Edina Zoning Ordinance. The regulations and requirements imposed by the Tree Preservation Zone shall be in addition to flood plain, shoreland and wetland regulations and requirements, and will all jointly apply to the property. If a conflict is created by the joint application of zones, the more restrictive requirements shall apply.

Restrictions. Within the Tree Preservation Zone, it shall be unlawful for any person or groups of persons to remove from privately owned land any tree or trees in excess of thirty-two (32 inches) diameter at breast height (DBH) per acre (43,560 square feet) in any twelve (12) month period without having first obtained a valid tree removal permit from the City. The removal rate for parcels which are less than one (1) acre or more than one (1) acre shall be mathematically proportionate (subject, however, to the maximum density of thirty-two (32 inches) diameter (DBH) for each acre.) For example, up to sixteen (16 inches) may be removed from a parcel which is one-half (1/2) acre in size

without a permit or up to sixty-four (64 inches) (but only up to thirty-two (32 inches) diameter at breast height (DBH) for each acre) may be removed from a parcel which is two (2) acres in size without a permit. The removal of dead, diseased, or hazardous trees from privately-owned land shall not require a tree removal permit.

Permit.

A. Any person with due authority desiring a permit to remove a tree shall submit a written application to the City Forester. The application shall include the following information:

- (1) Name and address of applicant.
- (2) Status of the applicant with respect to the land.
- (3) Written consent of the owner of the land, if the applicant is not the owner.
- (4) Name of the person preparing any map, drawing, or diagram submitted with the application.
- (5) Location of the property, including a street address or legal description.
- (6) Diagram of the parcel of land, specifically designating the area or areas of proposed tree removal and the existing and proposed use of such area.
- (7) Location of all proposed or existing structures, driveways or other hard surfaces on the site.
- (8) Location of all trees and identification of size (DBH) and species.
- (9) Designation of all diseased or damaged trees.
- (10) Designation of any tree(s) obstructing any roadway, pavement, walkway or utility.
- (11) Any proposed grade changes that might adversely affect or endanger any tree(s) on the site and plans to protect them.
- (12) Designation of trees to be removed and trees to be maintained.
- (13) Purpose of tree removal (construction, driveway, recreation area, patio, building addition etc.).
- (14) All materials to be planted as replacement trees, indicating size, species and method of planting.

- B. Upon receipt of the application, the City Forester may visit and inspect the site and adjoining lands. If it is determined that the plan set forth in the application outlined in this Section will minimize the loss of Significant Tree(s) and will destroy no more trees than are necessary to achieve a proposed development or purpose, and will comply with the Standards for Preservation of Trees in New Construction or Redevelopment of Property, the permit application may be approved. If the City Forester determines otherwise, the application shall be denied.
- C. The applicant may appeal the City Forester's decision by providing written notice to the City Council, with the City Council's decision to be made by the first City Council meeting to be held on or after 30 days of the written notice to the Council.

Standards for Preservation of Trees in New Construction or Redevelopment.

- A. Owners, Contractors, Developers, Builders, and Applicants shall exert their best good faith efforts, as outlined in the Development Agreement, to avoid damage to or the destruction of Significant Trees when designing, locating, or grading for and building improvements. This requirement shall be set forth in any development agreement and construction contracts entered into regarding the project.
- B. The applicant shall submit a Preservation Plan if improvements are to be constructed on property containing Significant Trees. The Preservation Plan shall be submitted along with all other materials required for the permit. The Preservation Plan shall be officially filed when the City Forester has received and examined the application and determined that all required information has been submitted and that the application is complete. Following the determination of "completeness" the Preservation Plan shall be approved or denied by the City Forester within ten (10) business days unless the Preservation Plan is being submitted in conjunction with a land use application, in which case the City of Edina shall approve or deny the application within sixty (60) days from the date of its official submission unless notice of an extension is provided by the City or a time waiver is granted by the applicant.
- C. The City Forester's review of the Preservation Plan shall be based upon the following criteria
 - (1) The applicant's legal right to use the property.
 - (2) The Preservation Plan minimizes the loss of Significant Trees and will destroy no more trees than are necessary to achieve a proposed development or purpose..
 - (3) The ease with which the applicant can alter or revise a proposed improvement to accommodate existing trees.
 - (4) The density of trees in the area and the effect of tree removal on property values of the neighborhood and on other existing vegetation.

- (5) Impact upon the urban and natural environment including:
- a. Whether tree removal would substantially alter the water table or affect the stabilization of ground and surface water.
 - b. Whether tree removal would create susceptibility to erosion and siltation
 - c. Whether tree removal would cause substantial damage to the existing biological and ecological systems.
 - d. Whether tree removal would affect noise pollution by increasing source noise levels to such a degree that a public nuisance may be anticipated or a violation of noise control ordinances will occur.
 - e. Whether tree removal will affect air quality by significantly affecting the natural cleansing of the atmosphere by vegetation.
 - f. Whether tree removal will affect wildlife habitat by significantly reducing the habitat available for wildlife existence and reproduction or causing the migration of wildlife from adjacent or associated ecosystems.
 - g. Whether tree removal will increase the possibility of tree disease, wind damage, and the loss of windbreak effect.
- (6) The heightened desirability of preserving tree cover in densely developed or densely populated areas.
- (7) The need for visual screening in transitional areas or relief from glare, blight, commercial or industrial ugliness or any other visual affront.
- (8) Whether the removal of the tree(s) is for the purpose of thinning a heavily wooded area where seventy-five (75) percent of the trees will still remain.
- D. If it is determined that the Preservation Plan complies with the criteria as set forth in part (C) above, the Preservation Plan may be approved. If the City Forester determines otherwise, the Preservation Plan shall be denied.
- E. The applicant may appeal the City Forester's decision by providing written notice to the City Council, with the City Council's decision to be made by the first City Council meeting to be held on or after 30 days of the written notice to the Council.
- F. If a Preservation Plan is approved, a copy of that approved Preservation Plan shall be attached to any issued permit and a copy shall be retained at City offices.
- G. Prior to commencing construction of the improvements, applicant must implement some form of barricade such as snow fence or plastic fence, which is easily visible to

a height of three feet (36") above ground to protect all trees to be preserved under the Preservation Plan. The barricade must incorporate 100% plus ten (10) feet of the tree(s) at the drip line or area to be preserved. No equipment or materials may be stored, parked, driven, moved or deposited within the area to be preserved. The positive protective measure such as fencing shall not be removed until all phases of construction have been completed and removal of protective measure has been approved by the Forester.

- H. Upon completion of grading and all construction, the Forester or Designee shall inspect the construction site for damage to trees that were to be preserved under the Preservation Plan. A report "Damage Report" shall be submitted to the Applicant as to any trees required to be preserved under the Preservation Plan which have been destroyed or severely damaged because of the grading or construction activity..
- I. If the damage report identifies destroyed or severely damaged trees which were required to be preserved under the Preservation Plan, the applicant will be required to pay to the City of Edina the sum of two hundred (200) dollars per diameter inch or such greater amount as may be determined by the City Council for each such destroyed or damaged tree. Alternately, the City Council may, at its discretion, agree to tree replanting equaling the total caliper inches lost, species and quality, in lieu of a fine or in conjunction with a reduced fine. Any such agreement shall specify the replacement tree(s) species and diameter. Applicant shall have the right to appeal the damage, report conclusions, and resulting fine or replanting requirements in the same manner as set forth in part (E) above.
- J. A certificate of occupancy shall not be issued until a final inspection of the property by the City Forester demonstrates compliance with the Preservation Plan and until such time as all levied fines have been paid or Security, subject to approval of the City Manager, has been posted by the applicant to secure performance. The City Forester may postpone the final inspection of the property if it is determined that seasonal conditions prevent the determination of whether or not there has been compliance with the Preservation Plan. If the applicant appeals pursuant to part (I) above, a Certificate of Occupancy may be issued prior to completion of the appeals process, so long as Security is posted.
- K. A tree will not be deemed to have been damaged under part (H) above where the City verifies the applicant implements positive measures such as fencing, or other City approved methods, during the entire period of grading and construction and where there is no evidence of physical damage to the trees, including their root structure
- L. The applicant's responsibility for the loss of trees on site subject to a Preservation Plan shall cease once the site grading and construction have been completed, the preservation has been verified, or any penalty fees have been paid or approved, replacement trees have been planted, and their growth has been well established for two (2) growing seasons. All monies collected pursuant to this ordinance shall be placed in the plant maintenance fund.

DRAFT MINUTES PLANNING COMMISSION MEETING 10/30/02

Proposed Tree Ordinance Amendment

Mr. Larsen reminded the Commission Planning Staff brought before them drafts of proposed tree ordinances from other cities at the direction of Council. Mr. Larsen said at this time he is asking for comments from the Commission on those ordinances.

Commissioner Runyan asked Mr. Larsen if he knows what triggered this interest. Mr. Larsen said he believes what triggered the interest of Council Members was the recent subdivision request on Iroquois Circle.

Commissioner Brown asked Mr. Larsen what the City considers a tree. Mr. Larsen said anything 6 inches in diameter or greater.

Chairman Johnson questioned if the City already has an ordinance with regard to tree loss. Mr. Larsen responded the City has an ordinance(s) that addresses tree loss at different levels, during redevelopment, vacant lot, diseased trees, etc. Commissioner Johnson questioned if we are creating an ordinance where one isn't needed. Mr. Larsen responded the Council must make determination.

Commissioner McClelland asked Mr. Larsen how this exact ordinance language was chosen. Mr. Larsen said he presented a number of ordinances for review, this one included. He stated he put before them different ordinances to afford them the opportunity to review what other cities have and if they feel Edina would benefit from something similar. He told the Commission the Council isn't necessarily indicating they will adopt a new ordinance they just want to review different ordinances and see how they would apply to our City.

Chairman Johnson said in reviewing the draft ordinances presented by Staff in his opinion they are too restrictive, especially with regard to already platted single-family lots. Continuing, Chairman Johnson said in his opinion if changes are adopted they should only address new construction.

Commissioner Swenson asked Mr. Larsen if the ordinance before us this evening were in place could Iroquois Circle have been developed as presented. Mr. Larsen said it could have been developed as proposed. Continuing, Mr. Larsen said today the City has a method in place for diseased trees, vacant lots, and we have a subjective standard in place for subdivision in our ordinance.

Commissioner McClelland stated in her opinion the tree loss proposed in the Iroquois Circle subdivision wasn't the only negative thing about that proposal. She said destruction to the topography was the major issue, at least for her. Continuing, Commissioner McClelland said as she read through the ordinance before her she thought it was outrageous especially for the individual single-family lot owners. Commissioner McClelland asked Mr. Larsen what the City presently does for individual lot owners, and pointed out if the ordinance before them were approved staff would be spending a lot of time reviewing tree loss plans.

Mr. Larsen responded if there is a diseased tree on an individual single family lot the City Forester tags the diseased tree and it is to be removed either by the property owner or the City removes it and assesses the property. If the individual property owner wants to cut down a tree on their lot we consider that their right, however, if an individual lot owner owns an undeveloped (vacant) lot the City requires a tree removal permit with a plan that identifies the trees needed to be removed for construction of a new home. Continuing, Mr. Larsen explained with a vacant lot situation City Staff works with the lot owner to ensure minimal disruption occurs. Mr. Larsen added the majority of owners also provide a landscaping plan, along with the tree removal plan. Concluding, Mr. Larsen said the majority of Edina's residential property owners realize that trees add value to their property so tree loss is as minimal as possible.

Commissioner Swenson commented as she reviewed the proposed draft ordinances she came to the conclusion that the City already has good ordinances in place and in her opinion no change is required. Commissioner Runyan commented he seconds that comment.

Commissioner Workinger said he agrees with what has been said so far, adding for him he does have a concern with re-builds. Commissioner Workinger said however, that policing individual lots would not be practical. He asked the Commission to note that on page 8 of the proposed draft ordinance the word ugliness occurs; and in his opinion that word would be very hard to define if the City were pressed to define what ugliness is.

Mr. Larsen agreed that enforcing a tree loss ordinance on individual lots would be difficult at best; at least it appears that way to him. He noted he has observed many residents try very hard to retain as many trees as possible on their property even during times of construction. He pointed out the zoning board reviews a number of variance requests as a result of residents wanting to retain large trees and opting to go through the variance process to achieve an addition to avoid tree lost. Mr. Larsen reiterated the majority of our residents have determined that trees add value to their property and are averse to removing them.

Commissioner Workinger agreed that individual lot owners appear to self-police, pointing out it is always difficult to legislate to try to avoid "the one wing

nut" that may come in and level their lot. Commissioner Workinger asked Mr. Larsen if he agrees that if the tree lot ordinance before us this evening were to be adopted more tree loss could occur especially with regard to subdivision. Mr. Larsen agreed that if this ordinance were adopted more tree loss could occur at the subdivision level. He said the ordinance before you this evening is more objective than our ordinance.

Commissioner Byron commented it appears to him that by the discussion thus far that the Commission believes the ordinances the City has in place serve us well and that the Commission believes the individual lot owner does not need more regulations in place with regard to tree loss.

Commissioner Swenson moved to communicate to the Council that the Commission considers our current regulations sufficient and that we do not want staff to be put in the position of policing each individual lot. The Commission also requests that Staff reiterate to the Council our current policies with regard to vacant lots. Commissioner Runyan seconded the motion. All voted aye; motion carried.

Edina City Code Sections 810 and 850;

NOW, THEREFORE, it is hereby resolved by the City Council of the City of Edina that the conveyance and ownership of the above described tracts of land (PARCEL A and PARCEL B) as separate tracts of land and hereby approved and the requirements and provisions of Code Sections 850 and 810 are hereby waived to allow said division and conveyance thereof as separate tracts of land but only to the extent permitted under Code Sections 810 and 850 SUBJECT TO THE LIMITATIONS SET OUT IN Code Section 850 and said Ordinances are now waived for any other purpose or as to any other provisions thereof, and further subject, however, to the provision that no further subdivision be made of said Parcels unless made in compliance with the pertinent Ordinances of the City of Edina.

Adopted this 17th day of December, 2002.

Motion carried on rollcall vote - four ayes.



ORDINANCE NO. 2002-10 REJECTED - TREE REMOVAL ORDINANCE Planner Larsen said the Council considered adopting a comprehensive tree removal ordinance at their November 19, 2002, meeting. Staff was directed to revise the ordinance and gather additional information from other communities as well as the cost implications to administer such an ordinance. 40 metro area communities were contacted to see if they regulate or require permits on developed R-1 and R-2 lots, 25 cities responded. Two cities, in addition to Wayzata, have ordinances addressing tree removal on developed residential properties; Shoreview and Blaine. Shoreview requires a permit to remove a quality tree with a diameter of 15 inches or greater or 30 inches for box elder or cottonwood trees. In Blaine, a homeowner can remove 2 trees with a diameter of greater than 8 inches, removing more would require approval of the City Forester.

Mr. Larsen elaborated staff attempted to estimate costs to administer a similar ordinance in Edina. Cities spoken to could not put a cost or time estimate of enforcement of their tree removal ordinance but both cities employ full-time foresters The City of Edina's forester is a half-time position. Both cities license tree trimming and tree-removal contractors, Edina does not. Based upon discussions staff feels the following cost implications of adopting and administering the ordinance would be as follows:

Staffing: Enforcing the ordinance would require a full-time forester.

Contractor License: Costs associated with requiring a City license. Enforcing the ordinance without licensing would be difficult.

Attorney Fees: City would likely incur attorney fees when enforcing the ordinance

Staff is concerned with fair enforcement and may require a difficult subjective judgment on whether to grant or deny a permit.

Manager Hughes informed the Council that the half-time contracted forester's annual salary is approximately \$26,700. If the position became full-time, an additional \$33,000 would be added to the position's services. Off setting a portion of that salary increase would be permit fees and licensing fees. The costs of prosecution are difficult to estimate.

Member Kelly inquired whether a full-time forester would be immediately necessary. Mr.

Hughes said much depends on the level of enforcement desired. Mr. Kelly stated he believes the increase in the forester's work is proportional to the increase in permit fees and licenses. Mr. Larsen added when residents are aware there is a control in place, the forester would be very busy responding to calls of concern, and many might occur on a weekend.

Member Housh inquired where this proposed Ordinance emanated from. Mr. Kelly responded it began with a resident in his neighborhood cutting most of the mature trees on the lot. His neighbors inquired of him whether an ordinance existed regarding tree removal and he brought the subject before the Council. Mr. Housh inquired about the difference between tree removal on a vacant lot and one that has a home on it. Mr. Larsen noted that issuing a building permit and subsequent construction would be tied to trees being removed. Mr. Kelly reminded the Council the Ordinance has no specific language in a subdivision request stating that a tree may not be removed. Mr. Larsen explained the proposed Ordinance is not a tree-replacement Ordinance.

Mayor Maetzold asked how many requests are received for removal of diseased trees. Mr. Larsen explained the City forester consults with residents more about saving their trees than removing them. Mayor Maetzold said the cost would be minimal if the forester would be responding to calls rather than doing constant inspections of neighborhoods for violations.

Member Housh elaborated that if this is the case, why is this proposed ordinance necessary.

Member Masica stated that mature trees are an asset and is an unusual circumstance when they are removed. She said she believes this ordinance would be hard to enforce and difficult to govern what people do on their own property.

Member Hovland indicated he disagrees with the fact that the opinion of the forester being substituted for the judgment of the homeowner. He voiced concern with adding costs to an already tight budget as well as creating new permit fees. He suggested taking a 'wait and see' attitude before approving the proposed ordinance. If residents see this is becoming problematic a closer look could be taken to approving the ordinance.

Mayor Maetzold asked what the process would be to license firms that remove trees. Mr. Hughes responded that approximately 4 - 5 companies remove most of the trees in the City. Licensing in cities with tree ordinances is not based upon competency but rather as a mechanism to inform them of what the permit rules are. Mr. Maetzold indicated his approval with passing the ordinance to maintain consistency in all that we do. He said there is an issue of individual property rights as well as rights of adjoining property owners. Mr. Maetzold said he does not believe there will be many applications for permits so the costs will not be burdensome to the City.

Brad Teslow, 4128 62nd Street West, said the reason to keep a tree is for shade, deadens noise, creates a windbreak, absorbs water, saves energy and provides privacy. As a homeowner, the important thing is how tree removal would affect adjoining property owners.

Mr. Larsen commented that the Park Director has to give permission every time a tree is removed from the boulevard, however, many times the permission is not sought.

Motion made by Member Kelly for adoption of Ordinance No. 2002-10, Tree Removal Ordinance as presented. Mayor Maetzold seconded the motion.

Rollcall:

Ayes: Kelly, Maetzold

Nays: Housh, Hovland, Masica

Motion failed.

ORDINANCE NO. 2002-10 AMENDMENTS TO SECTION 900 AND SECTION 1230 OF THE CITY LIQUOR CODE CONTINUED TO JANUARY 7, 2003 Manager Hughes stated staff prepared the proposed amendment to the liquor code at the Council's direction after receiving the request of the 50th & France Business and Professional Association in connection with the 2003 Art Fair. He provided an overview of the draft ordinance.

Council Comment: Mayor Maetzold inquired about the pros and cons of requiring a 'manager' be approved by the Police Chief to oversee the licensed premises. Mr. Hughes explained since it was an outdoor environment and the license holder was not in the business of dispensing alcoholic beverages, a requirement may be required by the Council to involve someone with business experience. Mr. Maetzold asked when would the Council require this. Mr. Hughes responded during the application process. Mr. Hughes elaborated for an intoxicating license, a public hearing would be required. For a 3.2 temporary license, a hearing is not required but still requires Council action.

Member Hovland asked what the standard is for issuing a license and inquired whether they should be spelled out in the ordinance. Mr. Hughes responded all licenses have to comply with provisions within 900.05 (A - K). Mr. Hovland asked if some element of subjectivity exists for a decision by the Council. Mr. Hughes said with any renewal of liquor licensing it could be argued that licensing is a property right. There is more discretion on the initial licensing. Member Housh noted only organizations listed in Section 900.07, are eligible for an intoxicating liquor license. Mr. Hughes said there are broader groups that could apply for a 3.2 beer license. Mr. Hovland asked clarification of Section 900.08 (M), a non-profit club. Mr. Hughes said the language is from the State Statute and states that all charitable, religious, or clubs must be non-profit in nature. Attorney Lindgren added that State Statute would cover the definition of legal non-profit for only a 3.2 license. Mr. Hovland questioned Section 1230.8 (D) referring to property damage by permit holder. He wondered if collection of monies for these damages would be a problem. He suggested maybe a bond or a security deposit could be made a requirement of approving licensing.

Mayor Maetzold inquired whether the Amendment could limit licensing to everyone yet accommodate 50th & France. Mr. Hughes said modification would be necessary to not allow temporary intoxicating sales but just allow temporary 3.2 beer licensing.

Ms. Masica asked if the word "club" could be eliminated. Mr. Lindgren said a re-phrasing of

Action

Continue discussion March 10, 2010. Discussion to focus on Applicability/Criteria.

III. NEW TOPIC ITEMS - Introductions

TOPIC: Tree Preservation

Dated Introduced: February 10, 2010

Introduction

Planner Teague reported this issue has been brought up by the Planning Commission, the Energy and Environment Commission, and residents during the update review process.

Planner Teague explained the City Council considered a "tree ordinance" in 2002; which was not adopted. Planner Teague suggested the following decision points:

1. Is the tree ordinance above and beyond the City's landscape requirements necessary?
2. Are the City's current standards adequate?
3. Staffing/budget concern to support a tree preservation ordinance.

Planner Teague concluded that he sees the following options:

1. Recommend creating a tree preservation ordinance.
2. Make no changes to the City's regulations regarding tree preservation; but further examine the City's landscaping requirements on new development; and
3. Refer the issue to the Energy and Environment Commission.

Public Comment

Janey Westin informed the Committee she was surprised to learn that Edina only had a part-time Forrester. Continuing, Ms. Westin said she has surveyed a number of cities to find out if they had tree ordinances, adding she found two municipalities; Minnetonka and Lake Forrest that have excellent tree ordinances. She suggested that the Committee take a look at them.

Discussion

Committee Members acknowledged that despite the failed attempt to pass a tree ordinance in 2002 it appears interest has again peaked. Commissioners raised the following:

- At this time what is the driving force behind a drafting a tree ordinance? Is it development/redevelopment? Members noted Edina residents consistently plant new trees and replace trees when removed .
- Where is the public benefit? Is there really a problem? It has been acknowledged if a tree ordinance is adopted policing and enforcement issues will occur. Staffing is an issue.
- Will a permit be required to remove a tree? And if so; would there be a minimum diameter requirement before a permit is needed. Would there be a maximum diameter whereby a tree can't be removed?

Planner Teague reiterated in Edina residents plant trees, adding he believes the correct way to proceed would be to reevaluate the City's landscaping requirements and make changes where needed. Continuing, Planner Teague said the Committee could also consider forwarding this issue to the Energy and Environment Commission for their comments.

Action

Referral to Energy and Environment Commission.

TOPIC: Wetland Setback

Date Introduced: February 10, 2010

Introduction

Planner Teague explained that the issue of wetland setback was brought up by Commissioner Risser during a recent development review. Planner Teague reported that currently the underlying Watershed Districts (9-Mile and Minnehaha) are the regulatory agencies for the City in regard to wetland protection, review and approval of new grading and drainage plans.

Planner Teague said he sees the following as decision points:

1. Are the current watershed district standards adequate?
2. Should the City of Edina go beyond watershed district regulations on wetland setbacks