



To: MAYOR AND COUNCIL

Agenda Item #: VIII.A.

From: Cary Teague, Community Development Director

Action

Discussion

Date: February 17, 2015

Information

Subject: Ordinance No 2015-25; Amending Chapters 10 & 32, regarding tree preservation and subdivisions.

Action Requested:

Second reading of the attached Ordinance No. 2015-25.

Information / Background:

The attached Ordinance includes the changes recommended by the City Council at first reading. The new text has been highlighted in light blue.

The following is a summary of the proposed Ordinance:

- This ordinance applies to: demolition permits; subdivisions applications; building permit applications for principal and accessory structures including a garage, deck or a pool; and additions to principal and accessory structures.
- All such permits are required to include a tree inventory plan indicating where Protected Trees are located and, their species, caliper, and health. 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, 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 within areas of installation of public infrastructure improvements including public roadways, stormwater retention areas and utilities 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, public infrastructure or utility 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.
- Inspect the property at the time of the final inspection for the building permit to ensure that the tree plan has been followed.
- 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.

ATTACHMENTS:

- Ordinance 2015-25

ORDINANCE NO. 2015-25
AN ORDINANCE AMENDMENT REGARDING
TREE PRESERVATION & SUBDIVISIONS

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 Division applies to: demolition permits; subdivisions applications; building permit applications for principal and accessory structures including a garage, deck or a pool; and additions to principal and accessory structures.

(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 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; preventing and reducing 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.

(2) Definitions:

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

Existing text – XXXX

Stricken text – ~~XXXX~~

Added text – **XXXX**

Added text after October 21 - ~~XXXX~~

i. a deciduous tree that is at least 8 inches dbh, except box elders, 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 as defined as an invasive species by the Minnesota Department of Natural Resources.

c. **Critical Root Zone.** The minimum area around a tree that is left 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). If the critical root zone must be disturbed for construction or construction activity, a plan for the disturbance shall be submitted subject to review and approval of the city forester to minimize the damage.

d. **Diameter at Breast Height (dbh).** The dbh shall be measured at a height of 4.6 feet.

e. **Transplanted Tree.** A protected tree which is removed from a lot and replanted to another private lot or a public space in Edina.

(3) Applications must include a tree inventory plan indicating where Protected Trees are located and, their species, caliper, and health. 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 (deciduous or coniferous) that are normally found growing in similar conditions and that are included on the list of acceptable replacement species on file with the city forester.

b. Replacement trees must be varied by species.

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. The tree inventory plan shall be verified at the time of final inspection for the building permit.
- g. If the city determines that there is no appropriate location for some or all the required replacement trees, those trees will not be required on site. The city shall require the replacement trees on public property if there is no appropriate location on site.

(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. Including, and within a five-foot (5') radius of driveways and parking areas.
- c. Including, and within ten-foot (10') radius of installation of public infrastructure improvements including public roadways, stormwater retention areas and utilities.

(6) 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.

(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, a plan for 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 1" holes, 2" deep, or as recommended by an arborist.

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

(10) Any transplanted tree shall not be counted as a protected tree that is removed under this section and shall not count as a tree that requires replacement under this section.

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~~
- ~~(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 including topography, or inadequate access to direct sunlight for solar energy systems.

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.

Section 3. 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.~~
- ~~(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.

(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 4. Chapter 36. Article VIII. Districts and District Regulations is hereby revised to add the following:

Sec. 36-437. Requirements for lot areas and dimensions.

(5) ***Variances from Section 36-437. When Variances are requested from Section 36-437, requirements for lot areas and dimensions, the Planning Commission and City Council may consider the following criteria in addition to Section 36-98:***

a. ***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:***

i. ***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***

ii. ***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.***

b. ***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***

Existing text – XXXX

Stricken text – XXXX

Added text – XXXX

Added text after October 21 - XXXX

site to erosion and sedimentation, susceptibility of the site to flooding and water storage needs on and from the site.

- c. 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.
- d. 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.
- e. The impact of the proposed plat or subdivision, and proposed development on the health, safety and general welfare of the public.
- f. 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.
- g. 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.
- h. 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.
- i. 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.
- j. 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.
- k. Whether the proposed plat or subdivision, or the improvements proposed to be placed thereon are likely to cause substantial environmental damage.

Section 5. This ordinance is effective immediately upon its passage and publication.

First Reading:
Second Reading:
Published:

Existing text – XXXX
Stricken text – ~~XXXX~~
Added text – XXXX
Added text after October 21 - XXXX

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 _____, 2015, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this _____ day of _____, 2015.

City Clerk