

ORDINANCE NO. 2091

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS PROHIBITING DISKING, TILLING OR GRADING OF PROPERTY WITHIN THE CITY EXCEPT AS SET FORTH IN THIS ORDINANCE AND ESTABLISHING PENALTIES FOR VIOLATION THEREOF AND DECLARING THAT THIS ORDINANCE NECESSARY TO THE PUBLIC HEALTH, SAFETY AND WELFARE WHICH SHALL PROVIDE CONTINUED PROTECTION FOR SENSITIVE WILDLIFE SPECIES AND REMAIN IN EFFECT UNTIL A COMPREHENSIVE GRADING AND DISKING ORDINANCE IS ADOPTED BY THE CITY COUNCIL.

WHEREAS, the citizens of the City and the City Council strongly support the preservation of habitat areas within the City; and

WHEREAS, the City Council is also cognizant of the need to control weeds and brush for the purposes of weed abatement and fire hazard control; and

WHEREAS, disking and tilling can destroy habitat for wildlife; and

WHEREAS, mowing and flailing provide adequate methods to abate weeds and significantly reduce, if not eliminate, injury and death to the wildlife that resides within the City; and

WHEREAS, significant habitat for burrowing owls was disked rather than mowed or flailed in May 2000 resulting in the destruction of this habitat during breeding season; and

WHEREAS, grading activities that are not appropriately monitored or permitted may also have the effect of destroying habitat; and

WHEREAS, the City is currently preparing a comprehensive grading and disking ordinance that addresses grading and disking activities related to construction and weed abatement; and

WHEREAS, the City desires to prohibit disking and tilling on property within the City until the the comprehensive grading and disking ordinance takes effect; and

WHEREAS, the City desires to require a permit for grading activities to assure that such activities are properly permitted by the regulatory agencies and are in full compliance with all environmental and other conditions of approval prior to such grading activities commencing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES ORDAIN AS FOLLOWS:

Section 1. Prohibition. Effective immediately upon the adoption of this Ordinance, except as provided in Section 2 of this Ordinance, all disking, tilling and grading of property within the City is prohibited. Except for the specific exemptions listed in Section 2, no person shall do or permit to be done any disking, tilling or grading of property on any site within the City.

Section 2. Exemptions; Requirements for Exemption. The following disking, tilling and grading activities are exempt from the prohibition set forth in Section 1 of this Ordinance:

A. Disking or tilling of sites under agricultural cultivation as of May 15, 2000, provided that a grading permit is first obtained.

B. Disking or tilling of subdivided lots zoned residential single family and residential multi-family or a planned development zone that permits such residential uses, provided that there was an existing single family or multifamily dwelling(s) constructed on the lots for which a certificate(s) of occupancy had been issued as of May 15, 2000.

C. Disking and tilling on individual residential lots for which building permits have been issued as of May 15, 2000, provided that a grading permit is first obtained for such disking or tilling.

D. Grading for which the City has approved a grading plan on or before May 15, 2000.

E. Grading pursuant to an approved development or subdivision entitlement provided that a grading permit is first obtained.

F. Grading necessary for excavation below finished grade for basements and footings of a building authorized by a valid building permit issued by the City.

G. Excavations in connection with a swimming pool authorized by a valid building permit issued by the City.

H. Disking or tilling in community gardens that are designated as community gardens by the Director of Planning and Building.

I. Mowing or flailing weeds and vegetation that does not disturb the soil or ground.

J. Grading, disking or tilling on any other property within the City provided a grading permit issued pursuant to this Ordinance is first obtained.

Section 3. Grading Permits. This ordinance establishes a grading permit process applicable to grading, disking and tilling activities within the City to assure that property will not be graded, disked or tilled without first investigating and safeguarding wildlife protected by state and federal laws that may be present on the property.

A. Permit Required.

A grading permit may be issued by the Director of Planning and Building as follows:

1. In connection with issuance of a building permit;
2. In connection with the approval of improvement plans for subdivision improvements; or
3. Where there is no building permit or improvement plans required, through the issuance of a grading permit.

B. Conditions of Issuance.

All permits issued shall be subject to the following conditions:

1. All work shall be performed in accordance with City standards and all applicable state and federal requirements.
2. Grading, disking or tilling shall be limited to the work shown on the grading plans approved by the Director.
3. All work shall be done in accordance with any applicable mitigation measures of adverse environmental impacts as disclosed in any environmental document and any conditions or measures set forth in the biological survey report applicable to the property for which the permit is issued and required by the Director of Planning and Building.
4. Any required permits for habitat or wildlife preservation, mitigation or take must be obtained prior to the issuance of any grading permit under this Ordinance and compliance with the conditions of such regulatory permits shall be a condition to the issuance of a grading permit.
5. Any additional conditions deemed necessary to protect the public health, safety and welfare, to prevent the creation of a hazard to public or private property, to assure proper completion of the grading, disking or tilling and to safeguard, preserve and conserve any wildlife present on the property.

6. The grading permit shall terminate and be of no further force and effect if the work permitted under the permit is not commenced within thirty (30) days of the date of issuance of the permit and completed within the time set forth in the permit.

C. Applications.

Applications for grading permits shall be filed with the Department of Planning and Building. Each application shall include a grading plan checking fee in the amount equal to the amount established for the processing of zoning verifications as set by resolution of the City Council, a preliminary grading, disking or tilling plan and a statement of the intended purpose for the grading, disking or tilling. Only one application and permit is allowed for grading, disking or tilling work on each legal parcel. The Director shall determine whether the application is complete or whether additional information is required. The applicant will be notified within 10 working days if the application is incomplete. Each application shall contain the following:

1. A plan for the work proposed under the permit.
2. A clear and precise description of the property on which the work will be done.
3. A biological survey prepared by an accredited biologist showing the location of nest sites or burrows for any wildlife species listed on the State of California Department of Fish and Game Natural Diversity Data Base, together with a report on proposed mitigation measures to reduce any impact on such wildlife by reason of the proposed activity. The report shall contain information on whether mowing or flailing can adequately address the property owner's purposes while preserving or conserving the wildlife species and its habitat. The report shall also state whether any state or federal permits are required prior to any activity on the property. The biological survey and report shall have been conducted within one month of the date of the permit application. This requirement may be waived by the Director upon submittal of sufficient information by the applicant that the site does not provide habitat to wildlife and by confirmation by visual inspection of the property by the Director or his designee.
4. Any required soils, erosion, geological, or design information required by the Director of Planning and Building or the Director of Public Works not previously submitted with an application for a subdivision or land use permit or entitlement.

D. Permit Issuance. The Director of Planning and Building shall issue the grading permit if the Director finds that the permit meets the requirements of this Ordinance and that issuance of the permit will not have a significant adverse impact on any wildlife noted on the biological survey and protected under state or federal law.

The Director shall not issue a permit for disking or grading if the Director finds that mowing or flailing will more adequately safeguard the wildlife on the property and meet the needs of the property owner and the City to clear the site to prevent fire hazards.

E. Final Grading Plans. Final grading plans and specifications shall be prepared and signed by a registered civil engineer and shall meet all current requirements of federal, state and local laws and regulations.

Section 4. Liability. The issuance of grading approval under the provisions of this Ordinance shall not relieve any person from responsibility for damage to any person or property or impose any liability on the City of Davis for damage to any person or property. The issuance of grading approval under the provisions of this Ordinance shall not relieve any person from responsibility for compliance with any other applicable laws or regulations related to the disking, tilling, or grading of their property, including but not limited to compliance with any applicable state, federal or city laws relating to the environment, wildlife or damage and preservation of wildlife and plant species.

Section 5. Violations; Remedies.

A. Nuisance. Any violation of this Ordinance is hereby declared to be a nuisance subject to abatement pursuant to Chapter 23 of the Davis Municipal Code.

B. Misdemeanor. Any person violating the provisions of this Ordinance shall be guilty of a misdemeanor.

C. The remedies and violations set forth herein are not exclusive and are in addition to any other remedy or penalty provided for in law for violation of this Ordinance or the activities regulated by this Ordinance.

Section 6. Definitions.

As used in this Ordinance the following words have the following meanings:

A. Disking means any mechanical system designed to turn and pulverize soil to destroy weeds or other plant material. Disking includes all types of harrowing devices designed to turn or level soil.

B. Tilling means the plowing of soil in such a manner as to remove or bury vegetative groundcover.

C. Mowing means the cutting of standing vegetation, grasses or herbage without disturbing the soil in which the vegetation is growing.

D. Grading means any land excavation or filling or combination thereof, or the plowing under or burial of vegetative groundcover.

Section 7. Findings. The City Council of the City of Davis hereby finds, determines and declares that there is a need to enact an ordinance establishing a prohibition of disking, tilling, and grading without a permit, as set forth in this ordinance to assure that nesting birds, including burrowing owls and other ground dwelling migratory birds and other wildlife species of concern are not killed or injured and that their burrows and nest sites are not disturbed. The City Council finds and determines that the wildlife species that visit, nest and inhabit the vacant properties within the City provide a valuable resource to the City and the community and that the public health and safety and welfare would be severely impacted if safeguards for conserving and preserving this wildlife is not implemented. This ordinance will greatly assist by establishing procedural safeguards to regulate otherwise lawful activities that, if undertaken may seriously impact and harm wildlife within the City. An example of the harm that may come from not adequately regulating disking and grading activities is the disking of the park site in Mace Ranch in May 2000. This Ordinance is designed to provide procedural safeguards and substantive prohibitions to avoid future incidents of disking of lands providing habitat to wildlife within the City.

Section 8. Effective Date; Term. This Ordinance shall become effective 30 days after the second reading by the City Council. This Ordinance shall remain in effect until a subsequent grading and disking ordinance takes effect.

PASSED AND ADOPTED by the City Council on September 11, 2003 by the following vote:

AYES: ASMUNDSON, GREENWALD, HARRINGTON, PUNTILLO, BOYD

NOES: NONE.

ABSENT: NONE.

Susie Boyd, Mayor

ATTEST:

Bette Racki, City Clerk