

★ **Roll Call Number**

Agenda Item Number

40A

Date March 9, 2009

An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by repealing Section 122-58 thereof, and enacting a new Section 122-58, and by adding and enacting a new Article X to Chapter 42 regarding tree preservation and the mitigation of tree removal",

presented.

MOVED by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

Roger K. Brown
 Roger K. Brown

Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED APPROVED

.....
Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

 City Clerk

ORDINANCE NO. _____

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by repealing Section 122-58 thereof, and enacting a new Section 122-58, and by adding and enacting a new Article X to Chapter 42 regarding tree preservation and the mitigation of tree removal.

BE IT ORDAINED by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, be and is hereby amended by repealing Section 122-58 thereof, and enacting a new Section 122-58, and by adding and enacting a new Article X to Chapter 42 regarding tree preservation and the mitigation of tree removal, as follows:

Chapter 42. ENVIRONMENT.
ARTICLE X. TREE PRESERVATION AND MITIGATION

Sec. 42-550. Title.

This Article shall be known as the tree preservation and mitigation ordinance and may be cited as such and will be referred to in this article as such.

Sec. 42-551. Purpose.

The city council finds that the city contains many canopied areas containing trees of significant size, value and quantity that contribute in a positive way to the human and animal environment. Trees and associated vegetation that are properly maintained increase property values, maintain the natural ecology, temper the effects of extreme temperatures and winds, reduce runoff, prevent erosion, and help create and maintain the identity and visual character of the city. The purpose of this chapter is to preserve and prevent the removal of canopied areas and groves of mature trees on public and private property until the impact of such removal can be considered in the context of the ultimate use and development of the land. Further purposes include the mitigation and replacement of trees that are lost from removal.

Sec. 42-552. Definitions:

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. Diameter at breast height (DBH) means the diameter of the tree measured 4.5 feet from the ground.

2. Baseline aerial photography (BAP) shall refer to any aerial photographs and other credible data that identifies the location and boundaries of canopied areas as of a known date.
3. Canopied area means an area of tree cover, measured planimetrically in square feet, from baseline aerial photography.
4. Director means the community development director of the city or the director's designee.
5. Mature tree means all tree species of 12 inches or more in diameter at breast height.
6. Parcel means a tract of land under common ownership.
7. Replacement tree means a tree required to be planted in replacement of trees removed from a canopied area. Replacement trees shall be of a species on the list approved by the city council by resolution for use in the city and no less than one and 1½ inches in caliper measured six-inches from the ground.
8. Tree removal means the destruction or removal of a tree, and the removal of more than twenty per cent (20%) of the crown, trunk or root system of a tree or to damage a tree so as to cause the tree to decline or die within one growing season. Tree removal does not include normal tree trimming or pruning undertaken for the purpose of maintaining and preserving a tree.
9. Tree removal permit means a permit issued pursuant to this article for tree removal.

Sec. 42-553. Tree removal permit required.

A. No person shall cause, or engage in the act of tree removal except under authority of a tree removal permit issued pursuant to this section. However, tree removal is exempt from this requirement under the following circumstances:

1. No tree removal permit is required for tree removal activities on a parcel under 40,000 square feet in area.
2. No tree removal permit is required when both of the following conditions are satisfied:
 - (a) Five or fewer mature trees are cumulatively removed from the parcel within any five year period after April 1, 2009; and,
 - (b) Less than 10,000 square feet of tree canopy is cumulatively removed from the parcel within any five year period after April 1, 2009.

B. A tree removal permit authorizes the removal of those trees identified in the approved tree removal plan for the affected parcel. No person operating under authority of a tree removal permit for a parcel shall engage in any tree removal activities on that parcel in excess of the activities identified in the approved tree removal plan.

Sec. 42-554. Application for tree removal permit.

A. Application. Application for a tree removal permit shall be made on a form provided by the community development department, and shall be accompanied by payment of a fee in the amount set in the schedule of fees adopted by the city council by resolution, and by three copies of the following information.

- (1) Vicinity sketch. The vicinity sketch shall be at a scale of one inch to 400 feet or larger and indicate the site location as well as the adjacent properties within 500 feet of the site boundaries.
- (2) Tree removal plan. The tree removal plan shall be at a scale of no more than one inch to 50 feet or larger, on one or more sheets no greater than 24 by 36 inches in size, showing the following for the affected parcel:

- (a) A statement from the landowner or the landowner's representative explaining why the proposed amount of tree removal is required.
 - (b) The names, addresses and telephone numbers of the land owner(s) and the individual or business responsible for the tree removal.
 - (c) A time schedule indicating the anticipated starting and completion dates of the tree removal.
 - (d) Location of the existing canopied area and all existing mature trees identified by size in DBH and species. However, trees located within an area which is designated on the plan as an area that is not to be disturbed and from which there is to be no tree removal, need not be individually identified.
 - (e) Identification of the canopied areas and all mature trees to be removed.
 - (f) Identification of canopied areas and mature trees, if any, which have been removed on or after April 1, 2009, based on the available baseline aerial photography, and any additional information known to the applicant.
 - (g) Notations providing for protection of the existing trees which are identified to remain, demonstrating compliance with the standards for protection of existing trees set forth in Sec. 42-556.
 - (h) An affirmative statement signed by an owner of the property or by the person responsible for the tree removal, acknowledging that they are required to limit any tree removal to that identified in the approved tree removal plan.
- (3) Mitigation plan. If the proposed tree removal, together with any prior tree removal occurring after April 1, 2009, will result in the loss of: i) more than five mature trees; or, ii) more than 10,000 square feet of canopy area, then the following information shall also be provided:
- (a) The location, species and schedule for the planting of any replacement trees in conformance with the requirements of section 42-556.
 - (b) If applicable, a statement from a certified arborist evaluating the quality of the canopied area or mature trees proposed to be removed and identifying those trees or portions of the canopied area to be considered for removal without penalty or mitigation due to species type, age, disease, damage and other factors.
 - (c) An affirmative statement signed by an owner of the property or by the person responsible for the tree removal, acknowledging that they are required to cause any replacement trees to be planted and maintained in conformance with such plan.

B. Review and approval. Within twenty (20) working days of receipt of the complete application, the director shall, after consultation with the park and recreation director or such director's designee, approve, conditionally approve or deny the application based on the information provided pursuant to paragraph A, above.

Sec. 42-555. Appeals. The applicant may, upon written notice to the city council, appeal in whole or in part any determination made by the director within the scope of this article. Appeal shall be made without cost by filing written notification of the appeal and the basis thereof with the city clerk within 30 days after directors ruling. The city council shall decide all appeals within 30 days after written notification of the appeal has been received by the city clerk, unless the applicant consents to an extension of time. A majority vote of the city council shall be necessary to overturn the action of the director.

Sec. 42-556. Tree protection and mitigation standards.

A. Protection of existing trees. Preference shall be given to preserving mature trees of a species recommended by the director. Any mature tree or canopied area identified for preservation by an approved tree removal plan shall be protected during any grading, construction or removal activity in accordance with policies approved by the director.

B. Tree mitigation. The tree mitigation plan shall provide for the mitigation of the mature trees subject to a tree removal permit, by the planting of replacement trees in accordance with the following mitigation standards based on the diameter breast height (DBH) of the removed trees. Plantings required by the landscape standards in the adopted site plan policies may not be counted as replacement trees. However, replacement trees may be used to satisfy any obligation for required street trees.

<u>DBH of Removed Tree in inches:</u>	<u>Ratio of Replacement Trees to Removed Tree:</u>
<u>At least 12 and less than 18</u>	<u>1:1</u>
<u>At least 18 and less than 23</u>	<u>2:1</u>
<u>At least 23 and less than 29</u>	<u>3:1</u>

For each increment of 6 inches, or any part thereof over 29 inches, another replacement tree shall be required.

C. Alternate mitigation. If the tree removal is performed without a tree removal permit, or that exceeds the tree removal allowed by an approved tree removal permit, then one replacement tree shall be planted for every 700 square foot increment of canopied area removed as determined by examination of the baseline aerial photography. Plantings required by the landscape standards in the adopted site plan policies and any required street trees may not be counted as such replacement trees.

D. Species of replacement trees. Replacement trees shall be of a species on the list approved by the city council for use in the city and approved by the director for use at the proposed location. Native species are preferred for replacement trees. Unless limited by site conditions, such as, but not limited, to overhead lines, all replacement trees shall be of an overstory species.

E. Off-site mitigation. Any replacement tree which cannot be reasonably planted within the boundaries of the development shall be planted off-site as approved by the director at the following locations:

- (1) On city property at locations approved by the city;
- (2) On other public property in the city with the written consent of an appropriate officer of the entity with jurisdiction over the property; and,
- (3) On private property in the city with the consent of the property owner.

Preference shall be given to off-site mitigation planting locations in close proximity to the property where the tree removal is proposed or has occurred.

F. Timing. All replacement trees shall be planted within one year of commencement of tree removal or by such later date as may be approved by the director for good cause

shown. In the approval of any subdivision, site plan, or conceptual or development plan for the development of the affected parcel, the schedule for the planting of any replacement trees may be extended to coordinate with such development.

G. Assurance of performance. The director may require a bond for the estimated cost of installing the replacement trees if the replacement trees are not to be planted contemporaneous with the tree removal or planned redevelopment. In considering whether to require a bond, the director shall consider whether the installation of the replacement trees is adequately assured by the applicant's need for further city permits or approval for the planned redevelopment of the site. As an alternative to the bond, the director may instead require that a notice be executed and recorded by all owners of the property in a form approved by the legal department, giving notice to future purchasers and owners of the mitigation requirements imposed pursuant to this section.

H. Maintenance of replacement trees. All replacement trees shall be maintained by the owner of the property where such tree is planted for a period of five (5) years, during which time the replacement tree shall not be subject to tree removal without the prior written consent of the director. If any replacement tree is removed or dies within such period, regardless of the cause, such owner shall cause a new replacement tree to be planted in close proximity to the site of the original tree.

I. Variances. The director, after consultation with the parks and recreation director or such director's designee, may grant such variances from the terms of this section as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this section will result in unnecessary hardship, and so that the spirit of this article shall be observed and substantial justice done. In granting any variance, the director may prescribe appropriate conditions and safeguards in conformity with this article. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article subject to enforcement under sections 42-557 and 42-558.

Sec. 42-557. Enforcement.

A. This article shall be implemented and administered by the community development department, and the zoning enforcement officer shall enforce this article.

B. No grading permit, plat of survey, subdivision plat, site plan, or building permit shall be approved for any development upon a parcel from which tree removal has occurred in violation of this article, until a tree removal permit is first obtained for such tree removal which provides for the implementation of a mitigation plan meeting the standards in section 42-556.

C. No grading permit, plat of survey, subdivision plat, site plan, or building permit shall be approved for any development upon a parcel subject to a mitigation plan which

has not been timely implemented until the requirements of that mitigation plan have been satisfied, or an amended mitigation plan is submitted and approved to coordinate the mitigation plantings with the redevelopment of the parcel.

D. If a violation of this article has been established by judgment or agreement with an owner of the property, the zoning enforcement officer or the officer's designee may cause a notice to be recorded in a form approved by the legal department, giving notice to future purchasers and owners of the property of the limitations imposed by such judgment or agreement.

Sec. 42-558. Civil violations and penalties.

A. No person shall engage in or cause any activity to be done in violation of any provision of this article.

B. Persons who fail to perform an act required by the provisions of this article or who commit an act prohibited by the provisions of this article shall be guilty of a misdemeanor punishable by fine or imprisonment as provided by section 1-15 of the City Code, or shall be guilty of a municipal infraction punishable by a civil penalty as provided by section 1-15 of the City Code.

C. The city may obtain injunctive relief to enforce the provisions of this chapter.

**Chapter 122 VEGETATION
ARTICLE II. TREES**

Sec. 122-58. Restriction on planting certain trees.

- (a) ~~No catalpa, soft maple, box elder, cottonwood, boileana poplar, American elm, black locust, Siberian elm, white poplar, willow, silver maple, weeping birch, Lombardy poplar, tree of heaven, evergreen poplar, Chinese elm, low growing tree or any tree having weeping or pendulous branches~~ No tree shall be planted in any of the public highways, streets or alleys in the city which is not on the list of street trees approved by the City Council by resolution.
- (b) No trees may be planted where there is less than 2 1/2 feet of soil on all sides of such tree, and not more than two trees can be planted on the parking in front of a 50-foot lot. No conifers or evergreens should be planted between the sidewalk and the curb of any city street for safety considerations. No such planting shall be any closer than five feet from any fire hydrant nor closer than 40 feet to another tree.

ORDINANCE NO. _____

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Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:



Roger K. Brown

Assistant City Attorney

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