

Date September 14, 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, as heretofore 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, to establish a comprehensive system for the consideration of tree removal and the planting of replacement trees in the review and approval of applications for grading permits, site plans, subdivision plats and plats of survey, and to adopt a list of approved tree species for planting in the rights-of-way and as required replacement trees",

which was considered, and voted for the first time upon under Roll Call No. 09-1587 of August 24, 2009, subject the ordinance being amended to use the mitigation ratios as initially proposed on July 13, 2009; again presented. The text of the ordinance has been amended from that initially presented for first reading as follows:

- to change the definition of mature tree to be a tree at least 12 inches in diameter;
- to change the tree mitigation ratios to commence at one replacement tree for the removal of a tree at least 12 inches and less than 24 inches in diameter; and,
- to identify examples of when tree removal necessary to comply with an applicable law or governmental regulation may occur without mitigation.

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

(Second of three required readings)

Form approved:

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, as heretofore 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, to establish a comprehensive system for the consideration of tree removal and the planting of replacement trees in the review and approval of applications for grading permits, site plans, subdivision plats and plats of survey, and to adopt a list of approved tree species for planting in the rights-of-way and as required replacement trees.

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, to establish a comprehensive system for the consideration of tree removal and the planting of replacement trees in the review and approval of applications for grading permits, site plans, subdivision plats and plats of survey, and to adopt a list of approved tree species for planting in the rights-of-way and as required replacement trees, as follows:

ARTICLE X. TREE REMOVAL AND MITIGATION

Sec. 42-550. Title.

This article shall be known as the tree removal and mitigation ordinance and may be cited 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 encourage the preservation of canopied areas and mature trees on private land, and to require the preservation or mitigation of trees during the development process.

The city council further declares its intent to adopt policies for the preservation and planting of trees on city property and to consider tree preservation and replacement in the

design and implementation of public works projects.

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 of mature trees and the 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. *Replacement tree* means a tree required to be planted pursuant to this article in replacement of trees removed.
7. *Tree removal and mitigation plan* means a plan which identifies trees or canopied areas to be preserved and those to be removed, and provides for the planting of any required replacement trees in compliance with this article.
8. *Tree removal* means the destruction or removal of a tree, or the removal of more than twenty-five percent (25%) of the crown or root system of a tree in a single growing season. Tree removal does not include normal tree trimming or pruning undertaken for the purpose of maintaining and preserving a tree in accordance with ANSI 300 Part 1.

Sec. 42-553. Scope.

A. Any person seeking city approval of any of the following development activities is subject to the requirements of this article. No city permits or approvals shall be given for any of the following development activities until the applicant has received approval of a tree removal and mitigation plan as provided in this article for the affected property.

- (1) a grading permit pursuant to article II, of chapter 42;
- (2) a site plan pursuant to article V, of chapter 82; or,
- (3) a subdivision plat or plat of survey pursuant to chapter 106 of this Code.

B. Any person may voluntarily seek approval of a tree removal and mitigation plan pursuant to this article.

C. This article does not apply to public improvement projects or to activities on city property or within the public rights-of-way. Public improvement projects, and activities on city property or within the public rights-of-way shall be subject to city policies for the

preservation and planting of trees on city property, and are to consider tree preservation and replacement in the design and implementation of public works projects.

Sec. 42-554. Required information.

Any person seeking city approval of a tree removal and mitigation plan shall submit three copies of the plan containing the following information:

- (1) A statement from the landowner or the landowner's representative explaining why the proposed amount of tree removal is required.
- (2) The names, addresses and telephone numbers of the land owner(s) and the individual or business responsible for the tree removal.
- (3) A time schedule indicating the anticipated starting and completion dates of the tree removal.
- (4) 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 and mitigation plan, and are further required to cause any replacement trees to be planted and maintained in conformance with such plan and this article.
- (5) One of the following on one or more sheets no greater than 24 by 36 inches in size and at scale that reasonably allows for the review and confirmation of the information contained therein:
 - (a) Option A. A survey or scalable drawing of the planned development overlaid upon an aerial photograph containing the following information:
 - (i) Location of the canopied areas to be preserved, the canopied areas existing on or after May 1, 2009, that have already been removed, and any additional canopied areas to be removed, based on the available baseline aerial photography and any additional information known to the applicant.
 - (ii) If applicable, the citation to any law or governmental regulation that requires such tree removal, the location of the trees so required to be removed, and evidence that there is no feasible alternative that would materially reduce the required amount of such tree removal.
 - (iii) The calculation of the amount of canopied area existing on or after May 1, 2009, that has already been removed, and the calculation of the amount of existing canopied area to be removed.
 - (iv) The calculation of the number of replacement trees required by this article, and the species and location for the placement of any such replacement trees.
 - (b) Option B. A survey or scalable drawing of the planned development overlaid upon a tree survey containing the following information:
 - (i) Location of the canopied areas to be preserved, the canopied areas existing on or after May 1, 2009, that have already been removed, and any additional canopied areas to be removed, based on the available baseline aerial photography and any additional information known to the

- applicant.
- (ii) The location of all mature trees identified by size in DBH and species, with a separate listing of the DBH and species of all such mature trees to be removed. 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. The identification of mature trees may be determined by actual survey or by any a sampling method determined to be reasonable and accurate by the director.
 - (iii) The calculation of the amount of canopied area existing on or after May 1, 2009, that has already been removed.
 - (iv) If applicable, a statement from a certified arborist evaluating the quality of the mature trees proposed to be removed and identifying those trees to be considered for removal without penalty or mitigation due to species type, age, disease, damage and other factors.
 - (v) If applicable, the citation to any law or governmental regulation that requires such tree removal, the location of the trees so required to be removed, and evidence that there is no feasible alternative that would materially reduce the required amount of such tree removal.
 - (vi) The calculation of the number of replacement trees required by this article, and the species and location for the placement of any such replacement trees.
- (6) A plan for the protection of the existing trees which are identified to remain, demonstrating compliance with the standards for protection of existing trees set forth in section 42-555(A).
- (7) The schedule for the planting of any replacement trees in conformance with the requirements of section 42-555(H).

Sec. 42-555. Tree protection and mitigation standards.

A. Protection of existing trees. Any mature tree or canopied area identified for preservation in an approved tree removal and mitigation plan shall be protected during any development activity in accordance with policies approved by the director. Preference shall be given to preserving mature trees of a species recommended for use at such trees' locations in the list of recommended tree species approved by the city council by resolution.

B. Mitigation option A. If the applicant has chosen to provide the information required under Option A in section 42-554, the tree removal and mitigation plan shall provide mitigation for the removal of canopied area by providing one replacement tree for each 2,000 square feet of canopied area removed or to be removed after May 1, 2009.

Tree removal shall be allowed without mitigation under this option A when the applicant has demonstrated that such tree removal is required to conform with any applicable law or governmental regulation or infrastructure requirements including, but not limited to, streets, sidewalks, and stormwater detention, and there is no feasible

alternative that would materially reduce the required amount of tree removal.

C. Mitigation option B. If the applicant has chosen to provide the information required under Option B in section 42-554, the tree removal and mitigation plan shall provide mitigation for the loss of canopied area existing on or after May 1, 2009, that has already been removed, and for any existing mature trees to be removed, in accordance with the following rations:

- (1) One replacement tree shall be provided for each 2,000 square feet of canopied area existing on or after May 1, 2009, that has already been removed; and,
- (2) Replacement trees shall be provided for each mature tree to be removed based upon the diameter at breast height (DBH) of the removed tree in the following rations:

<u>DBH of removed tree in inches</u>	<u>Ration 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 24</u>	<u>2 : 1</u>
<u>For each increment of 6 inches of DBH above 24 inches, one additional replacement tree shall be provided.</u>	

Tree removal shall be allowed without mitigation under this option B when the applicant has demonstrated that such tree removal qualifies under any of the following criteria:

- (i) Trees that are dead or dying from causes beyond the owner's control.
- (ii) Trees of a species that is not permitted for use as a street tree;
- (iii) Trees that must be removed to conform with any applicable law or governmental regulation or infrastructure requirements including, but not limited to, streets, sidewalks, stormwater detention, when there is no feasible alternative that would materially reduce the required amount of tree removal.

D. Mitigation for improper tree removal. If the tree removal is performed in violation of an approved tree removal and mitigation plan, or if tree removal is performed without an approved tree removal and mitigation plan under circumstances which reasonably demonstrates that such tree removal was performed in anticipation of redevelopment for the purposes of avoiding the mitigation requirements under this article, 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.

E. Replacement trees. Replacement trees shall be of a species on the list of recommended tree species approved by the city council by resolution, and approved by the director for use at the proposed location. Native species are preferred for replacement trees. Replacement trees shall be of an overstory species and at least one and one-half (1 ½) inches in caliper and not more than 2 inches in caliper measured six inches above grade. However, understory, ornamental and coniferous trees may be substituted for up

to 30% of the required overstory replacement trees, subject to the following replacement ratios: Two evergreen trees at least 6 feet tall, or three understory or ornamental trees at least 1 inch in caliper measured six inches above grade may be substituted for a required overstory replacement tree.

F. *Credit for required trees.* Trees required to be planted by the landscape standards in the adopted site plan policies, including those planted as required street trees, may be counted towards satisfaction of the mitigation requirements set forth above.

G. *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, with preference to be given to locations in close proximity to the property where the tree removal is proposed or has occurred:

- (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; or,
- (3) On private property in the city with the consent of the property owner.

H. *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. Each owner of the property upon which tree removal has occurred shall be responsible for causing the replacement trees to be planted and maintained in accordance with this article and the approved tree removal plan.

I. *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 one (1) year after planting, 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.

Sec. 42-556. Administration.

A. The requirements of this article shall be administered as part of the permitting process which triggered the requirement for compliance with this article.

B. The following provisions shall apply in the event an applicant voluntarily seeks approval of a tree removal and mitigation plan under circumstances where no grading or development is planned which would otherwise trigger a requirement for compliance with this article:

- (1) This article shall be administered by the director.

(2) The applicant may, upon written notice, 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 such determination is made. The city council shall decide the appeal 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. The affirmative vote of a majority of the city council shall be necessary to overturn or modify a determination by the director. The appealing party shall be presented a reasonable opportunity to present his or her views to the city council during its consideration of the appeal.

C. The applicable authority charged with administering this article may, after consultation with the parks and recreation director or such director's designee, grant such variances from the terms of this article as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this article will result in unnecessary hardship, and so that the spirit of this article shall be observed and substantial justice done. In granting any such variance, the reviewing authority 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 section 42-557.

Sec. 42-557. Enforcement.

A. The zoning enforcement officer shall enforce this article.

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

C. When a tree removal and mitigation plan has been approved by the City for a parcel, no person shall engage in any tree removal activities upon that parcel in excess of the activities identified in the approved plan.

D. No building permit, site plan, grading permit, plat of survey or subdivision plat shall be approved for any development upon a parcel subject to an approved tree removal and mitigation plan which has not been timely implemented until the requirements of that plan have been satisfied, or an amended tree removal and mitigation plan is submitted and approved to coordinate the mitigation plantings with the redevelopment of the parcel.

E. 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 municipal infraction punishable by a civil penalty as provided by section 1-15 of the City Code.

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

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 identified as a recommended street tree for use under the circumstances of that location in the list of recommended tree species approved by the City Council by resolution.
- (b) No trees may be planted in any of the public highways, streets or alleys in the city 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~~30 feet to another tree.

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