

Date September 28, 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 and replacing subsection (b) of Section 42-86, Section 42-87, subsections (a) and (c) of Section 82-207, subsection (14) of Section 82-212, subsection (9) of Section 82-213, subsection (a) of Section 82-215, paragraphs (10) and (11) of subsection (a) of Section 106-4, paragraph (3) of subsection (b) of Section 106-72, subparagraph (c) of paragraph (1) of subsection (b) of Section 106-102, the first unnumbered paragraph of Section 106-132, and subsections (5), (6) and (7) of Section 106-132, thereof, and by adding and enacting a new subsection (11) of Section 42-121, subsection (g) of Section 42-151, paragraph (5) of subsection (a) and paragraph (6) of subsection (b) of Section 82-206, subsection (10) of Section 82-213, paragraph (12) of subsection (a) of Section 106-4, and subsections (8) and (9) of Section 106-132, 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",

which was considered and voted upon for the first time under Roll Call No. 09-1589 of August 24, 2009, and considered and voted upon for the second time under Roll Call No. 09-1677 of September 28, 2009, again presented.

14

(Council Communication No. 09-680)

MOVED by _____ that this ordinance do now pass.

ORDINANCE NO. _____

G:\SHARED\LEGAL\BROWN\MISC\Tree Preservation\Alt C\Ord Ch 42 82 & 106\RC's Ord readings.doc

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 and replacing subsection (b) of Section 42-86, Section 42-87, subsections (a) and (c) of Section 82-207, subsection (14) of Section 82-212, subsection (9) of Section 82-213, subsection (a) of Section 82-215, paragraphs (10) and (11) of subsection (a) of Section 106-4, paragraph (3) of subsection (b) of Section 106-72, subparagraph (c) of paragraph (1) of subsection (b) of Section 106-102, the first unnumbered paragraph of Section 106-132, and subsections (5), (6) and (7) of Section 106-132, thereof, and by adding and enacting a new subsection (11) of Section 42-121, subsection (g) of Section 42-151, paragraph (5) of subsection (a) and paragraph (6) of subsection (b) of Section 82-206, subsection (10) of Section 82-213, paragraph (12) of subsection (a) of Section 106-4, and subsections (8) and (9) of Section 106-132, 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.

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, as amended by Ordinance No. 13,878 passed November 6, 2000, Ordinance No. 13,881 passed November 6, 2000, Ordinance No. 14,018 passed November 19, 2001, Ordinance No. 14,029 passed December 17, 2001, Ordinance No. 14,147 passed October 7, 2002, Ordinance No. 14,171 passed December 16, 2002, Ordinance No. 14,231 passed May 5, 2003, Ordinance No. 14,276 passed September 22, 2003, Ordinance No. 14,326 passed March 22, 2004, Ordinance No. 14,455 passed May 23, 2005, Ordinance No. 14,484 passed September 15, 2005, and Ordinance No. 14,708 passed September 24, 2007, be and is hereby amended by repealing and replacing subsection (b) of Section 42-86, Section 42-87, subsections (a) and (c) of Section 82-207, subsection (14) of Section 82-212, subsection (9) of Section 82-213, subsection (a) of Section 82-215, paragraphs (10) and (11) of subsection (a) of Section 106-4, paragraph (3) of subsection (b) of Section 106-72, subparagraph (c) of paragraph (1) of subsection (b) of Section 106-102, the first unnumbered paragraph of Section 106-132, and subsections (5), (6) and (7) of Section 106-132,

thereof, and by adding and enacting a new subsection (11) of Section 42-121, subsection (g) of Section 42-151, paragraph (5) of subsection (a) and paragraph (6) of subsection (b) of Section 82-206, subsection (10) of Section 82-213, paragraph (12) of subsection (a) of Section 106-4, and subsections (8) and (9) of Section 106-132, 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, as follows:

**CHAPTER 42. ENVIRONMENTAL
ARTICLE II. GRADING, SOIL EROSION AND
CONSTRUCTION SITE RUNOFF CONTROL**

Sec. 42-86. Permits required.

...

(b) A grading permit will not be necessary for any of the activities identified in subsection (a) where, prior to formal application, the applicant receives from the city engineer a written statement that the planned work or final structures or topographical changes, as presented by the applicant to the city engineer prior to formal application, will not result in or contribute to accelerated soil erosion or sedimentation, ~~and~~ will not significantly interfere with any existing drainage course, and will comply with the requirements of the tree removal and mitigation ordinance codified in Article X of Chapter 42 of this Code. A grading permit will also not be required for work performed by city crews or for city construction projects under direct control of the city engineer.

.....

Sec. 42-87. Application data required.

- A. Plans and specifications shall accompany each grading permit application and shall contain the following data unless otherwise included in the information required to be set forth in a preliminary plat or site plan;
- (1) A vicinity sketch at a scale of one inch to 400 feet or larger indicating the site location as well as the adjacent properties within 500 feet of the site boundaries.
 - (2) A boundary line survey of the property on which the work is to be performed, unless waived by the city engineer.
 - (3) A plan of the site at a scale of one inch to 100 feet or larger, on 24-inch by 36-inch reproducible sepia, vellum or Mylar showing the following:
 - a. The names, addresses, and telephone numbers of the landowner, developer, and petitioner.
 - b. A time schedule indicating the anticipated starting and completion dates of the

development's construction sequence and the time of exposure of each area prior to the completion of effective erosion and sediment control measures.

- c. A SWPPP for sites of one acre or more.
- d. Existing topography with contour intervals at least every two feet of elevation change with a minimum of two contour lines for each site.
- e. Proposed topography with contour intervals at least every two feet of elevation change with a minimum of two contour lines for each site.
- f. Location of any structure or natural feature, including existing tree canopies, trees six inches or larger in diameter or tree groups, rock outcrops, landslide area, springs and streams and other water bodies and any areas subject to flooding on the site or within 50 feet of the site boundary line. The plan must be accompanied by a tree removal and mitigation plan containing the information required by section 42-544 of the tree removal and mitigation ordinance.
- g. Location of any proposed structures or development on the site.
- h. Elevations, dimensions, location, extent, and the slope of all proposed grading.
- i. The estimated total cost of the required temporary and permanent soil erosion control measures if such application for the grading permit is made pursuant to chapter 106, pertaining to subdivisions, of this Code.
- j. Plans of all drainage provisions, retaining walls, cribbing, planting, erosion control measures, or other temporary or permanent soil erosion control measures to be constructed in connection with or as part of the proposed work.
- k. A map or other document sufficient to show the drainage area of land tributary to the site and estimated runoff of the area served by any drains.
- l. A soils report for the plat by a licensed professional engineer experienced in soils investigation. The content of such report shall be at the discretion of the licensed engineer, shall show general soil conditions, and shall include recommendations as to the adaptability of such soils for the proposed development. The city engineer may, in his or her discretion, waive this requirement.
- m. The location of all soil borrow or spoil sites and the proposed routes from the borrow or spoil sites to the job site.
- n. Certification by a licensed engineer, architect or landscape architect.
- o. A stormwater runoff control plan in compliance with section 106-136.

B. Small in-fill projects located on residential lots that exceed the area limits of section 42-86(a)(6), but are less than one acre, may be exempt from submitting a plan if, in the opinion of the city engineer, it has been demonstrated that adequate preventative measures will be taken to prevent any accelerated soil erosion or sedimentation or interference with any natural drainageway or storm sewer or constructed channel, and no more than 5 mature trees would be removed by such project.

Sec. 42-121. Grading operations.

The applicant or the owner of the property or any part thereof shall be responsible for the

following:

.....

(11) Carrying out the proposed work in compliance with any applicable tree removal and mitigation plan approved pursuant to the tree removal and mitigation ordinance codified in Article X of Chapter 42 of this Code.

Sec. 42-151. Minimum standards.

.....

(g) All grading plans and specifications, including extensions of previously approved plans, shall comply with the requirements of the tree removal and mitigation ordinance codified in Article X of Chapter 42 of this Code.

**Chapter 82. Planning
Article V. Site Plan Review**

Sec. 82-206. Purpose.

(a) It is the intent and purpose of this article to establish a procedure which will enable the city to plan for and review certain proposed improvements of property within specified zoning districts of the city in order to:

.....

(5) Give due consideration to the preservation of canopied areas and mature trees and to provide for the mitigation of canopied areas and mature trees which are removed for development.

(b) The site planning review requirements of this article are designed to ensure the orderly and harmonious development of such property in a manner that shall:

.....

(6) Encourage the preservation of canopied areas and mature trees and require mitigation for the removal of trees.

Sec. 82-207. Application.

(a) *Preapplication conference.* Whenever any person proposes to develop any tract or parcel of land ~~within any zoning district classification, except R-5 mobile home residential district, R-6 planned residential development district, PUD planned unit development district or C-4 shopping center commercial district,~~ he or she shall submit to the community development department a request for a preapplication conference for any use except the following:

- (1) One- or two-family attached and detached dwellings not within an NPC neighborhood pedestrian commercial district.
- (2) Nonresidential building or paving projects provided: i) the property is not within an NPC neighborhood pedestrian commercial district, D-R downtown riverfront district; or C-3B central business mixed use district; ii) the project does not involve the extension of parking under the authority of section 134-1377(f)(8) into a zoning district where such parking would be otherwise prohibited; and, iii) the project has a total site area of 10,000 square feet or less.

- (3) Fire stations owned and operated by the city.
- (4) Publicly owned parks, playgrounds, golf courses, recreation areas.
- (5) Agriculture uses, including nurseries and truck gardens, provided that no retail sale shall be permitted on the premises.
- (6) Uses of land or structures not within an NPC neighborhood pedestrian commercial district customarily incidental to and subordinate to those uses set forth in subsections (a)(1) through (5) of this section.
- (7) Development within the NPC neighborhood pedestrian commercial district, D-R downtown riverfront district or C3-B central business mixed use district with a total site area of 2,500 square feet or less and which is determined by the planning director to not increase the nonconformance of such development with the applicable design guidelines in this article.

The conference shall include the applicant or his or her representative, community development department staff and other city staff. The purpose of the conference shall be to acquaint the city staff with the proposed development and to acquaint the applicant or his or her representative with the procedures and with any special problems that might relate to the development. The applicant shall furnish a legal description of the property to be developed at the time of requesting a preapplication conference, and the conference shall be held within 15 days of such request.

.....

(c) *Site plan review.* A site plan shall be submitted and reviewed in accordance with the following:

- (1) After completion of the preapplication conference as required by subsection (a) of this section, and if the applicant wishes to proceed with the development of the property as discussed at such conference, he or she shall cause to be prepared a site plan of such development and submit four copies of the site plan to the community development department. The site plan shall contain all the information required by section 82-212 of this article unless otherwise waived by the planning director. The site plan shall be accompanied by a covering letter requesting review and approval of such plan and by payment of the fee in the amount set in the schedule of fees adopted by the city council by resolution. In addition to the fees, the owner shall pay the costs for any required notification to property owners as established by the community development department.
- (2) The community development department shall promptly convey one copy to the engineering department, and one copy to the fire department for their review and comments. The remaining copy shall be retained by the community development department for review. Such departments shall review the plan for conformance of the design to the regulations set forth in section 82-213 and any applicable design guidelines set forth in this article and shall forward their recommendations concerning the plan to the community development department within ten days after the date of submission of such plan to the community development department.

(3) A site plan submitted pursuant to this article may be combined with the plans required under the regulations applicable to development in the R-5 mobile home residential district, R-6 planned residential development district, PUD planned unit

development district, PBP planned business park district, and C-4 shopping center commercial district. In the event such plans are combined, the submitted plan shall satisfy the requirements under this article and the applicable zoning district regulations.

- (43) Persons developing property wholly owned by the federal government may submit a site plan for approval without paying the fees described in this section.

Sec. 82-212. Required information.

Site plans which are submitted for review shall be drawn to a scale of one inch to 50 feet or larger and shall include as a minimum the following items of information, unless otherwise waived by the planning director:

.....

- (14) Location of existing canopied areas, trees six inches or larger in diameter, any rock outcrops, any landslide areas, any springs and streams and other water bodies, and any areas subject to flooding. The site plan must be accompanied by a tree removal and mitigation plan containing the information required by section 42-554 of the tree removal and mitigation ordinance.

.....

Sec. 82-213. Design regulations.

The design regulations provided in this section are necessary to ensure the orderly and harmonious development of property in such manner as will safeguard the public's health, safety and general welfare and to ensure that the future development of property in the city will not be foreclosed by such development. The decision to approve, approve subject to conditions or disapprove a proposed site plan shall be based upon the conformance of the site plan with the following design regulations:

.....

- (9) The proposed development shall comply with the requirements of the tree removal and mitigation ordinance codified in Article X of Chapter 42 of this Code.
- (109) The stormwater runoff control facilities installed in compliance with the stormwater runoff control plan shall be maintained in compliance with section 106-136.

Sec. 82-215. Application and effectuation.

- (a) No building permit shall be issued for any development ~~within any zoning district classification except R-5 mobile home residential districts, R-6 planned residential development districts, PUD planned unit development districts or C-4 shopping center commercial districts~~ involving any use until a site plan has been submitted and approved for such development in accordance with this article, except for the following:
 - (1) One- or two-family attached and detached dwellings not within an NPC neighborhood pedestrian commercial district.
 - (2) Nonresidential building or paving projects provided: i) the property is not within an NPC neighborhood pedestrian commercial district, D-R downtown riverfront district or C-3B central business mixed use district; ii) the project does not involve the

extension of parking under the authority of section 134-1377(f)(8) into a zoning district where such parking would be otherwise prohibited; and iii) the project has a total site area of 10,000 square feet or less.

- (3) Fire stations owned and operated by the city.
- (4) Publicly owned parks, playgrounds, golf courses, recreation areas.
- (5) Agriculture uses, including nurseries and truck gardens, provided that no retail sale shall be permitted on the premises.
- (6) Uses of land or structures not within an NPC neighborhood pedestrian commercial district customarily incidental to and subordinate to those uses set forth in subsections (a)(1) through (5) of this section.
- (7) Development within the NPC neighborhood pedestrian commercial district, D-R downtown riverfront district or C-3B central business mixed use district with a total site area of 2,500 square feet or less and which is determined by the planning director to not increase the nonconformance of such development with the applicable design guidelines in this article.

Additionally, no certification of occupancy shall be issued for such development until all terms and conditions of the approved site plan have been satisfactorily completed or provided for.

.....

Chapter 106. Subdivisions

Sec. 106-4. Purposes.

(a) This chapter is adopted to:

.....

- (10) Provide for due consideration to be given to the preservation of canopied areas and mature trees and to provide for the mitigation of canopied areas and mature trees which are removed for development.
- (11) Provide for open spaces through the most efficient design and layout of the land.
- (12) Provide for the extent and manner in which streets shall be graded and improved and the extent to which water, sewer and other utility services shall be provided to protect the public health and general welfare.

....

Sec. 106-72. Preliminary plat submission requirements.

(b) The preliminary plat shall be drawn to a scale of not less than one inch to 100 feet, shall be certified by a registered professional engineer and a registered land surveyor and shall show the following:

.....

- (3) The location of property lines, existing and proposed public easements, and all such surface features as buildings, railroads, utilities, watercourses, canopied areas ~~trees over six inches in caliper~~ and similar items affecting the development; also, the general location and size of all existing and proposed

subsurface features such as storm and sanitary sewers, water mains, culverts, gas mains, underground electric lines or cables, and drainpipes. The preliminary plat must be accompanied by a tree removal and mitigation plan containing the information required by section 42-554 of the tree removal and mitigation ordinance.

Sec. 106-102. Plat approval by commission.

(b) Such plats shall be drawn to a scale of not less than one inch to 100 feet. The preliminary plat shall be certified by a registered professional engineer and a registered land surveyor, and the final plat shall be certified by a registered land surveyor and shall contain the following:

(1) The preliminary plat shall show the following:

c. The location of property lines, existing and proposed public easements, and all such surface features as buildings, railroads, utilities, watercourses, canopied areas, trees over six inches in diameter and similar items affecting the development; also, the location and size of all existing and proposed subsurface features such as storm and sanitary sewers, water mains, culverts, gas mains, underground electric lines or cables, and drainpipes. The preliminary plat must be accompanied by a tree removal and mitigation plan containing the information required by section 42-554 of the tree removal and mitigation ordinance.

Sec. 106-132. Platting of land.

~~In the~~ The design of any subdivision plat, due consideration shall be given to the preservation of scenic and historic sites, drainageways, stands of fine trees, marshes, lakes and ponds, and watersheds and shall be in accordance with the following:

(5) Tree preservation and mitigation. The proposed tree removal and mitigation plan shall comply with the requirements of the tree removal and mitigation ordinance codified in Article X of Chapter 42 of this Code.

(6) Scenic and historic sites and natural features. The design of any subdivision shall give due consideration to the preservation of scenic and historic sites, drainageways, marshes, lakes and ponds, and watersheds.

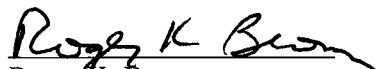
(7) Buffer strips. Buffer strips include treatment of railroad rights-of-way and limited access highways. Wherever the proposed subdivision contains or is adjacent to a railroad right-of-way or limited access highway or where lots back onto a public street, the subdivision shall provide the following treatment: In residential districts a buffer strip at least 25 feet in depth, in addition to the required lot depth, shall be provided adjacent to a railroad right-of-way. This strip shall be a part of the platted lots and shall contain planted materials approved by the planning director. The plat

shall contain the following restriction lettered on the face: Buffer strip to be planted by subdivider and maintained by property owners; erection of any aboveground structure is prohibited.

- | (86) Plats straddling municipal boundaries. Wherever access to the subdivision is required across land outside the corporate limits, the commission may request that access be legally established, subject to approval of the city engineer to ensure that the access road is adequately improved, or that a bond has been duly executed and is sufficient to ensure construction of the access road.
- | (97) Final plat approval. Approval of the final plat by the council is subject to installation of improvements designated in this division, together with a bond that such improvements shall be installed. The city engineer shall be responsible for approving all plans and specifications for the required improvements and shall ensure adequate inspection of construction for compliance with the approved plans and specifications and for issuing a certificate of satisfactory completion upon the acceptable completion of the work.

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