

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date	March 9, 2009
	Agenda Item No. 40 Roll Call No. <u>09-</u> Communication No. <u>09-159</u> Submitted by: Larry Hulse, Community Development Director	

AGENDA HEADING:

Public Hearing regarding proposed Tree Management Ordinance.

SYNOPSIS:

The attached ordinance would amend Chapter 42 of the City Code (“Environment”) to include tree preservation and mitigation. The ordinance would apply to any publicly or privately owned parcel of ground that is over 40,000 square feet in size. A tree removal permit and mitigation plantings would be required whenever 5 or more mature trees (at least 12-inches in diameter) are removed from a site or when at least 10,000 square feet of tree canopy is removed from a site. Mitigation planting requirements are greater for tree removals that occur without a required permit.

FISCAL IMPACT:

Amount: Indeterminate. The proposed ordinance would be implemented by staff resources in the Community Development and Parks Departments. Reducing the minimum property size threshold would likely require additional staff resources. A minimal fee for tree removal permits will not cover actual costs of implementation.

Funding Source: General Fund and/or Capital Improvement Program.

ADDITIONAL INFORMATION:

Comparison of Ordinance Drafts

Exhibit A contains the ordinance that is recommended for approval by the City Manager. This version compiles and balances the recommendations of the Plan and Zoning Commission, Park and Recreation Board and numerous city departments.

Exhibit B contains the original ordinance drafted by the Regulation and Ordinance subcommittee of the Plan and Zoning Commission with input from Trees Forever and a developer panel. “Strikeout” and “underline” text in Exhibit B reflects the recommendations of the Plan and Zoning Commission.

Key differences between *Exhibit A* and *Exhibit B* include:

- Exhibit A eliminates “removal of 10% of tree canopy” as a threshold for determining whether a permit is necessary. Staff notes that if there are 10 trees on a property, removal of one tree would

require a permit. Such a requirement would lead to confusion in enforcement for staff and compliance by citizens.

- Exhibit A retains the original ratios for mitigation plantings when a permit is required and the original penalty for removals that occur without a required permit (see strikeout text in Exhibit B).
- Exhibit A specifies that the Community Development Director will consult with the Parks and Recreation Director or their designee on all tree removals in excess of five mature trees or 10,000 square feet of canopy area.
- Exhibit A specifies that the Community Development Director, after consultation with the Parks and Recreation Director, may grant variances to the ordinance (rather than the Plan and Zoning Commission).
- Exhibit A specifies that the applicant may appeal the decision of the Community Development Director to the City Council.

Impact of Ordinance on Des Moines International Airport

On February 23, 2009 the Council's motion set the date of public hearing and directed staff to prepare information regarding the potential impact of the ordinance on the Des Moines International Airport and future development projects. Specifically, Airport Grant Assurances conflict with the goals of this ordinance and will require the Airport to mitigate a significant number of trees for the future construction of Runway 13R/31L and other projects reflected in the Airport Master Plan. The Des Moines International Airport is required under CFR 14 Part 139 to follow all Federal Aviation Advisory Circulars.

Part 139, Section 337, requires the Airport to have a Wildlife Hazard Management plan which reduces wildlife habitat and discourages birds within five miles of the Airport under guidelines found in FAA Advisory Circular 150/5200-33B. There is a full time USDA wildlife biologist at the Airport who assesses wildlife hazards and advises the Airport Staff on which trees or other habitat must be modified to prevent bird hazards like the one that caused the recent plane to crash into the Hudson Bay in New York. Among other controlling measures, the current Wildlife Hazard Management plan for the Des Moines International Airport says that "Habitats such as dense vegetation, shrubs and trees within the perimeter fence line will be reduced and/or eliminated over the next few years. If the Airport does not receive a designated variance from complying with this ordinance for the Runway 13R/31L project, this will require the Airport to plant and maintain around 2,500 trees over a 5-year period at a cost of well over \$1,000,000.

Airport Grant conditions also require the City, as sponsor of the Airport, to protect the runway approaches from any objects that affect navigable airspace as defined in 14 CFR Part 77, and requires the City to protect the airspace by preventing the construction of any object and removing the formation of any vegetation that grows up into the navigable airspace. The City has a number of easements from some property owners which allow the Airport to control the growth of trees or other obstructions near the Airport. The City also has an ordinance in place that requires the removal of trees that become obstructions to navigable airspace. These tree removals are normally individual obstructions and may not violate this new tree ordinance.

The Airport Board has raised good questions on the applicability of the ordinance to the airport operations and projects, especially the concern of meeting federal regulations and the safety of the flying public. The ordinance as drafted contains provisions for variances from the ordinance where the terms of the ordinance, if literally enforced, would result in unnecessary hardship. The Airport Board's

concerns describe special conditions where variances should be granted. If the ordinance is adopted, the staff would create criteria to measure hardships imposed by the ordinance, such as a cap on the cost of mitigation. In all variance requests the staff would look to having tree mitigation take place but in a reasonable way to fit the special circumstances. When granting variances the staff will expect some level of mitigation as would be appropriate given specific circumstances, including safety concerns or cost concerns as have been outlined by the Airport Board. The ordinance also allows for appeals to be considered by the City Council.

Tree Mitigation Bank

If the proposed ordinance is adopted, the City will develop a “tree mitigation bank” to assist with mitigation of tree removals associated with any City projects. The fund would be managed by the Parks and Recreation Director. Individual city projects would be responsible for tree removals and either providing mitigation planting as part of the individual project or contribute funds to the tree mitigation bank for planting and maintenance by the Public Works or Parks and Recreation Department. The Public Works Department will maintain trees planted within public right-of-way and the Parks and Recreation Department will maintain all other trees. An annual permit would be issued for various city activities to track projects and city crew activity. The tree mitigation fund may need to be supplemented with General Fund or Capital Improvement Program dollars on an annual basis. The amount that a City project contributes or the General Fund / CIP supplements on an annual basis will vary based upon the actual number of trees removed or that are proposed for removal.

Responses to Questions from the January 26, 2009 Council Worksession

Can the tree ordinance include properties smaller than 40,000 sq. feet?

The ordinance can include any size parcels that the Council directs. There are 4,640 parcels in the Des Moines City Limits that are greater than 40,000 square feet in size. There are 7,839 parcels greater than 20,000 square feet in size and 24,836 parcels greater than 10,000 square feet in size. The Plan and Zoning Commission and Community Development staff recommended that the ordinance apply to parcels greater than 40,000 square feet in size in order to implement the ordinance within existing resources. Reducing the minimum applicable lot size will likely result in the need for additional staff resources.

Can Council be provided with a copy of the potential ordinance and the original one? And how soon can this ordinance be submitted to Council?

Staff committed to submitting the proposed ordinance to the City Council within 30 days of the January 26, 2009 worksession. *Exhibit A* contains the proposed ordinance as recommended by the City Manager and is a compilation of recommendations by the Plan and Zoning Commission, Park and Recreation Board and city departments. *Exhibit B* contains the original ordinance drafted by the Regulation and Ordinance subcommittee of the Plan and Zoning Commission with input from Trees Forever and a developer panel. “Strikeout” and “underline” text in Exhibit B reflects the recommendations of the Plan and Zoning Commission.

Can this ordinance be implemented prior to the current development season?

Yes. The proposed ordinance references applicability to all removals that occur after April 1, 2009. This date could be amended if the Council chooses to approve final consideration of the ordinance on March 9 or March 23, 2009.

When did Plan and Zoning's R&O Committee give their recommendation on tree management?

On October 4, 2007 the P&Z voted 10-0 in support of a motion asking Council to initiate actions authorizing staff to prepare a Tree Preservation / Management Ordinance. On October 22, 2007 the City Council authorized the Plan and Zoning Commission and staff to prepare such an ordinance. On May 1, 2008 the Plan and Zoning Commission recommended approval of the ordinance recommended by the Regulation and Ordinance subcommittee with amendments. The ordinance was then reviewed by the Park and Recreation Board and pertinent City Departments.

Can research be conducted on New York City's reforestation process?

The City of New York City has inventoried street trees and trees in public parks based on region or borough. Mayor Bloomberg announced the *PlaNYC* and *MillionTreesNYC* initiatives in April 2007. The *PlaNYC* includes a plan to increase street tree stocking from 73% to 100%. The *MillionTreesNYC* initiative calls for the planting of 1 million trees by 2017. Both programs are oriented toward public right-of-way and public property, although residents may register plantings on private property with the MillionTreesNYC program. Tree permits are required to plant, prune, or remove trees in the public right-of-way or on public property. All work must be done by the Parks and Recreation Department. The City of New York City does not require a permit to prune or remove a tree on private property.

The New York City Planning Commission has been designating special zoning districts since 1969 to achieve specific planning and urban design objectives in defined areas with unique characteristics. Each special district designated by the Commission stipulates zoning requirements and/or zoning incentives tailored to distinctive qualities that may not lend themselves to generalized zoning and standard development.

While special districts remain a widely used affirmative zoning technique in New York City, they have changed over time as new zoning tools became available. Some special districts have been eliminated; others have been modified and absorbed within new special districts. Today, increasingly fine-tuned contextual zoning districts (see Planned Unit Development in Des Moines) can often preserve a neighborhood's special character without need for special district zoning.

Can we look into a policy that would look at trees as more of an asset in neighborhoods/private properties?

The "Purpose" section of the proposed ordinance states "*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 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.*" The Park and Recreation Board has recommended that they be charged with creating a tree management plan for the entire city. Due to the

time necessary to prepare such a plan, staff believes that the proposed ordinance is a necessary interim step.

What is the ratio of tree replacement?

If a required permit is obtained, the following mitigation ratio is proposed by the staff:

<u>DBH of Removed Tree in inches:</u>	<u>Ratio of Replacement Trees to Removed Tree:</u>
At least 12 and less than 18	1:1
At least 18 and less than 23	2:1
At least 23 and less than 29	3:1
For each increment of 6 inches, or any part thereof over 29 inches, another replacement tree shall be required.	

If a required permit is not obtained, the following mitigation ratio is proposed:

One replacement tree shall be planted for every 700 square foot increment of canopied area removed (approximately 2.5x to 3x the amount required if a required permit was obtained).

PREVIOUS COUNCIL ACTION(S):

Date: February 23, 2009

Roll Call Number: 09-287

Action: On Proposed Tree Preservation and Mitigation Ordinance, (3-9-09). (Council Communication No. 09-109) Moved by Hensley to adopt; refer to the City Manager to report on how this ordinance would impact the Airport. Motion carried 7-0.

Date: May 19, 2008

Roll Call Number: 08-868

Action: Regarding a proposed Tree Preservation/Management Ordinance. Moved by Coleman to receive, file and refer to the City Manager and the Park and Recreation Board for review and recommendation; seek input from a variety of those affected and determine the fiscal impact. Motion Carried 7-0.

Date: October 22, 2007

Roll Call Number: 07-2023

Action: Regarding a Tree Preservation/Management Ordinance. Moved by Vlassis to receive and file. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S):

Date: September 23, 2008

Action: The Park and Recreation Board referred the item to their Urban Conservation subcommittee. The Committee ultimately recommended that the Park and Recreation Board and the Urban Conservation subcommittee be charged with developing a citywide Tree Management Plan. They also recommended that the proposed tree preservation / management ordinance be deferred until a Tree Management Plan is completed (estimated 2+ years).

Date: May 1, 2008

Action: Plan and Zoning Commission voted 11-0 to recommend approval of an ordinance containing the text attached hereto as Exhibit "B".

Date: October 4, 2007

Action: Plan and Zoning Commission voted 10-0 in support of a motion to express their concerns with the removal of existing mature trees on private and public property within the City of Des Moines and to request that the City Council initiate actions authorizing the Planning Commission and City staff to prepare a Tree Preservation / Management Ordinance.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Public Hearing and first reading of the ordinance on March 9, 2009. Second and third readings of the ordinance would need to be approved no later than March 23, 2009 in order for the ordinance to be implemented by April 1, 2009.

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the second floor of City Hall, 400 Robert D. Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to cityclerk@dmgov.org.