

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date	September 14, 2009
	Agenda Item No. 49 Roll Call No. <u>09-</u> Communication No. <u>09-663</u> Submitted by: Larry Hulse, Community Development Director	

AGENDA HEADING:

Hearing on proposed ordinances to establish a comprehensive system for the consideration of tree removal and the planting of replacement trees required during the review and approval of applications for grading permits, site plans, subdivision plats and plats of survey.

SYNOPSIS:

Staff has prepared a revised tree removal and mitigation ordinance and other development related ordinances to formalize requirements for tree protection and mitigation as directed by the City Council on August 24, 2009. Staff has also prepared a policy for City owned land, City operations and CIP projects. The “Additional Information” section of this report contains information regarding the Council’s directives for the ordinances and policies, and staff responses to issues raised in the communications received by the City Council at the August 24, 2009 public hearing. In addition, separate communications are attached from the Legal Department regarding the application of the mitigation requirements to the airport and off-site mitigation. Staff recommends approval of the ordinances and policies as amended.

FISCAL IMPACT:

Amount: It is proposed to establish a City Tree Replacement Fund (CTRF) in the CIP in the amount of \$400 per tree to mitigate tree removals that are associated with City Operations and CIP projects. No additional staff resources are anticipated but existing staff workload will increase.

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

ADDITIONAL INFORMATION:

On July 13, 2009, the City Council directed staff to prepare a revised tree removal and mitigation ordinance and other development related ordinances to formalize requirements for tree protection and mitigation. On August 24, 2009 the City Council voted 6-1 to approve first reading of the ordinances, subject to amendments. The proposed implementation of the July 13, 2009 and August 24, 2009 Council directives are as follows (*new information is denoted by italicized and underlined text*):

Council Directed Revisions to City Ordinances

- *Regulations shall be implemented within existing financial and staff resources via existing development review and enforcement processes and shall not require a permit.*

Exhibit “A” is an ordinance that establishes Chapter 42, Article 10 of the City Code entitled “Tree Removal and Mitigation” and revises Chapter 122, Article 2 of the City Code entitled “Trees”. The ordinance does not require a permit to remove trees and applies only to existing development related processes (i.e. subdivisions, site plans and grading permits). Exhibit “B” (Subdivisions), Exhibit “C” (Site Plans) and Exhibit “D” (Grading) are ordinance revisions that require compliance with Chapter 42, Article 10. Exhibit “E” is the proposed policy for City public improvement projects and utilities.

- *The minimization of tree removal shall be emphasized during zoning, subdivision, site plan and public improvement approval processes.*

Section 42-551 of Exhibit "A" states that the purpose of the ordinance is to encourage the preservation of canopied areas and mature trees on private land, and to require the preservation and mitigation of trees during the development process. Section 42-553[C] of Exhibit “A” states that public improvement projects and activities on city property, or within public right-of-way (ROW), are exempt from Chapter 42, Article 10, but are 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. Exhibit “E” contains the proposed policy for public improvement projects and activities on city property, or within public ROW. Staff recommends that the Airport not be included in the City policy for the mitigation of trees. This recommendation is based on the information provided in the attached communications from the Airport Board and from the City Legal Department regarding tree mitigation at the Des Moines International Airport (Exhibits “H” and “I”).

- *The regulations shall specify the protective measures that are necessary during construction for existing mature trees that are designated for preservation.*

Section 42-555[A] of Exhibit “A” states that 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 Community Development Director. The Council’s agenda includes an item to receive and file the Community Development Director’s policy regarding tree protection during development activities, which references a publication from the University of Minnesota Extension Service entitled "Protecting Trees from Construction Damage: A Homeowner's Guide" by Gary R. Johnson, 1999 Revised Edition. The document was previously provided by the City Forester to the Community Development Department (Exhibit “F”).

- *On July 13, the City Council directed that the regulations define “mature trees” as those that are 6-inches in caliper or greater. On August 24, 2009 the Council directed that the regulations define “mature trees” as those that are 12-inches in caliper or greater.*

Section 42-552(5) of Exhibit “A” defines a mature tree as all tree species of 12-inches or more in diameter.

- *Mitigation for the removal of trees during development shall generally be required with exceptions allowed for removal of undesirable species, diseased or damaged trees or removals necessitated by other Federal, State or local code requirements.*

Section 42-554 (5) of Exhibit “A” specifies methods for identifying proposed tree removal.

Option A allows the applicant to submit a copy of their proposed development overlaid on aerial photography of the site. Mitigation is required for every 2,000 square feet of canopy area (or fraction thereof) proposed for removal, regardless of species, diameter or condition.

Option B allows the applicant to submit a tree survey identifying the location, size, species and condition of existing trees. Mitigation is required for removal of mature trees (12-inches or greater) that are on the Recommended Trees Species list (Exhibit "G") and that are not determined to be an imminent threat, hazard, etc. by a Certified Arborist. Both methods allow an exemption of mitigation for removals that are necessitated by any law or governmental regulation.

- *The required Mitigation Ratios for tree removals (during plan review and approval processes) shall be:*

<u>Removal (diameter)</u>	<u>Replacement (# of 2" trees)</u>
6-12"	<u>± 0</u>
12-18"	<u>± 1</u>
18-23"	<u>± 2</u>
23-29"	<u>4 3</u>
each 6" over 29"	1

Or

1 tree per 2,000 square feet of canopied area based upon the identification method that is utilized.

Section 42-555[B] of Exhibit "A" specifies a mitigation ratio of one replacement tree for every 2,000 square feet of canopied area under mitigation option "A". Section 42-555[C] of Exhibit "A" specifies a mitigation ratio of 1 replacement tree for each 12-inch diameter tree removed; 1 replacement tree for each 12"-18" diameter tree removed; and 1 additional replacement tree for each increment of 6" of diameter above 18" under mitigation option "B".

- *The Penalty Mitigation Ratio (minimum ratios required for tree removal in violation of approved plan) shall be 1 tree for every 700 square feet of canopy removed.*

Section 42-555[D] of Exhibit "A" specifies that the mitigation ratio for improper tree removal shall be one replacement tree for every 700 square foot increment of canopied area removed.

- *Street trees and other trees required by the City's Landscape Standards shall count toward mitigation planting requirements.*

Section 42-555[F] of Exhibit "A" specifies that 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.

- *Mitigation plantings may be planted "off-site" with the receiving property owner's consent.*

Section 42-555[G] of Exhibit “A” specifies that any replacement tree that 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 proximity to the property where the removal is proposed or has occurred: (1) on City property in 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. Please refer to Exhibit “J” for communication from the Legal Department regarding off-site mitigation.

- *The tree lists in the City’s Landscape Standards shall be revised and updated.*

The Council Agenda includes a resolution approving a list of tree species approved for planting in the ROW and as required replacement trees. Please refer to Exhibit “G”.

In addition, Exhibit “A” includes numerous provisions that address additional concerns that were raised during the public comment process. Those provisions include the following:

- Section 42-552[8] defines tree removal as removal of more than 25% or more of the crown or root system of the tree in a single growing season. This definition matches the City Forestry definition and excludes normal tree trimming or pruning undertaken for the purpose of maintaining and preserving a tree in accordance with nationally recognized tree pruning standards (ANSI 300 Part 1).
- All review of tree removal and mitigation plans is contained within existing development review process timelines. No additional time delays are anticipated, so long as the required information is submitted.
- The authority to approve of a tree removal and mitigation plan remains delegated to the entity that is responsible for approving the controlling development application (i.e. subdivision, site plan, grading permit). No new authorities are created.
- The applicable authority may, after consultation with the Parks and Recreation Director or such Director’s designee, grant variances to the tree removal and mitigation ordinance if it is not contrary to the public interest and the authority finds that special conditions exist where literal enforcement would result in an unnecessary hardship to the applicant.
- Up to 30% of required overstory replacement trees may be substituted with ornamental and coniferous trees. Two 6-foot evergreen trees or 3 ornamental trees are equivalent to 1 overstory tree.
- All replacement trees shall be maintained for a period of one year after planting. No maintenance bond is required.

City Operations and CIP Projects

Exhibit “E” contains the proposed Tree Preservation Principals for City CIP and utilities. In general, the policy includes the following:

- Acknowledgement that in order to operate and maintain City owned infrastructure and public utilities it is necessary to repair, replace and upgrade this infrastructure in a timely and cost efficient manner. Since the City of Des Moines allows trees to be planted within City ROW where most of this infrastructure is located, these public trees are vulnerable to the impacts of this work. The goal is to minimize the impact to the public trees with only moderate increases in cost to repair, replace and upgrade the infrastructure.

- Proposed establishment of a CTRF to provide for mitigation plantings associated with CIP and utility projects at a ratio that is equal to those required by Exhibit “A” for private property.
- Add a requirement to all ROW utility permits that any total tree removal must first be coordinated with the Public Works Forestry Division or for ROW managed by Parks Department with Parks Department Personnel. Forestry Division and Parks Department would keep a tally of all trees removed by utility companies. Once a year, during the budget process, a transfer of funds will be made from the franchise fee revenue to the CTRF in the amount of \$400 per required mitigation tree.
- All non-ROW City space managed by Parks Department such as parks, golf courses, cemeteries and other open spaces will contribute to the CTRF for any removed trees that cannot be mitigated within the parks system. The Parks Department will mitigate trees in the Park Lands and meet or exceed the ratios required by city ordinance. Parks will also mitigate for trees that are removed due to death or disease at these ratios. Parks will maintain an inventory of removals due to construction, disease and death and replanting. A report will be filed annually with the Park and Recreation board and the City Manager and City Council. This does not include the cutting of undesirable, invasive species.
- Research and development of a new construction specification supplement to protect nearby trees. The specification shall include financial penalties. The new supplemental shall be used on City funded construction projects bid after January 2010. *The specifications will also apply to City operations.*

An exemption is allowed for private property under Sections 42-555[B] and 42-554[C][2][iii] of Exhibit “A” which specify that tree removal shall be allowed without mitigation when the applicant has demonstrated that such tree removal is required to conform with any applicable law or governmental regulation, and there is no feasible alternative that would materially reduce the required amount of such tree removal. Tree removals on the airport property are required to comply with FAA regulations for clear zones and for wildlife management. While these airport tree removals would not require mitigation under the corresponding private tree ordinance, the airport will work with FAA, and to the extent possible, develop appropriate on airport tree mitigation.

Enhancement of Planning for the Urban Forest

The City Manager will enhance the City’s urban forest planning efforts through activities, such as:

- Providing educational programming for citizens, developers and other civic groups.
- Creating green partnerships with corporate citizens, public utilities and tree advocacy groups.
- Sponsoring and promoting special events surrounding tree preservation and building the urban forest.
- Providing proactive literature for tree services and potential developers.

Staff responses to Issues Raised at the 8/24/09 Public Hearing

The Developer’s Council (DEVCO) of the Home Builder’s Association of Greater Des Moines raised the following issues at the August 24, 2009 public hearing (staff responses in italics/underlined text):

- “The City Exemption. In Section 42-553(C), the Ordinance provides that it does not apply to public improvement projects or the activities on City property or within the public rights-of-way. There is no reason to exclude the City from the environmental benefits supposedly provided by this Ordinance. The City’s trees have no less value than those found on development ground and

the promise of future “policies” to be applied to City projects is inadequate. If the City is to lead by example, it should apply the Ordinance to its projects in the same manner that developers will be required to comply with the Ordinance. For these reasons, Section 42-553(C) should be stricken and Section 42-553(A) should add subparagraph (4) as follows: Public improvement projects or activities on City property or within the public rights-of-way.”

Per Council directive on 7/13/09 City property and City projects are to be subject to the policy (Exhibit E) and not the Ordinance (Exhibit A). The mitigation ratios are proposed to be the same between the ordinance and policy. Staff recommends that the Airport not be included in the City policy for the mitigation of trees. This recommendation is based on the information provided in the attached communications from the Airport Board and from the City Legal Department regarding tree mitigation at the Des Moines International Airport (Exhibits “H” and “I”).

- “Number of Trees. Section 42-555(C)(2) sets out the number of replacement trees required. The requirements now set forth in the Ordinance are changed from the previous draft and are now much more onerous and expensive to the home-buying public than previously. DEVCO requests that the Ordinance be modified to read as follows:

DBH of removed tree in inches	Ratio of replacement trees to remove tree
At least 12 and less than 18	1:1
At least 18 and less than 24	2:1
For each increment of 6” of DBH above 24”, one additional replacement tree shall be provided	

The August 24, 2009 Council directive for amendments to the ordinance addresses DEVCO’s concern. Please refer to the above bullet point titled “required mitigation ratios”.

- “Mitigation Not Required. Section 42-555(C)(2) also provides for when tree removal will be allowed without mitigation. DEVCO requests that paragraph (iii) be amended to read as follows: Trees that must be removed to conform with any applicable law or governmental regulation when there is no feasible alternative that would materially reduce the required amount of tree removal and/or trees that must be removed for infrastructure requirements (including streets, sidewalks, storm water detention, etc.)”

Staff has revised Section 42-555[B] and Section 42-555[C][2][iii] of the ordinance to exempt “trees that must be removed to conform with any applicable law, governmental regulation or infrastructure requirements including, but not limited to, streets, sidewalks, stormwater detention, and there is no feasible alternative that would materially reduce the required amount of tree removal.” Staff believes that the proposed language adequately addresses DEVCO’s request for clarity.

- “Discretion of Director. Section 42-555(E) provides that replacement trees shall be from a list approved by the city council and “approved by the director for use at the proposed location.” The discretion of the director to pick and choose from the list already approved by the city council is unnecessary and this phrase should be stricken from this section.”

Staff does not recommend elimination of the language. The director must ensure that plans are reviewed for compliance with recognized standards for tree planting and care. This includes, but is not limited, to making determinations that new over-story trees have adequate separation from

power lines; that plantings have adequate separation;, and that proper documentation has been submitted authorizing off-site mitigation plantings. For all non-administrative review processes, the director's recommendation will be confirmed or modified by the applicable decision-making body.

- “Off-Site Mitigation. Section 42-555(G) requires off-site mitigation if replacement trees cannot be reasonably planted within the boundaries of the development. DEVCO believes that this provision is beyond the authority of the City and should be stricken. If mitigation on-site is not feasible, it is because the site is already heavily canopied and would not need additional trees.”

No changes have been made to the proposed ordinance. Please refer to Exhibit “J” for communication from the Legal Department regarding off-site mitigation.

The Des Moines Trees Forever Ordinance Committee raised the following issues at the August 24, 2009 public hearing (staff responses in bold/italics/underlined text):

- “It exempts trees removed for purposes governed by city regulation which would include streets, utilities, storm detention areas and even building sites in subdivision and site plans making a mockery of mitigating tree removal on vegetated sites. The purpose of the ordinance is to require developers who acquire or seek to develop wooded sites to mitigate the tree removal, not to make them whole as if they had purchase non-wooded farmland. These exemptions have not been used in policies previously enforced by the P & Z.”

The proposed ordinance follows the 7/13/2009 and 8/24/2009 Council directives. Staff has revised the ordinance to exempt “trees that must be removed to conform with any applicable law, governmental regulation or infrastructure requirements including, but not limited to, streets, sidewalks, stormwater detention, and there is no feasible alternative that would materially reduce the required amount of tree removal.”

- “Section D: It seems to allow wholesale removal of trees if the landowner doesn't intend to develop the property, again allowing land speculators to clear trees without penalty.”

Section 42-555 (D) of Exhibit A allows the City to require a mitigation in the ratio of 1 replacement tree for every 700 square foot increment of canopied area removed under circumstances which reasonably demonstrates that such removal was performed in anticipation of redevelopment for the purposes of avoiding the mitigation requirements of the ordinance. If trees are removed outside of a subdivision, site plan or grading process after May 1, 2009, mitigation may be required at the future time of a subdivision, site plan or grading permit for the property.

- “2,000 sq. ft. of canopied area. We were successful in getting a "mature tree" defined as 6"-11," but the standard for removal of canopied area of 2,000 sq.ft. is representative of a much larger tree--a canopied area approximately 45 feet in circumference. This option saves the developer considerable time and money in avoiding a field survey of 6"+ trees, and the standard should be much closer to the 6" tree--1,000 sq. ft. or approximately a 30 foot circumference. By the way, if we lower the standard to 1,000 sq. ft. the standard for mitigating trees removed without City approval should be reduced from 700 sq. ft. to 500 sq. ft.”

On August 24, 2009 the Council directed staff to define a mature tree as one that is 12-inches in diameter or greater and to require mitigation for removal of trees that are 12-inches or greater in diameter. The ratios requested by Trees Forever are significantly greater than the Council's August 24, 2009 directive.

- “Allowing variances by staff is a slippery slope. An example is the removal of trees for the Wakonda subdivision. P & Z allowed staff to consider a letter provided by a Master Arborist to determine final mitigation--staff permitted the developer to remove virtually all of the trees in the subdivided area when the Arborist asserted that his report did not recommend that all the trees be removed. Staff variances should be scrutinized and sanctioned by either the P & Z or Council.”

The Plan and Zoning Commission approved the required tree mitigation for the Wakonda Subdivision. The P&Z considered the report of a certified arborist regarding the condition of trees in their deliberations. 76 trees were removed as part of the Wakonda Subdivision. 81 trees were required to be planted as mitigation. The mitigation required for the Wakonda Subdivision was consistent with other decisions made by the Plan and Zoning Commission over the last 8 years. The mitigation ratios proposed by staff on August 24, 2009 would have required a virtually identical number of replacement trees. The Council directive on August 24, 2009 will require slightly fewer replacement trees.

- “Although this ordinance does not require a permitting process, it is still a major step in codifying P & Z procedures if the proposed loopholes can be removed.”

The proposed ordinance complies with Council directives. Staff has made every attempt to eliminate potential loopholes. The ordinance can be amended in the future if necessary.

PREVIOUS COUNCIL ACTION(S):

Date: August 24, 2009

Roll Call Number: 09-1586, 09-1587 and 09-1589

Action: On proposed ordinances to establish a comprehensive system for the consideration of tree removal and planting of replacement trees in the review and approval of applications for grading permits, site plans, subdivision plats and plats of survey. (Council Communication No. 09-616) Moved by Coleman to adopt, subject to the appropriate ordinance being amended to use the mitigation ratios initially proposed on July 13, 2009; to direct the City Manager to respond to the issues raised in the communications received by the City Council at the hearing including, but not limited to, the application of the mitigation requirements to the airport; and, to direct the Legal Department to respond to the issues regarding off-site mitigation. Motion Carried 6-1. Nays: Cownie.

Date: July 13, 2009

Roll Call Number: 09-1268

Action: On Proposed Tree Preservation and Mitigation Ordinance (continued from 5-4-09). (Council Communication No. 09-462) Moved by Hensley to adopt the directives and continue the public hearing to August 24, 2009; and to include consideration of Tree Protection and Mitigation Standards. Motion Carried 7-0.

Date: May 4, 2009

Roll Call Number: 09-793

Action: On Proposed Tree Preservation and Mitigation Ordinance and to continue to July 13, 2009 at 5:00 PM. Moved by Kiernan to continue the hearing to July 13, 2009 at 5:00 PM. Motion Carried 7-0.

Date: March 9, 2009

Roll Call Number: 09-411

Action: On Proposed Tree Preservation and Mitigation Ordinance. (Council Communication No. 09-159) Moved by Meyer to continue the hearing to the May 4th Council meeting at 5:00 PM to allow time for additional input and give an opportunity for the M.A.C. (Metro Advisory Council) to review. The City Manager will report back on the following: 1) Details of the permit process. 2) Fiscal impact. 3) Description of penalties. Motion Carried 4-3. Nays: Cownie, Mahaffey and Vlassis.

Date: February 23, 2009

Roll Call Number: 09-287

Action: Set date of public hearing 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: Communication from Plan and Zoning 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: Communication from Plan and Zoning 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 city-wide 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:

Third reading of the ordinances would be held, as necessary.

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