

Date May 4, 2009

RESOLUTION TO CONTINUE PUBLIC HEARING ON PROPOSED
TREE PRESERVATION AND MITIGATION ORDINANCE

WHEREAS, on October 22, 2007, by Roll Call No. 07-2023, the City Council received a communication from the City Plan and Zoning Commission expressing the Commission's concerns with the removal of existing mature trees on private and public property within the City of Des Moines and requesting that the Council initiate actions authorizing the Commission and City staff to prepare a Tree Preservation/Management Ordinance; and,

WHEREAS, in response to favorable comments expressed by the City Council for the proposal, the Regulations and Ordinance Committee of the City Plan and Zoning Commission held meetings with representatives of Trees Forever and a developer panel for input to guide the drafting of the proposed ordinance; and,

WHEREAS, on May 19, 2008, by Roll Call No. 08-868, the City Council received a communication from the City Plan and Zoning Commission advising that at hearings held on March 6th, April 3rd and May 1st, 2008, the Commission considered and ultimately voted 11-0 in support of a motion to recommend approval of an ordinance containing the test attached hereto as Exhibit "B"; and,

WHEREAS, on May 19, 2008, by said Roll Call No. 08-868, the City Council referred the proposed ordinance to the City Manager and Park and Recreation Board for review and recommendation, to seek input from a variety of those affected, and to determine the fiscal impact; and,

WHEREAS, after further consideration of the proposal by the City Parks Department and City Staff, the City Manager recommends that the City Council consider for adoption a Tree Preservation and Mitigation Ordinance in the form set forth in Exhibit "A" attached hereto, for the reasons set forth in the accompanying council communication.

WHEREAS, on February 23, 2009, by Roll Call No. 09-287, it was duly resolved by the City Council that the proposal to amend Section 122-58, and to enact a new Article X to Chapter 42 of the City Code, regarding tree preservation and the mitigation of tree removal as more fully described in Exhibit "A" attached hereto, be set down for hearing on March 9, 2009, at 5:00 p.m., in the Council Chambers at City Hall; and

WHEREAS, due notice of the hearing was published in the Des Moines Register as provided by law on February 26, 2009; and

(continued)

Date May 4, 2009


WHEREAS, on March 9, 2009 by Roll Call No. 09-411, the City Council duly resolved to continue the public hearing until May 4, 2009 at 5:00 p.m. in the Council Chambers at City Hall to allow time for additional input and give an opportunity for the Metro Advisory Council ("M.A.C.") to review the proposed ordinance, with the City Manager to report to the Council regarding details of the permitting process, fiscal impact of the proposed ordinance, and a description of penalties authorized under the proposed ordinance.

WHEREAS, M.A.C. has not yet reviewed the proposed ordinance and other parties with an interest in the ordinance have requested further opportunity to evaluate the ordinance and present their views to the City Council.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that the public hearing on the proposed Tree Preservation and Mitigation Ordinance is hereby opened, and the hearing is CONTINUED.

MOVED by _____ to continue the hearing to July 13, 2009 at 5:30 PM

FORM APPROVED:


 Michael F. Kelley
 Assistant City Attorney

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

Exhibit "A"

Proposed language as recommended by the City Staff

Chapter 42. ENVIRONMENT.

ARTICLE X. TREE PRESERVATION AND MITIGATION (new)

Sec. 42-550. Title.

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

Sec. 42-551. Purpose.

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

Sec. 42-552. Definitions:

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

1. *Diameter at breast height* (DBH) means the diameter of the tree measured 4.5 feet from the ground.
2. *Baseline aerial photography* (BAP) shall refer to any aerial photographs and other credible data that identifies the location and boundaries of canopied areas as of a known date.
3. *Canopied area* means an area of tree cover, measured planimetrically in square feet, from baseline aerial photography.
4. *Director* means the community development director of the city or the director's designee.
5. *Mature tree* means all tree species of 12 inches or more in diameter at breast height.
6. *Parcel* means a tract of land under common ownership.
7. *Replacement tree* means a tree required to be planted in replacement of trees removed from a canopied area. Replacement trees shall be of a species on the list approved by the city council by resolution for use in the city and no less than one and 1½ inches in caliper measured six-inches from the ground.
8. *Tree removal* means the destruction or removal of a tree, and the removal of more than twenty per cent (20%) of the crown, trunk or root system of a tree or to damage a tree so as to cause the tree to decline or die within one growing season. Tree removal does not include normal tree trimming or pruning undertaken for the purpose of maintaining and preserving a tree.
9. *Tree removal permit* means a permit issued pursuant to this article for tree removal.

Sec. 42-553. Tree removal permit required.

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

1. No tree removal permit is required for tree removal activities on a parcel under 40,000 square feet in area.
2. No tree removal permit is required when both of the following conditions are satisfied:

- (a) Five or fewer mature trees are cumulatively removed from the parcel within any five year period after April 1, 2009; and,
- (b) Less than 10,000 square feet of tree canopy is cumulatively removed from the parcel within any five year period after April 1, 2009.

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

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

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

- (1) *Vicinity sketch.* The vicinity sketch shall be at a scale of one inch to 400 feet or larger and indicate the site location as well as the adjacent properties within 500 feet of the site boundaries.
- (2) *Tree removal plan.* The tree removal plan shall be at a scale of no more than one inch to 50 feet or larger, on one or more sheets no greater than 24 by 36 inches in size, showing the following for the affected parcel:
 - (a) A statement from the landowner or the landowner's representative explaining why the proposed amount of tree removal is required.
 - (b) The names, addresses and telephone numbers of the land owner(s) and the individual or business responsible for the tree removal.
 - (c) A time schedule indicating the anticipated starting and completion dates of the tree removal.
 - (d) Location of the existing canopied area and all existing mature trees identified by size in DBH and species. However, trees located within an area which is designated on the plan as an area that is not to be disturbed and from which there is to be no tree removal, need not be individually identified.
 - (e) Identification of the canopied areas and all mature trees to be removed.
 - (f) Identification of canopied areas and mature trees, if any, which have been removed on or after April 1, 2009, based on the available baseline aerial photography, and any additional information known to the applicant.
 - (g) Notations providing for protection of the existing trees which are identified to remain, demonstrating compliance with the standards for protection of existing trees set forth in Sec. 42-556.
 - (h) An affirmative statement signed by an owner of the property or by the person responsible for the tree removal, acknowledging that they are required to limit any tree removal to that identified in the approved tree removal plan.
- (3) *Mitigation plan.* If the proposed tree removal, together with any prior tree removal occurring after April 1, 2009, will result in the loss of: i) more than five mature trees; or, ii) more than 10,000 square feet of canopy area, then the following information shall also be provided:
 - (a) The location, species and schedule for the planting of any replacement trees in conformance with the requirements of section 42-556.
 - (b) If applicable, a statement from a certified arborist evaluating the quality of the canopied area or mature trees proposed to be removed and identifying those trees or portions of the canopied area to be considered for removal without penalty or mitigation due to species type, age, disease, damage and other factors.
 - (c) An affirmative statement signed by an owner of the property or by the person responsible for the tree removal, acknowledging that they are required to cause any replacement trees to be planted and maintained in conformance with such plan.

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

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

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

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

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

<u>DBH of Removed Tree in inches:</u>	<u>Ratio of Replacement Trees to Removed Tree:</u>
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.

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

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

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

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

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

F. *Timing.* All replacement trees shall be planted within one year of commencement of tree removal or by such later date as may be approved by the director for good cause shown. In the approval of any subdivision, site plan, or conceptual or development plan for the development of the affected parcel, the schedule for the planting of any replacement trees may be extended to coordinate with such development.

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

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

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

Sec. 42-557. Enforcement.

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

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

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

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

Sec. 42-558. Civil violations and penalties.

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

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

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

**Chapter 122 VEGETATION
ARTICLE II. TREES**

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

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

OTHER REQUIRED ACTIONS: Present an updated list of acceptable street trees for approval by resolution of the City Council.

Exhibit "B"
Proposed language with additions and deletions
recommended by the Plan and Zoning Commission

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

Sec. 42-550. Title.

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Sec. 42-551. Purpose.

The city council finds that the city contains many canopied areas containing trees of significant size, value and quantity that contribute in a positive way to the human and animal environment. Trees and associated vegetation that are properly maintained increase property values, maintain the natural ecology, temper the effects of extreme temperatures and winds, reduce runoff, prevent erosion, and help create and maintain the identity and visual character of the city. The purpose of this chapter is to preserve and prevent the removal of canopied areas and groves of mature trees on 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.

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

9. *Tree removal permit* means a permit issued pursuant to this article for tree removal.

Sec. 42-553. Tree removal permit required.

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

1. No tree removal permit is required for tree removal activities on a parcel under 40,000 square feet in area.
2. No tree removal permit is required for tree removal when five or fewer trees, each having a diameter at breast height of twelve inches or greater are removed from a parcel within any five year period.
3. ~~Tree removal within city right of way is regulated by the department of public works.~~
4. ~~Tree removal within city parks is regulated by the park and recreation board.~~

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

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

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

- (1) *Vicinity sketch.* The vicinity sketch shall be at a scale of one inch to 400 feet or larger and indicate the site location as well as the adjacent properties within 500 feet of the site boundaries.
- (2) *Tree removal plan.* The tree removal plan shall be at a scale of no more than one inch to 50 feet or larger, on one or more sheets no greater than 24 by 36 inches in size, showing the following for the affected parcel:
 - (a) The names, addresses and telephone numbers of the land owner(s) and the individual or business responsible for the tree removal.
 - (b) A time schedule indicating the anticipated starting and completion dates of the tree removal.
 - (c) Location of the existing canopied area and all existing trees twelve inches or greater in diameter breast height (DBH), identified by size in DBH and species. However, trees located within an area which is designated on the plan as an area that is not to be disturbed and from which there is to be no tree removal need not be individually identified.
 - (d) Identification of canopied areas, if any, which have been removed on or after July 1, 2008, based on the available baseline aerial photography, and any additional information known to the applicant.
 - (e) Identification of the canopied areas and all trees twelve inches or greater in DBH proposed to be removed.

- (f) Notations providing for protection of the existing trees which are identified to remain, demonstrating compliance with the standards for protection of existing trees set forth in Sec. 42-556.
 - (g) An affirmative statement signed by an owner of the property or by the person responsible for the tree removal, acknowledging that they are required to limit any tree removal to that identified in the approved tree removal plan.
- (3) *Mitigation plan.* If the proposed tree removal, together with any prior tree removal occurring after July 1, 2008, will result in the loss of: ~~the greater of:~~ i) 10,000 square feet of canopy area; or ii) ten percent of the canopy area existing on July 1, 2008, whichever is less, then the following information shall also be provided:
- (a) A statement from the landowner explaining why the proposed amount of tree removal is required.
 - (b) The location, species and schedule for the planting of any replacement trees in conformance with the requirements of section 42-556.
 - (c) If applicable, a statement from a certified arborist evaluating the quality of the canopied area proposed to be removed and identifying those trees or portions of the canopied area appropriate for removal without penalty or mitigation due to species type, age, disease, damage and other factors.
 - (d) An affirmative statement signed by an owner of the property or by the person responsible for the tree removal, acknowledging that they are required to cause any replacement trees to be planted and maintained in conformance with such plan.

B. *Review and approval.* Within twenty (20) working days of receipt of the application, the director shall approve, conditionally approve or deny the application. The director shall approve the application if the proposed tree removal, together with any prior tree removal occurring after July 1, 2008, will not result in the loss of ~~the greater of:~~ i) 10,000 square feet of canopy area; or ii) ten percent of the canopy area existing on July 1, 2008, whichever is less. The director may approve an application for proposed tree removal in excess of such limitation only if the director determines, after consultation with the City Arborist, that such tree removal is reasonably justified based on the statements provided pursuant to paragraph A.3, above, and tree mitigation is provided in conformance with section 42-556.

Sec. 42-555. Appeals.

A. *Appeal to commission.* The applicant may, upon notice to the plan and zoning commission, appeal in whole or in part any determination or action of the director made within the scope of this article. Appeal shall be made without cost by written notification of the appeal and the basis thereof, received by the community development department within 30 days after the date of the action from which appeal is sought. The plan and zoning commission shall decide all appeals within 30 days after written notification of the appeal has been received by the community development department, provided that the appellant may agree to a longer time period. Failure to decide the appeal within such period shall have the effect of overturning the director's decision and approving the tree removal plan as submitted. Except as provided in this article, the affirmative vote of at least eight commission members shall be necessary to overturn or modify the action from which appeal is sought. At the commission meeting, the appealing party shall be presented a reasonable opportunity to present his or her views.

B. *Appeal to city council.* The applicant may, upon written notice to the city council, appeal in whole or in part any determination made by the plan and zoning commission made 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 the commission ruling. The city council shall decide all appeals within 30 days after written notification of the appeal has been received by the city clerk. A majority vote of the city council shall be necessary to overturn the action of the plan and zoning commission.

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

A. *Tree mitigation.* Preference shall be given to preserving mature trees of a species recommended by the director. If the proposed tree removal, together with any prior tree removal occurring after July 1, 2008, will result in the loss of: ~~the greater of;~~ i) 10,000 square feet of canopy area; or ii) ten percent of the canopy area existing on July 1, 2008, whichever is less, then the tree mitigation plan shall provide for the mitigation of the mature trees subject to tree removal by the planting of replacement trees in accordance with the following mitigation standards based on the diameter breast height (DBH) of the removed trees. Such replacement trees may be used to satisfy any obligation for required street trees.

<u>DBH of Removed Tree in inches:</u>	<u>Ratio of Replacement Trees to Removed Tree:</u>
At least 12 and less than 18	1:1 <u>2:1</u>
At least 18 and less than 23	2:1 <u>3:1</u>
At least 23 and less than 29	3:1 <u>4:1</u>

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

B. *Alternate mitigation.* If the tree removal is performed without a tree removal permit, or that exceeds the tree removal allowed by an approved tree removal permit, that together with any prior tree removal occurring after July 1, 2008, results in the loss of: ~~the greater of;~~ i) 10,000 square feet of canopy area; or ii) ten percent of the canopy area existing on July 1, 2008, whichever is less, then one replacement tree shall be planted for every ~~200~~ 700-square foot increment of canopied area removed in excess of that threshold, as determined by examination of the baseline aerial photography. Such replacement trees shall be in addition to any required street trees, and the replacement trees may not be used to satisfy the obligation for any required street trees.

C. *Species of replacement trees.* Replacement trees shall be of a species approved for use as a street tree or a native species ~~and approved~~ by the director for use at the proposed location. Native species are preferred. Unless limited by site conditions, such as, but not limited, to overhead lines, all replacement trees shall be of an overstory species.

D. *Protection of existing trees.* Any mature tree or canopied area identified for preservation by an approved tree removal plan shall be protected during any grading, construction or removal activity in accordance with policies approved by the director.

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

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

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

F. *Timing.* All replacement trees shall be planted within one year of commencement of tree removal or by such later date as may be approved by the director for good cause shown. In the approval of any subdivision, site plan, or conceptual or development plan for the development of the affected parcel, the schedule for the planting of any replacement trees may be extended to coordinate with such development.

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

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

I. *Variances.* ~~The director~~ plan and zoning commission may grant such variances from the terms of this section as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this section will result in unnecessary hardship, and so that the spirit of this article shall be observed and substantial justice done. In granting any variance, ~~the director~~ commission may prescribe appropriate conditions and safeguards in conformity with this article. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article subject to enforcement under sections 42-558 and 42-559.

Sec, 42-557. (not used) Agricultural activities.

~~An applicant for a tree removal permit on property assessed as agricultural property, who seeks to undertake tree removal for agricultural purposes, may elect to delay submission of a~~

~~mitigation plan until the parcel is to be converted to a non-agricultural use by causing a notice be executed and recorded by all owners of the property in a form approved by the legal department, giving notice to future purchasers and owners of the mitigation requirements imposed pursuant to this section. Once such an election is made by the owners of a parcel, no grading permit, plat of survey, subdivision plat, site plan, or building permit shall be approved for any development upon that parcel until a mitigation plan is submitted and approved pursuant to this article.~~

Sec. 42-558. Enforcement.

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

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

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

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

Sec. 42-559. Civil violations and penalties.

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

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

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