

★ **Roll Call Number**

Agenda Item Number

20

Date May 19, 2008

**COMMUNICATION FROM THE CITY PLAN AND ZONING COMMISSION
REGARDING A PROPOSED TREE PRESERVATION/MANAGEMENT ORDINANCE**

WHEREAS, on October 4, 2007, the 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; and

WHEREAS, on October 22, 2007 by Roll Call No. 07-2023, the City Council authorized the Plan and Zoning Commission and City staff to prepare a Tree Preservation/Management Ordinance for consideration by the City Council; and,

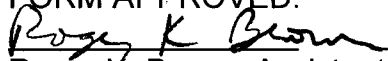
WHEREAS, the Regulation and Ordinance Committee of the City Plan and Zoning Commission held meetings with representatives of Trees Forever and a developer panel for input to guide the drafting of the proposed ordinance; and

WHEREAS, the Plan and Zoning Commission held a public hearing on February 21, 2008 to consider a draft of proposed ordinance language, and continued the hearing until March 6th, April 3rd, and May 1st; and

WHEREAS, the City Plan and Zoning Commission has advised in the attached letter that at a public hearing held May 1, 2008, the members ultimately voted 11-0 in support of a motion to recommend approval of an ordinance containing the text attached hereto as Exhibit "A".

MOVED by _____ to receive, file and refer to the City Manager and the Park and Recreation Board for review and recommendation.

FORM APPROVED:



Roger K. Brown, Assistant City Attorney

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

May 19, 2008

Date _____

Agenda Item _____, 20

Honorable Mayor and City Council
City of Des Moines, Iowa

Roll Call # _____

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held May 1, 2008, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus	X			
JoAnne Corigliano	X			
David Cupp	X			
Shirley Daniels				X
Dann Flaherty	X			
Bruce Heilman				X
Jeffrey Johannsen	X			
Greg Jones	X			
Frances Koontz	X			
Kaye Lozier				X
Brian Millard	X			
Mike Simonson				X
Kent Sovern	X			
Tim Urban	X			
Marc Wallace	X			

APPROVAL of text amendments to Section 42 of the Zoning Code establishing a Tree Preservation/Management Ordinance containing the text attached in Exhibit "A". (10-2008-5.02)

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Staff recommends approval of the proposed ordinance.

STAFF REPORT

I. GENERAL INFORMATION

On October 4, 2007 the Plan and Zoning Commission voted 10-0 in support of a motion to express their concern about the removal of existing mature trees on private and public property within the City of Des Moines and request that the City Council initiate actions authorizing the Plan and Zoning Commission and City staff to prepare a Tree Preservation/Management Ordinance.

On October 22, 2007 the City Council authorized the Plan and Zoning Commission and City staff to prepare a Tree Preservation/Management Ordinance pursuant to City Council Roll Call 07-2023.



CITY PLAN AND ZONING COMMISSION
ARMORY BUILDING
602 ROBERT D. RAY DRIVE
DES MOINES, IOWA 50309 -1881
(515) 283-4182

ALL-AMERICA CITY
1949, 1976, 1981
2003

The Plan and Zoning Commission held a public hearing on February 21, 2008 to consider a draft of a proposed ordinance and continued the hearing until March 6, 2008. The Commission subsequently continued the public hearing to April 3, 2008 and May 1, 2008.

The Regulation and Ordinance Subcommittee of the 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.

Attached is a revised ordinance that establishes a Tree Preservation and Mitigation subsection of Chapter 42 (Environment) of the City Code.

In summary:

- The ordinance revisions do not apply to public parks as the public parks are regulated and maintained by the Park Board. The ordinance revisions also do not apply to Public Right-of-Way as they are regulated and maintained by the Public Works Department which includes the Municipal Arborist.
- A tree removal permit is required when more than five mature trees are removed from a parcel that is at least 40,000 square feet in size.
- Mature trees are trees that are 12-inches diameter or greater.
- Mitigation is required when the removal results in a loss of the greater of; i) 10,000 square feet of canopy area ; or ii) 10% of the tree canopy on the property.
- If the proper permits are obtained prior to removal, the mitigation ratios are as follows:
 - each tree removed that is at least 12-inches diameter and less than 18-inches diameter requires 1 replacement tree to be planted.
 - each tree removed that is at least 18-inches diameter and less than 23-inches diameter requires 2 replacement trees to be planted.
 - each tree removed that is at least 23-inches diameter and less than 29-inches diameter requires 3 replacement trees to be planted.
 - For each increment of 6-inches, or any part thereof over 29-inches, another replacement tree shall be required.
 - plantings required by Landscape Standards count towards mitigation requirements
- If trees are removed without a required permit, the mitigation requirement is 1 replacement tree for every 700 square feet of tree canopy removed (approximately 2.5 to 3 times the mitigation than if the required permit had been obtained). Plantings required by Landscape Standards do not count toward mitigation requirements.
- Mitigation plantings can be required off-site with the receiving property owner's consent.

SUMMARY OF DISCUSSION

Mike Ludwig: Presented staff report and recommendation. Noted the proposed ordinance would only amend Chapter 42 of the City Code, which is the Environmental section and would have a subsection regarding tree preservation and mitigation.

Dann Flaherty: Asked if there would be a fee for a permit.

Mike Ludwig: Noted there would be a fee associated with a permit and explained the City Council sets the fee schedule. Noted there is a provision in the ordinance for City parks and right of way to be exempt because the City Council, Parks and Recreation Department, Parks and Recreation

Board and City Arborist provide sufficient oversight for City property. Indicated the Commission could make a recommendation to remove that provision if they felt the City should be held to the same standard as developers. There is also an agricultural exemption, which could affect a farmer if he wanted to take out a fence row. Upon further review, staff would not object to removal of that exemption. If the property owner or applicant disagrees with the application of the ordinance by the Director, the appeal process first goes to the Plan and Zoning Commission and then to the City Council.

Jeffrey Johannsen: Asked if the ordinance would apply to utility work in the public right-of-way.

Mike Ludwig: Noted the ordinance would not apply in that instance because the Public Works department would regulate the public right-of-way.

Larry Hulse: Noted it would not apply to the utilities who have a franchise right to use the right-of-way.

Fran Koontz: Expressed concern that the ordinance did not apply to City Parks and she referred to Grandview Park where there are trees that are down and need to be eliminated.

Dann Flaherty: Suggested a problem in the city parks is an issue for the Parks department.

Marc Wallace joined the meeting at 6:28 p.m.

Tim Urban: Commended staff for their patience. Noted they have found the proper place for tree preservation in the ordinance.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following individuals spoke:

Randy Cook, 502 E. 9th Street, Wallace State Office Building, Urban Forester, State of Iowa: Des Moines is one of his clients and the capitol city is important to the State and the citizens. Thanked the members of the R&O and the Plan and Zoning Commission for their work and for allowing Trees Forever the opportunity to have input. He felt the intent and the focus was displayed in the proposed draft and suggested concerns would be heard at the appropriate time. He reiterated the Trees Forever concerns as noted on a letter submitted by that organization noting two of the four main areas of their concern to be changing the name of the ordinance to "Tree Mitigation", and revising the species for replacement list. He suggested utilizing the acceptable tree list provided by input from the National Resource of Ecology and Management of the Iowa State Department of Horticulture and the Iowa Arborist Association.

Dann Flaherty: Asked if native species would be preferable.

Randy Cook: Explained he would encourage the use of native species, however would not rule out proven adapted species that have a track record of good survivability in Iowa. There are issues with native vs non-native. It is a species that is adaptable to the micro-site, which is the most important part of mitigation. Need to look at forest soils, but recommended using native stock as much as possible. Noted the acceptable tree list should include adapted species that are not native. He did not have it available at the meeting but agreed to email the list for the file.

Tim Urban: Expressed concern that being too restrictive could prohibit the use of new hybrids and adaptive species that have overcome the infestations that have wiped out native ash, elm and oak species native to Iowa.

Dann Flaherty: Suggested changing the language to native or adaptive species "preferred" but not "required".

CJ Stevens, Trees Forever Review Committee: Thanked the Commission and staff for the patience and work and noted they would continue to work with staff. Expressed concern with the mitigation schedule and suggested it be increased 2 to 3 times. Also expressed concern for the definition of "Director", noting they felt it appeared to be a conflict of interest. Explained the environment is at risk; over 90 trees are targeted for removal along the trails system and trees are being removed for sewer work. Technology is available to tunnel under trees to accomplish what is needed to repair or replace infrastructure. Noted they will continue to work with the City Manager and other departments regarding the budget.

Fran Koontz: Commended the volunteers for their hard work.

Jeffrey Johannsen: Commended the volunteers for their work on saving trees as well, and asked if the speaker felt there were no tree rules for utility companies.

CJ Stevens: Indicated someone gave the permission to the utility companies and she questioned who they are and what their skill level is for pruning; many have been made unsafe. Noted someone should be observing it or implementing proper pruning procedures. They have made trees dangerous instead of improving the quality of life.

Leisha Barcus: Asked about the Trees Forever indication that the mitigation should be increased two to three times.

CJ Stevens: Explained it referred to the number of trees for replacement.

Tim Urban: Explained 6" trees are currently the threshold of replacement and the proposed ordinance is for 12" trees as a concession to a developer group who found it to be difficult to mitigate. Noted the one-to-one replacement went with it. Indicated having a relationship between having a 2" replacement tree and a 6" tree is an appropriate trade-off in bio-mass. It would mean increasing each ratio by one tree and suggested an amendment could be offered to that effect.

Dann Flaherty: Asked if adding three additional trees would create spacing problems with respect to how the trees are placed.

Tim Urban: Explained the trees have to be planted according to a plan and there is the opportunity for off-site mitigation as well.

Mike Ludwig: Noted a recommendation on changing the mitigation schedule would be the Commission's prerogative. The ratios proposed in the ordinance are equivalent to what was typically required for mitigation on developments where 6" caliper trees were being dealt with.

Tim Urban: Explained off-site mitigation was not previously allowed. Suggested there is a need to get back to biomass replacement given the functionality of green infrastructure.

CJ Stevens: Noted the City just acquired an additional 50 acres for mitigation and there will always be space for trees.

Greg Jones: Noted the R&O Committee's thought toward mitigation was that any tree planted not on a site, to be fair, the tree should be planted as close as possible to the lot such as in the right-of-way, but there is a maximum number that can fit on a lot. He agreed with Commissioner Urban that it began with 6" and has suddenly gone to 12" and it is definitely in the request to change that number. There needs to be something in place to avoid mass destruction of trees.

David Cupp: Asked if there is a rule of thumb regarding the size or species of trees, relative to transplanting. Asked if transplanting trees to a different part of the lot would be an alternative to cutting them down.

Randy Cook: Noted with proper preparation of large trees (6 months in advance) they could be moved and some trees are hand-dug that are fully mature trees. Concerned about transplanting large mature trees and noted a smaller caliper tree will establish and grow more rapidly.

Greg Jones: Explained large trees can be moved but it is costly. In the right place it should be done, but generally the smaller the tree the better off it will be so it can establish itself.

Jeffrey Johannsen: Asked about the reality of developers taking care of trees five years down the road.

Tim Urban: Noted every time a landscape plan is approved it is assumed it will be enforced. The City has the same burden of responsibility to ensure the ordinances are conformed to.

There was no one else in the audience to speak on this item.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Kent Sovern: Moved approval of the ordinance with the deletion of "Agricultural activities" from Section 42-557.

Tim Urban: Offered the following amendments:

- Eliminate "preservation" from the title and make it a tree "mitigation" ordinance to signal others to return with more preservation proposals to deal with more proactive public policies;
- Amend Sections 42-554[A][3]; 42-554[B]; 42-556[A]; and 42-556[B] to state that mitigation is required for removal of 10,000 square feet or 10% of tree canopy whichever is less;
- Amend Section 42-556[C] to state that species of mitigation plantings may include the City's street tree list and that native species are preferred (species are ultimately subject to approval by the City).

Kent Sovern: Accepted the amendments.

Amendments passed 11-0.

Dann Flaherty: Offered the following amendment:

- Amend Section 42-559[C] to state that the City may obtain a temporary restraint or injunctive relief to enforce the provisions of the ordinance.

Amendment passed 11-0.

Tim Urban: Offered the following amendment:

- Amend Section 42-554[B] to state that the Director shall consult the City Arborist prior to deciding on a tree removal permit.

Amendment passed 8-3 (David Cupp, JoAnne Corigliano & Leisha Barcus were in opposition).

Tim Urban: Offered the following amendment:

- Amend Section 42-556[A] to require the following mitigation:

<u>Diameter of tree removed</u>	<u>Ratio of replacement trees to removed tree</u>
At least 12" and less than 18"	2:1
At least 18" and less than 23"	3:1
At least 23" and less than 29"	4:1

For each increment of 6", or portion thereof over 29", another replacement tree shall be required.

Motion approved 10-1 (Kent Sovern opposed).

Tim Urban: Offered the following amendment:

- Amend Section 42-556[B] to require mitigation of 1 replacement tree for every 200 square feet increment of canopied area (removal without a permit).

Kent Sovern: Explained the presumption is going to be that whatever was removed was high value and was mature and should have been preserved. Increase the penalty so it is not only normal mitigation standard but increase to a replacement for every 200 square feet.

Tim Urban: Explained the latitude given to the Director to look at exceptions would apply.

Kent Sovern: Accepted the amendment.

Amendment passed 11-0.

Tim Urban: Offered the following amendment:

- Amend Section 42-556[E] to add an item [4] stating that preference shall be given to off-site mitigation planting locations in close proximity to the property where removals are proposed.

Kent Sovern: Accepted the amendment.

Amendment passed 11-0.

Tim Urban: Offered the following amendment:

- Amend Section 42-556[I] to require that Variances to the ordinance are subject to review by the Plan and Zoning Commission (instead of the Director).

Kent Sovern: Accepted the amendment.

Motion passed 11-0.

Tim Urban: Offered the following amendment:

- Delete Sections 42-553[3] and [4] to eliminate exemption for city right-of-way and city property. If the section is not deleted, require mitigation plantings consistent with ordinance for tree removals on City right-of-way or City property (no permit required).

Dave Cupp: Cannot legislate for someone to do their job; up to City Manager and Mayor to make sure they are doing their job – disagreed with the amendment.

JoAnne Corigliano: Felt public entities should be required to be held responsible.

Tim Urban: Suggested not exempting 3 and 4 but have a statement that tree removal permits should not be required of public entities, but all provisions of the ordinance should apply for removal of trees on public property.

Dann Flaherty: Suggested instead that a tree removal permit should be required but with no fee.

Tim Urban: Agreed and suggested that for the language.

Leisha Barcus: Not opposed to having regulation for governmental bodies, but suggested this was not the time or place to do that. Suggested the ordinance did not provide a clear vision and was not the same vision as Trees Forever and the neighborhoods had, but the purpose for the legislation was to codify the decisions made with private developers. She was pleased with the name change; the missing part is a vision for what is wanted for the City in terms of development.

Greg Jones: Did not think the current system is as onerous as is obvious. He was not certain it was necessary to have regulation for governmental bodies, but he is not opposed to it. Suggested Parks and Recreation should be made to take care of their own trees, but did not know if this was the right forum to do that.

Jeffrey Johannsen: Supports the amendment. Feels utilities have done unnecessary removal of trees for the wrong reason and there has been no watchdog of the process.

JoAnne Corigliano: Also supports the amendment. Did not know where else to put it.

Kent Sovern: Did not support the removal of the requirement for the government because he didn't think the Commission was the appropriate entity to deal with tree preservation/mitigation. Suggested there is a Parks Board and he did not want to impede the scope of their responsibilities. Public Works deals with the health and safety and they should be making the decisions, particularly because the City Arborist is in Public Works.

David Cupp: Opposed the amendment because the Plan & Zoning Commission doesn't have the necessary expertise to legislate it.

Marc Wallace: Can't legislate that someone does their job but can define the parameters for how they do the job and that's why there are ordinances. Expressed concern for development issues. The City needs to regulate what goes on and needs to have an expectation; the City departments have the expertise and would be doing it. He supported the amendment.

Brian Millard: Supported the motion and had no problem with Parks pulled out since they have their tree professionals. However he wanted the City to be held accountable for the city's trees. Expressed concern that Mid-American Energy has a contractor who trims trees but misidentified the species and type of trees in his yard, but the power companies have federal legislation that protects them. There needs to be some control over the public trees.

Fran Koontz: Supported the motion.

Dann Flaherty: Asked legal counsel whether or not the Commission has the ability from a jurisdictional standpoint to tell Parks & Recreation or Public Works what they can or cannot do.

Mike Kelley: Noted the question rests at the City Council and they would offer the best answer.

Larry Hulse: Explained the Commission normally does the zoning and Parks does their part. Public Works is dealing with storm damage, difficult situations, sewer problems, emergency situations and they need to be able to do what they need to do. He was uncertain if that fits within the ordinance.

Jeffrey Johannsen: Wants to see the City set a good example and be good stewards regarding the utilities.

Dann Flaherty: Noted he does not want to dictate to another Board how to do their job. With respect to the City, elected officials represent the citizens. There is an opportunity to go directly to the Boards with concerns.

David Cupp: Asked what would happen if there was a bad storm and a tree took out someone's electricity, under the ordinance if he would have to wait 20 days for an arborist to come out and ok the public utilities to take care of the tree so the power could be restored.

Larry Hulse: Responded that in emergency situations what would need to be done would be done, however he noted the ordinance would make that an awkward situation.

Tim Urban: Noted the purpose of his motion was only to signal to the City Council whether the Commission feels public property should be subject to the broad purposes of the ordinance as is expected by private property. It will be carefully thrashed out because it will affect other departments and they will weigh in with the City Council. City Council will have to deal with the issues.

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Amendment passed 8-3 (Leisha Barcus, David Cupp and Kent Sovern were in opposition).

Motion to approve the ordinance as amended passed 11-0.

Fran Koontz left the meeting at 7:50 p.m.

Kent Sovern: Offered a sense of the Commission motion to encourage the City Council to apply the mitigation standards and requirements of the ordinance on public improvement projects in the City of Des Moines.

Tim Urban: Offered a point of clarification that if the City Council does not wish the ordinance to apply to public property, the Commission would still urge them to apply the standards of mitigation.

Kent Sovern: Noted a permit would be required by public entities for tree removal and he was trying to broaden it to any public improvement would require mitigation.

Tim Urban: Explained the intent of his motion was that the City would have to follow the same procedures the developers or larger private property owners would have to. That was approved by the Commission as a recommendation. Suggested his motion is a narrower restriction.

Kent Sovern: Asked what the minimum sized parcel is for the ordinance to engage.

Mike Ludwig: Indicated 40,000 square feet; just under an acre.

Kent Sovern: Asked how many public improvement projects cover more than an acre at a time.

Tim Urban: Asked if it would apply regardless of the size and would require mitigation only and the City agencies would not be required to go through the application, review and approval process.

Leisha Barcus: Asked if the mitigation standards would be reasonable for smaller projects.

Kent Sovern: Noted they would if they are removing canopy along a corridor.

Tim Urban: Noted if the street trees taken out are less than 12" it is a canopy analysis and not a tree-by-tree analysis.

Motion to move on to City Council was approved 10-0.

Respectfully submitted,



Michael G. Ludwig, AICP
Planning Administrator

MGL:dfa

cc: File

Exhibit "A"
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.

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 article, 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 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	4:1 <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.