

**CITY OF APALACHICOLA, FLORIDA
ORDINANCE 2018-07 “TREE ORDINANCE”**

AN ORDINANCE BY THE CITY COMMISSION OF THE CITY OF APALACHICOLA, FLORIDA ADOPTING ORDINANCE 2018-07 TO REPLACE ORDINANCE 2011-01 IN ITS ENTIRETY; PROVIDING FOR INCLUSION OF ITS REGULATIONS IN THE LAND DEVELOPMENT CODE OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, trees are recognized to be a valued asset, providing a healthier and more beautiful environment in which to live; and

WHEREAS, trees are valuable natural resources that produce oxygen and clean the air, through their shade reduce summer temperatures and conserve electricity used for air conditioning, and reduce water runoff that would otherwise enter the City of Apalachicola’s storm water system and discharge to Apalachicola Bay, an area of critical State concern; and

WHEREAS, tree preservation enhances the value and marketability of property and thereby promotes the stability of residential neighborhoods, making them more livable and desirable; and

WHEREAS, Chapter 163, Florida Statutes, empowers and requires the City to establish land-use codes and provide for its administration, enforcement and amendments; and

WHEREAS, the Tree Committee has recommended to the City Commission a proposed amendment to the Land Development Code of the City of Apalachicola, Florida by revising sections of the existing Code and adding a section to the zoning regulations for tree protection and preservation within the City; and

WHEREAS, the Tree Committee of the City of Apalachicola has in accordance with the City’s Policy No. 002, Comprehensive Plan and Land Development Code Amendment Procedure, held two public workshops prior to Planning and Zoning Board meetings on July 9 and August 13, 2018, to receive comments and on November 6, 2018, held a joint workshop with the City Commission; and

WHEREAS, the City Commission of the City of Apalachicola, Florida finds it necessary for the purpose of promoting, protecting and preserving the general historic and pristine nature of the City of Apalachicola to amend and omit certain sections of Ordinance 2011-01 (“Tree Ordinance”) and adopt Ordinance 2018-07 (“Tree Ordinance”) to replace Ordinance 2011-01 in its entirety; and

WHEREAS, the City Commission, after due public notice and advertising of the proposed amendment of the Land Development Code of the City of Apalachicola, Florida by amending the regulations for tree protection and preservation within the City, as recommended by the Tree Committee, accept and enact such proposed amendment as set forth herein.

NOW THEREFORE BE IT ENACTED BY THE PEOPLE OF THE CITY OF APALACHICOLA, FLORIDA, THE FOLLOWING ORDINANCE PROVISIONS REGARDING THE REGULATIONS OF THE LAND DEVELOPMENT CODE FOR THE CITY OF APALACHICOLA:

SECTION I. LAND DEVELOPMENT CODE REGULATIONS

Attached are the regulations that are being incorporated into the Land Development Code.

SECTION II. SEVERABILITY

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are severable.

SECTION III. REPEAL AND REPLACEMENT OF EXISTING ORDINANCE

Ordinance 2011-01 is hereby repealed and replaced by Ordinance 2018-07.

SECTION IV. EFFECTIVE DATE

This ordinance shall become effective upon affirmative vote of the majority of the City Commission and when signed by the Mayor and attested by the City Clerk.

This Ordinance was first read in open session on the 4th day of December, 2018. This Ordinance was read for the second time and fully adopted in open session on the 8th day of January, 2019.

The final adoption and motion was made by Commissioner _____, and seconded by Commissioner _____.

Voting Aye: _____

Voting Nay: _____

FOR THE CITY COMMISSION OF THE CITY OF APALACHICOLA, FLORIDA:

Van W. Johnson, Sr., Mayor

ATTEST:

Deborah Guillotte, City Clerk

PROPOSED LAND DEVELOPMENT CODE REVISIONS CONCERNING TREE PROTECTION

The following would replace in its entirety Land Development Code revisions adopted in Ordinance 2011-01. The following are proposed changes to the Code as it existed prior to the adoption of Ordinance 2011-01.

II. LANGUAGE AND DEFINITIONS

Remove the definition of "caliper."

~~**Caliper** - caliper shall be the diameter at breast height (DBH) of the trunk of all trees four (4) feet above ground.~~

Revise the definition of "tree."

Tree- A woody plant having one or more well-defined trunks capable of being maintained with a clear trunk and normally growing to an overall height at maturity of a minimum of fifteen (15) feet.

Add the definitions of "diameter at breast height," "patriarch tree," "relocate," and "substantial alteration."

Diameter at Breast Height - The diameter of a tree trunk as measured four and a half (4 ½) feet above ground level.

Drip Line - The limiting line established by a series of perpendicular drop points marking the maximum radius of the crown of an existing tree, but not less than ten (10) feet from the trunk, whichever is greater.

Patriarch Tree – A protected native tree (section XII.A) whose trunk is thirty five (35) or more inches in diameter at breast height.

Relocate - As used in the Chapter XII tree protection regulations and elsewhere in this Code, the digging up of a protected tree by a property owner from a place on the owner's property and the planting of the same tree in another place on the same property or in a public place.

Substantial Alteration - The heavy cutting of top branches (topping), cutting of major lower limbs (elevating), or significant trimming of a tree that alters the natural symmetry of the tree. The term does not include customarily accepted practices used by certified arborists for pruning shade trees.

In the Chapter VII Site Plan Review Regulations, revise section B, Applicability, to read as follows; remove section E, Time Limit on Approval; and recodify section F as E, Site Plan Requirements, and add paragraph 2.a.13.

B. APPLICABILITY

This Chapter establishes procedures and standards for the preparation, review and approval of site plans to carry out development.

* * *

~~E. TIME LIMIT ON APPROVAL~~

~~Following approval of the site plan, the applicant shall have one (1) year, unless otherwise specified in the appropriate zoning district regulations, to commence construction on the site. Any site where substantial construction has not begun within one (1) year shall cause the site plan to be reevaluated by the appropriate bodies and any newly adopted standards will be considered.~~

E. SITE PLAN REQUIREMENTS

* * *

2. Site plans shall contain maps and documents indicating:

a. General Information.

* * *

13. Tree protection.

A map of sufficient scale to clearly show the locations of lot boundaries; footprints of existing and proposed structures and improvements; species and size (inches diameter breast height) of existing protected trees; protected trees that are proposed to be removed, relocated, or substantially altered; and fences or other protective barriers that will be erected around protected trees at the tree drip lines.

A plan for protecting trees from equipment, material, debris, fill, gasoline, oil, paint, chemicals or other harmful materials.

A discussion of proposed grade changes and how the changes would affect protected trees.

Add new Chapter XII.

XII. TREE PROTECTION

A. PROTECTED NATIVE TREES

The native trees predominately foresting the City of Apalachicola are:

bald and pond cypress (Taxodium distichum and Taxodium ascendens)
eastern and southern redcedar (Juniperus virginiana and Juniperus solidicola),
live oak (Quercus virginiana),
longleaf pine (Pinus palustris),
pecan (Carya illinoensis),
sabal (cabbage) palm (Sabal palmetto),
slash pine (Pinus elliottii),
southern magnolia (Magnolia grandiflora), and
sycamore (Platanus occidentalis).

Individual trees of these species having diameters of four (4) or more inches at breast height are protected (hereinafter referred to as "protected trees"). Other native trees and all nonnative trees are not protected.

B. PRESERVATION OF PATRIARCH TREES

No patriarch tree on privately- or City-owned property shall be removed or substantially altered by a private landowner or a department of the City unless:

1. Under a declared emergency (section C.3) or in the case of an imminent hazard (section C.4), the Code Enforcement Officer, City Manager, or a designee in their absence finds for a specific tree that immediate action is required to eliminate a condition endangering public safety or property.
2. In a non-emergency or non-imminent hazard situation:
 - a. On private property, the Planning and Zoning Board approves the issuance of a tree permit to a private landowner to remove or substantially alter a tree on a lot because not doing so would make the lot undevelopable for any principal structure (section D.1.c).
 - b. On private or City property, the City Manager documents in writing his or her reasons for allowing removal or substantial alteration (sections D.1.c and D.2.c).

C. EXEMPTIONS FROM REQUIREMENTS TO OBTAIN TREE PERMIT

The following circumstances do not require a tree permit.

1. Unprotected trees.--The removal, relocation, or substantial alteration of:
 - a. Native trees not listed in section A;
 - b. Native trees listed in section A that are less than 4 inches in diameter at breast height;

c. Cultivated varieties of once native trees developed by selective breeding and sold by plant nurseries; and

d. Nonnative trees, including invasive species.

2. Pruning.--Pruning of unprotected trees, and light pruning of protected trees that does not substantially alter the protected trees.

3. Emergency.--The removal or substantial alteration of any significantly-damaged, protected, non-patriarch tree during or following a natural or man-made disaster (e.g., hurricane, tornado, high wind, flood, or forest fire) when the City Commission or Manager declares a state of emergency and determines that permitting requirements will hamper private or public work to restore safety and order to the City. Permission is required to remove or substantially alter a patriarch tree (section B.1).

4. Imminent hazard.--The removal or substantial alteration of any protected, non-patriarch tree when the Code Enforcement Officer, City Manager, or a designee in their absence finds that immediate action is required due to a condition endangering public safety or property.

5. Diseased or pest-infested trees.--The removal of a diseased or pest-infested tree when the Code Enforcement Officer, City Manager, or a designee in their absence finds that doing so will prevent the spread of the disease or pests to healthy trees.

6. Highway and electric utility rights of way.--The removal or trimming of protected trees by:

a. The Florida Department of Transportation along roads under its jurisdiction to maintain safe lines of sight at road intersections and alleys and horizontal clearance areas along roadways where errant vehicles leaving the roadway might travel.

b. The electric utility along power lines necessary for the maintenance of accepted public safety standards and system reliability.

D. PERMITS FOR REMOVAL, RELOCATION, OR SUBSTANTIAL ALTERATION OF PROTECTED TREES

Any person wishing to remove or substantially alter a protected tree shall make application to the Code Enforcement Officer on a tree application form provided by the Officer.

A tree permit shall be issued to remove or substantially alter a protected tree only if such action is in compliance with these Chapter XII requirements and the section VII.E site plan requirements.

Substantial alteration of a protected tree shall be allowed only under a declared emergency (sections B.1 and C.3), when a permit is obtained in the case of an imminent hazard (sections B.1 and C.4), or when a permit is obtained in a non-emergency or non-imminent hazard situation to eliminate limbs that encroach on an adjacent structure.

1. Private property.

a. If the proposed tree removal or substantial alteration is in conjunction with proposed development the Planning and Zoning Board reviews (e.g., a newly-proposed structure, the expansion of an existing structure where the footprint increases in size, the construction of a driveway or walkway, or other such development that disturbs the land surface), the Board shall implement these tree protection requirements at the time it reviews and decides to approve, conditionally approve, or disapprove the site plan.

b. If the proposed tree removal or substantial alteration is not in conjunction with proposed development that the Planning and Zoning Board reviews (e.g., tree removal due to tree roots affecting the structural integrity of a building foundation), the Code Enforcement Officer, City Manager, or a designee shall implement these tree protection requirements at the time he or she reviews and decides to approve, conditionally approve, or disapprove the proposal. Only the City Manager shall make decisions on patriarch trees (paragraph c).

c. If the proposal is the removal or substantial alteration of a patriarch tree, the Code Enforcement Officer shall provide a copy of the tree application to the Tree Committee appointed by the City Commission. The Committee shall review the tree permit application and make a recommendation to the decision maker (the Planning and Zoning Board (paragraph a) or the City Manager (paragraph b)).

When the Board is the decision maker, approval or conditional approval to remove or substantially alter a patriarch tree on a privately-owned lot shall only be made when no principal structure could be legally built on the lot taking into consideration the location of the tree and such requirements as setbacks and minimum required size for single-family dwellings. Through the variance process the Board of Adjustment may consider reducing setbacks or minimum dwelling size if doing so would spare the tree.

When the City Manager is the decision maker, the Manager's reasons for allowing removal or substantial alteration of a patriarch tree shall be documented in writing.

2. City property.

a. A person wanting to remove or substantially alter a protected tree on City property adjacent to private property owned by the person (e.g., to create an entryway to a proposed driveway on private property) shall apply for a tree

December 4, 2018, City Commission meeting - first reading of proposed ordinance

permit. Cost of the permit and tree removal or substantial alteration shall be borne by the applicant.

b. A City department wanting to remove or substantially alter a protected tree on City property shall make a request to the Code Enforcement Officer. To document the request, the Code Enforcement Officer shall prepare a tree application for the proposed action. Removal or substantial alteration of the tree shall not occur unless the Code Enforcement Officer, City Manager, or one of their designees approves the removal or substantial alteration.

c. If the proposal is the removal or substantial alteration of a patriarch tree, the Code Enforcement Officer shall provide a copy of the tree application to the City Manager and Tree Committee appointed by the City Commission. The Committee shall review the tree permit application and make a recommendation. The City Manager shall make a decision on the proposal and document in writing the reasons for allowing any removal or substantial alteration.

As a condition of approval, decision makers may require that certain protected trees or native trees listed in section A that are less than four (4) inches in diameter at breast height be relocated from the area of proposed development to an undeveloped location.

Under a tree permit, thinning of healthy protected trees may be justified if selective removal of trees improves the development of remaining trees and allows them to grow faster and in a fuller, characteristic form.

To ensure that a tree permit is not prematurely issued for a proposed development that is never approved, the tree permit and building permit will be issued simultaneously.

E. PROTECTION OF TREES DURING BUILDING OPERATIONS

Before development, redevelopment, or improvement the developer or builder is required to erect and maintain suitable protective barriers at the drip line of the tree. No construction or disturbance shall occur within this radius. Prohibited activities in this radius include operation of equipment; deposition of debris and fill; storage of gasoline, oil, paint, chemicals, and other toxic materials harmful to trees; and attachment of wire to trees. Wood, metal, or other substantial material shall be utilized in the construction of protective barriers. This protection shall remain until such time as the development, redevelopment, or improvement is completed.

Driveways and sidewalks of impervious concrete and asphalt may not be constructed within the drip line of protected trees.

F. UTILITY EASEMENT TRIMMING

Electric utility companies and their contractors that perform vegetation maintenance and tree pruning or trimming within electric utility right-of-way corridors shall do so in accordance with the following requirements. As defined in State law (F.S. 163.3209), "vegetation maintenance

and tree pruning or trimming” means “the mowing of vegetation within the right-of-way, removal of trees or brush within the right-of-way, and selective removal of tree branches that extend within the right-of-way.”

1. All tree management will be limited to what is necessary for the proper maintenance of existing and new utility facilities in order to provide safe and reliable utility service.
2. Prior to vegetation maintenance and tree pruning or trimming, the utility shall provide the City Manager with a minimum of five (5) business days’ advance notice. Such advance notice is not required for vegetation maintenance and tree pruning or trimming required to restore electric service or to avoid an imminent vegetation-caused outage.
3. The electric utility shall meet with the City Manager, or the Manager’s designee (e.g., Code Enforcement Officer), to discuss and submit the utility’s vegetation maintenance plan, including the utility’s trimming specifications and maintenance practices. The plan shall identify any patriarch trees that are proposed for trimming and the amount of trimming proposed.
4. Vegetation maintenance and tree pruning or trimming conducted by utilities shall conform to American National Standards Institute (ANSI) A300 (Part I)—2008 (R2014) pruning standards and ANSI Z133.1-2000 Pruning, Repairing, Maintaining, and Removing Trees, and Cutting Brush—Safety Requirements.
5. Vegetation maintenance and tree pruning or trimming conducted by utilities must be supervised by qualified electric utility personnel or contractors licensed to do business in the City of Apalachicola and trained to conduct vegetation maintenance and tree trimming or pruning consistent with these requirements or by Certified Arborists certified by the certification program of the International Society of Arboriculture. Trimming of patriarch trees may only be performed by Certified Arborists.

G. REFORESTATION FUND

Fees collected for the lawful removal or relocation of protected trees and fines from the unlawful removal, relocation, or substantial alteration of protected trees (section H) shall be placed in a Reforestation Fund maintained by the City of Apalachicola. These funds will be spent to establish, maintain, and promote a reforestation program on City property, primarily along highway corridors and in City parks. These fees are in addition to the per-permit fee charged by the City for the administrative processing of a tree permit application, which are not deposited in the Reforestation Fund.

Following are the tree permit fees that will be collected for removal of protected trees.

Diameter at breast height of protected tree removed (inches)	Fee for each tree (\$)
4 to 16	25

Greater than 16 to less than 35	35
35 and larger (patriarch tree)	1,000

For a tree permit applicant not proposing to remove a patriarch tree, the maximum total fee collected for each lot covered by the application shall not exceed two hundred and fifty dollars (\$250).

For a tree permit applicant proposing to remove a patriarch tree, the maximum total fee collected for each lot covered by the application shall not exceed two hundred and fifty dollars (\$250) for the non-patriarch trees plus an additional \$1,000 dollars (\$1,000) for each patriarch tree.

H. PENALTIES FOR VIOLATIONS

Any person that removes or substantially alters a protected tree before a tree permit is obtained shall be charged a doubled application fee for an after-the-fact permit.

If an after-the-fact tree permit is not issued because the tree removal or substantial alteration is not in accordance with these tree protection regulations, a fine in the amount specified in section III.D.1 of this Code shall be imposed. Each tree that is illegally removed or substantially altered is a separate offense.

Any person that illegally removes or substantially alters a patriarch tree shall be fined up to \$25,000.

Commercial tree care contractors or general contractors are required to be licensed by the City in order for them to conduct business within the City. Two or more violations of any provision of these tree protection requirements by any commercial tree care contractor or general contractor may result in revocation of such person's license to do business within the City.