

## 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.

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

**Relocate** - As used in the Chapter XI 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; revise section E, Time Limit on Approval, to read as follows; and revise section F, Site Plan Requirements, to add paragraphs 13 and 14.*

### B. APPLICABILITY

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

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#### E. TIME LIMIT ON APPROVAL

Following approval of the site plan, the applicant shall have one hundred and eighty (180) days to commence substantial construction and one (1) year to complete construction (section III.C.1) on the site. Any site where construction has not begun and been completed within these time periods shall cause the site plan to be reevaluated by the appropriate bodies and any newly-adopted standards to be considered.

#### F. SITE PLAN REQUIREMENTS

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##### 13. Tree protection.

- a. 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.
- b. A plan for protecting trees from equipment, material, debris, fill, gasoline, oil, paint, chemicals or other harmful materials.
- c. A discussion of proposed grade changes and how the changes would affect protected trees.

##### 14. Landscape planting plan for multi-family developments.

*Add new Chapter XI.*

### **XI. 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*),  
loblolly pine (*Pinus taeda*),  
longleaf pine (*Pinus palustris*),  
pecan (*Carya illinoensis*),  
pignut hickory (*Carya glabra*),

red maple (*Acer rubrum*),  
sabal (cabbage) palm (*Sabal palmetto*),  
slash pine (*Pinus elliottii*),  
southern magnolia (*Magnolia grandiflora*),  
southern red oak (*Quercus falcata*),  
sugarberry (*Celtis laevigata*),  
sycamore (*Platanus occidentalis*),  
water oak (*Quercus nigra*), and  
white oak (*Quercus alba*).

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 Administrator, 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, the City Commission 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.a).

## 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 Administrator 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 Administrator, 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 Administrator, 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

Substantial alteration of a protected, non-patriarch tree shall be allowed only under a declared emergency (section C.3), when a permit is obtained in the case of an imminent hazard (section 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.

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

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.

1. Private property.

- a. Patriarch trees.--If the proposal is the removal or substantial alteration of a patriarch tree, only the City Commission shall make a decision on the tree permit application. The Planning and Zoning Board shall review the application and make a recommendation to the City Commission as to whether the permit should be issued, conditionally issued, or denied. A recommendation to approve or conditionally approve shall only be made when no principal structure could be legally built on a lot taking into consideration the location of the tree and such requirements as setbacks and minimum required size for single-family dwellings.

Other protected trees.--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 Administrator, or a designee in their absence shall review the tree permit application and make a decision on it.

## 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 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 Administrator, or one of their designees approves the application.

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. DURATION OF PERMITS

Work to remove or substantially alter a protected tree shall commence within one hundred eighty (180) days of tree permit issuance (section VII.E). Such work shall be completed within one (1) year of permit issuance unless the work for the tree permit is happening on a property where building construction is also occurring and the building inspector determines that construction is occurring on an uninterrupted basis and more time is needed for completion (section III.C.1).

#### F. PROTECTION OF TREES DURING BUILDING OPERATIONS

It is unlawful for any person, in the development, redevelopment or improvement of any parcel of land to store within ten (10) feet of the trunk of any protected tree equipment, material, debris, fill, gasoline, oil, paint, chemicals or other materials harmful to trees.

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. The drip line is a 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. No construction or disturbance shall occur within this radius. 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.

During construction, no attachments, including wires, shall be made on any protected tree.

Concrete, asphalt, or any other impervious material may not be placed within a specified distance of any protected tree as determined to be appropriate by the Planning and Zoning Board for the size and species of tree that would be affected.

#### G. 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 Administrator 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 Administrator 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)—2001 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.
6. In their decisions on proposed site plans and tree permits, the Planning and Zoning Board and Building Department shall not require the planting of trees that will reach a height of greater than fourteen (14) feet in electric utility rights-of-way or intrude from the side on power lines.
7. The utility shall develop standards to minimize clearing distances for eighteen (18)-month cyclical pruning. The standards shall be tiered to recognize growth patterns of different species and maintain the essential character of the trees and at no time shall the removal of more than twenty five (25) percent of any tree's canopy occur within an eighteen (18)-month period.
8. Target clearance distance shall fall within the four to six (4 to 6) foot range, trimmed according to International Society of Arboriculture standards.
9. The utility shall continue its program of community education to ensure that the public is made aware of the need for utility pruning, what to expect when the pruning trucks come into a neighborhood, and to allow citizens to express their concerns and get answers before trimming begins.
10. The City of Apalachicola and the utility will evaluate alternative system engineering design whenever trees twenty-four (24) inches diameter breast height or larger are to be affected. If the alternative design is determined to be economically viable the utility will perform

the alternative construction.

11. Should disagreements on tree trimming arise between the utility and the owner of property on which an affected tree is located, the Code Enforcement Officer shall meet with the utility and property owner to reach resolution, if possible.
12. The utility should continue to explore and propose to the City Commission alternatives for converting overhead lines to underground transmission lines.

#### H. SPECIAL BEAUTIFICATION FUND

At a rate of [\$\_\_ per protected tree with a maximum of \$\_\_ per lot per tree permit; \$\_\_ per tree permit (flat fee no matter how many trees removed); or progressively increasing amount per tree], 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 I) shall be placed in a Special Beautification Fund maintained by the City of Apalachicola. These funds will be spent to establish, maintain, and promote a beautification and 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 Special Beautification Fund.

#### I. 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.

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.

#### J. APPEALS

Any person who is denied a tree permit by the Planning and Zoning Board, Code Enforcement Officer, or City Administrator may appeal that decision to the City Commission (section III.A.1.d).

Any person who is denied a tree permit for a patriarch tree by the City Commission may appeal that decision to the circuit court (section III.A.1.d.3).