Agenda
Special Tree Board Workshop
City of Dunnellon, Florida
August 11, 2016 at 3:00 p.m.

PLEASE NOTE: Individuals wishing to address the Tree Board please sign in. A three-minute time limit will be administered. **PLEASE TURN CELL PHONES OFF**.

One or more City Council members may attend this meeting and may speak.

Call to Order
Pledge of Allegiance
Roll Call
Proof of Publication (Posted on City's website and City Hall bulletin board on Tuesday, August 9, 2016)

1. TREE ORDINANCE REVIEW WORKSHOP

Documents:

1-Tree Code - Chapter 74 VEGETATION.pdf
2-Hand Andrew re responses to citizens comments of ordinance and memo 8-4-16.pdf
3-Citizens comments on May 2016 Draft Tree Ordinance May 2016.pdf
4-Citizen comments of AJH Memo.pdf

2. PUBLIC COMMENT

3. ADJOURNMENT

ANY PERSON REQUIRING A SPECIAL ACCOMMODATION AT THIS MEETING OF HEARING BECAUSE OF A DISABILITY OR PHYSICAL IMPAIRMENT SHOULD CONTACT THE CITY CLERK AT (352) 465-8500 AT LEAST 48 HOURS PRIOR TO THE PROCEEDING. IF A PERSON DESIRES TO APPEAL ANY DECISION WITH RESPECT TO ANY MATTER CONSIDERED AT THE ABOVE MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDING, AND FOR SUCH PURPOSE, HE OR SHE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THE CITY IS NOT RESPONSIBLE FOR ANY MECHANICAL FAILURE OF RECORDING EQUIPMENT.

Chapter 74 - VEGETATION

FOOTNOTE(S):

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Cross reference— Parks and recreation, ch. 46; removal of garden trash, § 50-64; streets, sidewalks and other public places, ch. 54; waterways, ch. 78; buildings and building regulations, ch. 82; community development, ch. 86; zoning, app. A.

State Law reference— Cutting or destroying shade trees along public roads, F.S. §§ 861.11, 861.12.

ARTICLE I. - IN GENERAL

Secs. 74-1—74-30. - Reserved.

ARTICLE II. - WEEDS

Sec. 74-31. - Enforcement.

The city code inspector, as defined in section 2-198, shall be charged with the responsibility of enforcement of this article. Any violation of this article shall be handled pursuant to the procedures set forth in chapter 2, article V, division 2.

(Code 1985, § 25-17)

Sec. 74-32. - Lot clearing required.

All owners and occupants of property located within the city shall jointly and severally, at all times, keep their property clear of weeds and undergrowth over 12 inches in height and keep the property clear of debris, cans, trash and unsightly and unsanitary matter.

(Code 1985, § 25-16)

Sec. 74-33. - Correction of violations by city.

(a) *Authorized.* Should any violation of this article not be corrected by the landowner or occupant through the procedures of chapter 2, article V, division 2, the city council is empowered to cause the condition constituting a violation of this article to be corrected by the city, at the expense of the property owner.

(b) *Minimum charge.* Any work performed by the city pursuant to this section shall bear a minimum charge of $50.00 per buildable lot to the property owner.

(c) *Collection of costs.* The city council shall cause to be sent a billing statement by United States mail, certified return receipt requested, to the property owner at the property owner's last known address as reflected by the records of the county property appraiser's office, for the cost of such work. Should such billing remain unpaid for a period of 30 days from the date of mailing, then, in that event, such amount of the billing shall be and constitute a special assessment lien upon the real property, such lien to bear interest at the rate of eight percent per annum. The city council shall cause such liens to be recorded in the public records of the county against the real property.

(d) *Enforcement of lien.* Such liens shall be enforced pursuant to the provisions of F.S. ch. 173.

(e) *Provisions supplemental.* The provisions of this section shall be additional and cumulative to the procedures and remedies of chapter 2, article V, division 2.

(Code 1985, § 25-18)

Secs. 74-34—74-60. - Reserved.

ARTICLE III. - TREES

FOOTNOTE(S):

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Editor's note— Ord. No. 2007-04, § 1, adopted Oct. 22, 2007, repealed the former Art. III., §§ 74-61—74-71, and enacted a new Art. III as set out herein. The former Art. III pertained to similar subject matter and was derived from Code 1985, §§ 25-26—25-34 and 25-36.

Sec. 74-61. - 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:

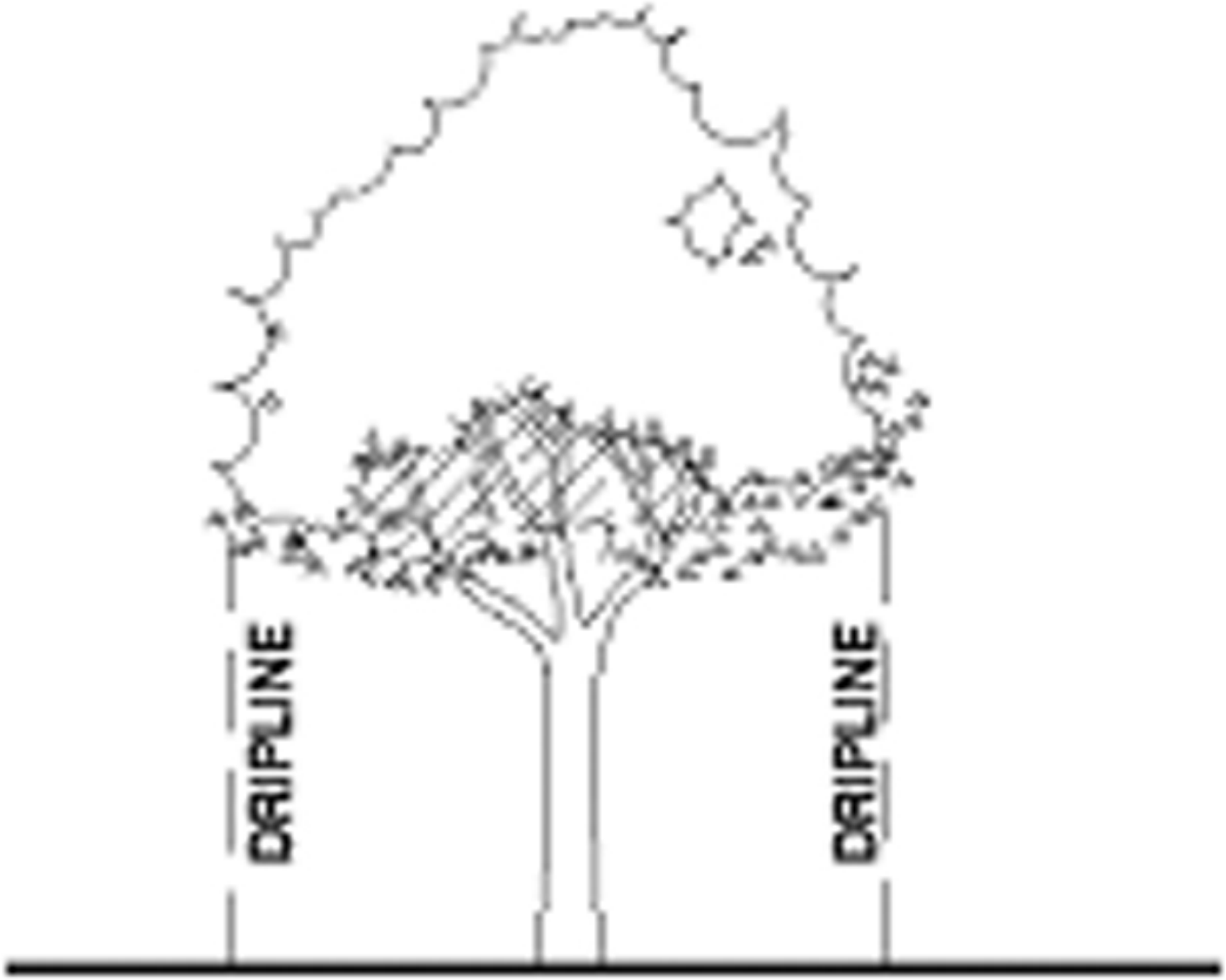
Certified arborist approved by the city means an individual holding the highest certification from the certification program of the International Society of Arboriculture and approved by the city to provide evaluations of trees.

Champion tree is defined in section 74-68.

Diameter at breast height (DBH) means the tree trunk diameter as measured at 54 inches above the natural grade at the base of the tree.

Diseased tree means a protected tree judged by the certified arborist approved by the city to be dangerous to the health of other protected trees in the city or to be diseased to such an extent that it will die within two years.

Drip line means the ground area surrounding the trunk of a tree that is described by the vertical plane enclosing the outermost branches of the tree.



Hat-rack means a severe form of pruning that removes all but the trunk and largest branches, often resulting in death of the tree.

Heritage tree is defined in section 74-68.

Prohibited tree means a tree identified as prohibited in subsection 74-66(3).

Protected tree means any tree, other than a prohibited tree that is four inches or more DBH.

Pruning means the cutting or removing of any part of the branching structure of a tree in either the crown, trunk, or root areas.

Remove or removal means to clear, cut down, damage, poison, or in any other manner destroy or cause to be destroyed, a tree and includes both actual elimination or the effective elimination through killing, damaging, or destroying.

Silviculture means the art, science, and practice of managing trees and the forest on bona fide agricultural land. Bona fide agricultural land has been classified as agricultural pursuant to F.S. § 193.461.

Tree means any self-supporting woody plant which has at least one main trunk and normally grows to a minimum overall height of 15 feet. Palm trees are included in the definition of tree.

Tree restoration fee means a fee established by the city council to compensate for tree removal.

Understory means any plant growing beneath the forest canopy including shrubs, seedlings, or saplings.

Wetlands means those areas that are saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Wetlands are identified by the uniform methodology adopted in F.S. §373.421.

(Ord. No. 2007-04, § 1, 10-22-2007)

Sec. 74-62. - Applicability.

The provisions of this article apply to all development and land used for silviculture within the City of Dunnellon, except as specifically exempted below:

(1) The provisions of this article shall not apply to a platted lot where such subdivision plat was approved on or before January 1, 2007, and where a valid, unexpired building permit has been issued for such lot on or before the effective date of this ordinance.

(2) Applications for permits for interior construction, renovation, or remodeling shall not require proof of compliance with this article, provided that such interior construction, renovation, or remodeling shall not increase the footprint of the building by 20 percent or more, and further, that trees removed shall be limited to those located totally within the area proposed for the 20 percent increase in the footprint. Otherwise, a tree permit is required.

(3) Licensed plant or tree nurseries or botanical gardens which contain plants and trees that are planted and grown for sale to the general public in the ordinary course of the licensed business or for public purposes are exempt from the provisions of this article.

(4) The City of Dunnellon or its authorized agents are exempt from the provisions of this article for the purpose of removal of a tree on city-owned property that is dead or a hazard to the public.

(5) Utility companies, the Florida Department of Transportation, Marion County, or their authorized agents are exempt from the provisions of this article for the purpose of removal of a tree that is a substantial hazard to overhead wires or for trimming that is necessary for establishment or maintenance of utility service. All such agencies shall provide notification to the City of Dunnellon prior to engaging in tree removal or maintenance, except in the case of a declared emergency. However, utility companies other than electrical utilities, the Florida Department of Transportation, Marion County, or their authorized agents are required to seek a permit for removal of a heritage tree that is a substantial hazard to overhead lines or for removal of trees identified in section 74-70

(6) The removal of under story vegetation and the removal of trees less than four inches DBH shall not require a tree removal permit, except as set forth in section 74-70

(7) The removal of a prohibited tree, as identified in section 74-66, shall not require a tree removal permit.

(8)

The removal of dead or diseased trees on an occupied lot shall not require a fee for removal permit, provided that the property owner notifies the city in advance of such removal and provides evidence of the condition of the tree. Diseased trees shall only be removed when the disease presents a clear and documented danger to the health and survival of trees in the immediately surrounding area. Acceptable evidence shall be a written assessment of condition provided by the certified arborist approved by the city. Notification shall be on a form provided by the city and shall not require any fee.

(9) The provisions of this article shall not apply to activities directly resulting from as well as occurring during a declared federal, state, or local emergency.

(Ord. No. 2007-04, § 1, 10-22-2007)

Sec. 74-63. - Tree removal permit requirements and procedures.

(a) A tree survey shall be submitted with any application for a tree permit, a site plan, or a preliminary subdivision plat.

(1) A tree survey shall be prepared at the same scale as an associated site plan or preliminary subdivision plat. When there is no associated site plan or preliminary subdivision plat, the scale shall be as directed by the city manager, or designee.

(2) The tree survey shall identify each protected tree and each prohibited tree, indicate the DBH, and identify the species. Where protected trees are located in a group or a cluster, the survey may identify the tree group rather than individual trees, including the number of trees, the range of DBH, and the species within the group.

(3) The tree survey shall identify protected trees to be retained, removed, and relocated and shall indicate that prohibited trees will be removed. When protected trees are proposed for relocation, the new location shall be indicated.

(4) The tree survey shall show the location of all proposed and existing structures, driveways, and other planned improvements.

(5) A grading plan shall be provided to identify any proposed grade changes and methods to ensure that such changes will not adversely impact or endanger any protected trees that are proposed for retention.

(6) A tree replacement plan shall be provided, at the same scale as the tree survey, showing the location, size, and species of all proposed replacement trees. Such replacement trees shall comply with the requirements of section 74-66. The replacement plan may be shown on the tree survey.

(7) The tree survey shall be sealed by a land surveyor, licensed in the State of Florida. The grading plan and tree replacement plan shall be sealed by a landscape architect or civil engineer, licensed in the State of Florida.

(8) Where a tree survey is required for one single-family lot, the survey may be a sketch provided by the property owner for purposes of identifying tree locations and trees sought to be removed.

(b) A permit is required for the removal of any protected tree, unless such removal is exempt as set forth in section 74-62

(1) Where an application for site plan or preliminary subdivision plat is submitted, a separate tree permit application is not required. The preservation, relocation, replanting, or removal of protected trees shall be considered as part of the site plan or preliminary subdivision plat review

and approval process. Tree removal shall not be authorized prior to the final approval of a site plan or preliminary subdivision plat.

(2) No authorization shall be granted to remove a protected tree where the developer or property owner has failed to take reasonable measures to design and locate the proposed improvements so that the number of protected trees to be removed is minimized.

(3) Anyone who fails to obtain a permit before removing or relocating a protected tree shall be subject to a penalty of $25.00 per inch of DBH. However, the fine for unauthorized removal of a champion or heritage tree shall be $100.00 per inch DBH of the removed tree, up to the maximum penalty allowed by law. Where the size of the champion or heritage tree cannot be determined, the minimum penalty shall be $3,600.00 and the maximum penalty shall be provided by law. The removal of a champion or heritage tree without a permit shall be considered irreversible and irreparable in nature. Violators who fail to replace trees within the applicable time period set forth in this ordinance shall be considered guilty of a separate violation, and a fine shall be imposed for each day the violation exists, calculated from the date of unauthorized removal until the required replacement trees are installed.

(4) Violators must replace trees removed without a permit at triple the replacement ratio required for trees removed pursuant to a permit, except that the replacement ratio for champion and heritage trees shall be as provided in section 74-68

(5) A tree removal permit shall be valid for a period of up to three months from the date of issuance. The permit may be renewed one time for a period not to exceed three months. Renewal shall be granted only by the person, commission, or council that granted the original authorization.

(6) A tree removal permit shall be valid only so long as the conditions of approval continue to be met. Failure to meet permit conditions requires that the code enforcement officer issue a stop work order and rescind the permit.

(c) An application for a tree removal permit shall include the following:

(1) A completed application on a form provided by the city. Signing the form shall grant access to the site for inspection during consideration of the permit application and subsequent to permit issuance for determination of compliance with the permit.

(2) Payment of the applicable permit fee.

(3) Legal description of the property.

(4) Name, phone number, and address of the property owner. If the property owner does not have local contact information, a local agent is required.

(5) Where an agent is authorized to apply for a tree removal permit on behalf of the owner, a signed and notarized affidavit shall be provided, on a form provided by the city, to authorize the agent.

(6) A tree survey, grading plan, and tree replacement plan, complying with the requirements of this article.

(7) An aerial map for parcels of two or more acres. Photographs of trees shall be provided for parcels of less than two acres.

(8) For bona fide agricultural land where harvesting of the timber is proposed, the applicant shall submit proof of compliance with F.S. § 193.461. The applicant shall also submit a reforestation plan, prepared by a professional forester where silviculture is proposed to continue, or a preliminary development plan where the property is proposed to be cleared in order to accommodate future development.

(d) An application for a tree removal permit shall be processed as set forth in this section.

(1) The city manager, or designee, shall determine that the application is complete and contains all required submittals. An incomplete application shall not be processed for review. Where an application is incomplete, the city manager, or designee, shall notify the applicant of missing information within eight working days. If the missing information is not provided to the city within 30 working days, the application shall be deemed withdrawn and returned to the applicant. An extension of the 30-day time limit may be granted by the city manager, or designee, upon written request from the applicant. No more than one 30-day extension shall be granted.

(2) Applications for tree removal permits for individual lots zoned for single-family or duplex residential use and lots of less than one acre that are zoned for commercial, office, or industrial uses shall be processed for administrative approval. The city manager, or designee, shall review a complete application and approve the application when it fully complies with the standards and criteria of this article. An application that does not fully comply with the standards and criteria of this article shall be denied.

(3) Applications for tree removal permits for all waterfront land, wetlands, conservation lands, as further defined in section 74-70, all site plans, all subdivision plats, all lots larger than specified in subsection 74-63(d)(2) and for harvesting trees on bonafide agricultural land shall require consideration by the tree board and the city council. The city manager, or his designee, shall prepare a staff report regarding the application for tree removal with the requirements of this article. Notice shall be provided as set forth in subsection 74-63(d)(5). The application and staff report shall be forwarded to the tree board at the next regular meeting following notice. The tree board shall make recommendation to approve, deny, or approve with conditions to the city council. The application, staff report, and written recommendation from the tree board shall be forwarded to the city council at the next regular meeting following notice. The city council may approve, deny, or approve with conditions.

(4) Where notice is required, such notice shall be provided as set forth in this section. Notices of hearings shall be published in a newspaper of general circulation at least 15 days prior to the date of the hearing. Such notice shall specify the time and place of the hearing. The applicant shall be given notice of the hearing by letter addressed to such applicant at the address provided in the application and mailed at least 15 days prior to the date of the hearing.

(e) A tree restoration fund shall be established and maintained by the City of Dunnellon. The purpose of the tree restoration fund is to support planting and replacing trees throughout the city. Where protected trees are removed and cannot be relocated or replaced on the development lot or parcel, a property owner shall pay a fee-in-lieu of replacement. Such fees will be deposited to the tree restoration fund. The applicable fees shall be adopted by resolution of the city council. The payment of a fee-in-lieu of replacement may be authorized by the city planning director or designee. Payments given credit as a replacement alternative are costs in addition to other city development and impact fees and are not creditable against these fees. The purpose of the replacement alternate system is to allow the owner/applicant to select an alternative that will best benefit the project, the surrounding area, and the citizens and visitors of the City of Dunnellon. The system permits payment into the tree bank, in lieu of tree replacement for the replacement shortfall. Prior to requesting approval of an alternative to tree replacement, the landscape design shall meet the following requirements, and be able to demonstrate as such:

(1) Tree placement on the site shall be maximized to the greatest extent possible;

(2) The size of the trees provided exceeds the minimum requirements; and

(3) All possible modifications to the site design have been made to preserve the greatest amount of trees. Waivers shall not be granted to avoid or reduce payment to the replacement requirements.

(Ord. No. 2007-04, § 1, 10-22-2007)

Sec. 74-64. - Standards for preserving, relocating, and replacing trees.

(a) All lots and parcels with fewer than 16 protected trees per acre shall preserve all protected trees. Where a proposed building cannot be located in compliance with the applicable zoning standards, protected trees may be relocated to another portion of the development lot or parcel. Where preservation of protected trees is not possible, due to physical conditions of the land or where relocation would result in conditions where the relocated trees could not thrive, removal may be authorized. Where removal is authorized, replacement trees shall be required or payment of a fee-in-lieu of replacement shall be required.

(b) All lots and parcels with 16 or more protected trees per acre shall preserve 50 percent of the protected trees on the lot or parcel. Protected trees in excess of 50 percent may be relocated to another portion of the development lot or parcel. Protected trees that are authorized for removal shall be replaced or a payment of a fee-in-lieu of replacement shall be required.

(c) All lots and parcels of one-half acre or less, regardless of the number of trees currently on the site, shall retain or plant trees to provide at least four trees on the site.

(d) When authorization has been granted to remove protected trees, replacement trees shall meet the specifications set forth in section 74-66. Protected trees authorized for removal shall be replaced on a one-inch-for-one-inch basis, which means that the total inches DBH of replacement trees shall meet or exceed the total inches DBH of trees authorized for removal.

(e) No certificate of occupancy shall be issued until all replacement trees have been planted. Where a delay is necessary due to the growing season, the applicant shall provide a performance bond acceptable to the city guaranteeing that replacement trees will be planted not later than six months following issuance of the certificate of occupancy.

(f) Where trees are authorized for removal on a parcel where a certificate of occupancy will not be issued, replacement trees shall be planted not later than six months following issuance of the tree removal permit.

(Ord. No. 2007-04, § 1, 10-22-2007)

Sec. 74-65. - Credit for preservation of existing trees.

(a) Credit may be granted for the preservation of existing protected trees based upon the size of the protected trees. Such credit is intended to provide an incentive for preserving larger trees when it is necessary to remove trees in order to allow development of a lot or parcel. This section describes the method of determining credit for retaining trees. Credit is not based on an exact inch-for-inch calculation, but provides a table to assign a number of trees as credit for the preservation of a tree within a size range.

(1) Credit shall not be granted for any tree that is not adequately protected during construction and development of the lot or parcel or for any tree that is not healthy and thriving at the time that the certificate of occupancy is issued. Tree protection requirements during construction are set forth in Section 74-67

(2) Credit shall not be granted for any prohibited tree, as set forth in Section 74-66

(3) Credit shall not be granted for any tree with less than four inches DBH.

(b) Credit, when granted, shall be based on the following standards:

DBH	Number of Trees Credited	
36 inches or greater	7	
30 to 35 inches	6	
26 to 29 inches	5	
20 to 25 inches	4	
13 to 19 inches	3	
8 to 12 inches	2	
4 to 7 inches	1	

(Ord. No. 2007-04, § 1, 10-22-2007)

Sec. 74-66. - Specifications for trees, tree installation, and tree maintenance.

(a) Fifty percent of the trees proposed for planting as replacement trees shall be species for species, meaning that a replacement tree shall be the same species as a tree authorized for removal. All trees proposed for planting as replacement trees shall be a minimum of four inches DBH.

(b) Trees shall meet the standards for Florida No. 1 or better, as set out in *Grades and Standards for Nursery Plants*, Department of Agriculture, State of Florida.

(c) The following table identifies permissible trees and trees that are prohibited within the city. The city may consider other trees, where the applicant provides evidence that the proposed trees are appropriate and expected to thrive in the Dunnellon area. Evidence may include written information from the Institute of Food and Agricultural Sciences at the University of Florida, the Florida Department of Agriculture and Consumer Services or the certified arborist approved by the city. The tree board shall develop a list of permissible understory trees.

Permissible Canopy Trees	Prohibited Trees
American Elm	Australian Pine
American Holly	Brazilian Pepper

American Hornbeam	Camphor Tree
Bald Cypress	Chinaberry
Bluejack Oak	Chinese Tallow
Cabbage Palm	Melaleuca/Punk Tree
Carolina Basswood	Silk Oak
Chinese / Drake Elm	
Florida Basswood	
Hophornbeam	
Laurel Oak	
Live Oak	
Loblolly Bay	
Longleaf Pine	
Persimmon	
Pignut Hickory	
Pond Cypress	
Red bay	
Red Maple	
River Birch	
Sabal Palm	
Slash Pine	

Southern Magnolia	
Sugarberry	
Sugar Maple	
Sweet Bay Magnolia	
Sweet Gum	
Sycamore	
Turkey Oak	
Water Oak	
Water Tupelo	
White Ash	

(d) Trees shall meet the following location and planting standards:

(1) Trees shall be located:

a. Ten feet or more from any existing building;

b. Five feet or more from any property line;

c. Twenty feet or more from any existing tree; and

d. Six or more feet from any pavement, measured to the back of the curb.

(2) Canopy trees shall not be installed under any overhead utility line, over any buried utilities, or within a utility easement.

(3) Trees shall be properly guyed, braced, or staked at the time of planting to ensure establishment of the tree and erect growth. Nail staking or other methods that cause cosmetic or biological damage to the tree are prohibited. Trees shall be re-staked within 24 hours in the event of a failure in the staking or guying. Stakes shall be removed not later than 12 months after installation.

(4) Canopy trees shall be provided with at least 400 square feet of rooting area per tree.

(5) Understory trees shall be provided with at least 200 square feet of rooting area.

(e) The priority for installation of replacement trees shall be as follows:

(1) Planting the replacement trees on the same parcel where trees have been removed;

(2) Planting the replacement trees on another parcel as authorized by the city council; or

(3) Payment of a tree restoration fee according to the city schedule of fees.

(f) A tree replacement plan shall demonstrate that the proposed location, whether on site or on another site, is appropriate, considering:

(1) Existing tree coverage, including the replacement of removed canopy trees with new canopy trees and the replacement of removed understory trees with new understory trees;

(2) Topography and drainage patterns of the site;

(3) Site conditions, including whether the site is designated conservation on the Future Land Use Map;

(4) Characteristics of existing and proposed vegetation on the site; and

(5) Health and desirability of existing trees and other vegetation.

(g) Additional conditions may be imposed during consideration and approval of a tree removal permit and tree replacement plan. Such conditions may be required in order to:

(1) Protect areas with steep slopes or soils highly susceptible to soil erosion. Soils highly susceptible to soil erosion shall be identified on the replacement tree plan and shall be identified according to the soil classifications in the Marion County Soil Survey;

(2) Protect views; and

(3) Protect wetlands, shorelines, floodplains, environmentally sensitive land, and wildlife habitat. Where habitat of wildlife species is present, conditions may be necessary to limit the removal of trees that damages or eliminates the habitat. Maintenance of tree cover may be necessary in order to protect the function of protected wetlands, floodplains, or lands designated by the city as environmentally sensitive.

(h) All trees shall be maintained according to accepted horticultural practices. Trees that become diseased or die shall be replaced as soon as practical, but not later than three months following notice of the requirement for replacement. Maintenance may include pruning according to accepted horticultural practices and shall not be construed to allow "hat-racking". However, where extensive pruning is designed solely to produce an ornamental result to a change in the branch configuration, such extensive pruning shall not be considered hat-racking. When a conflict arises in the determination as to whether pruning is according to accepted horticultural practices, the decision of the certified arborist approved by the city shall be obtained.

(Ord. No. 2007-04, § 1, 10-22-2007)

Sec. 74-67. - Standards for protecting trees during development and construction activities.

(a) In conjunction with any development, building, or land clearing it shall be unlawful for any person to cause, authorize, assist, or permit the removal of or damage to any protected tree; or to root rake, grade, or permit the movement or storage of equipment, material, debris or fill within the drip line of any protected tree which is not authorized or approved for removal in accordance with the provisions of this section. Protected trees are those trees identified on the required tree survey, pursuant to the standards of this article.

(b) Protective measures are required during site development in order to assure the health and survival of protected trees. Protective measures are required to avoid:

(1) Mechanical injuries to roots, trunk, and branches;

(2) Injuries by chemical poisoning;

(3) Injuries by grade changes;

(4) Injuries by excavations; and

(5) Injuries by paving.

(c) A circular tree protection zone shall be established around each protected tree as follows (See figure):

(1) If the drip line is less than six feet from the trunk of the tree, the zone shall be that area within a radius of six feet around the tree.

(2) If the drip line is more than six feet from the trunk of the tree, but less than 20 feet, the zone shall be that area within a radius of the full drip line around the tree.

(3) If the drip line is 20 feet or more from the trunk of the tree, the zone shall be that area within a radius of 20 feet around the tree.

(d) All development activities shall be prohibited within the tree protection zone, including any construction of buildings, structures, paving surfaces, stormwater retention or detention ponds, and temporary construction activities, including all digging, storage of construction material, and parking of construction vehicles.

(e) Prior to the commencement of construction, the tree protection zone shall be enclosed within a fence or similar barrier as follows:

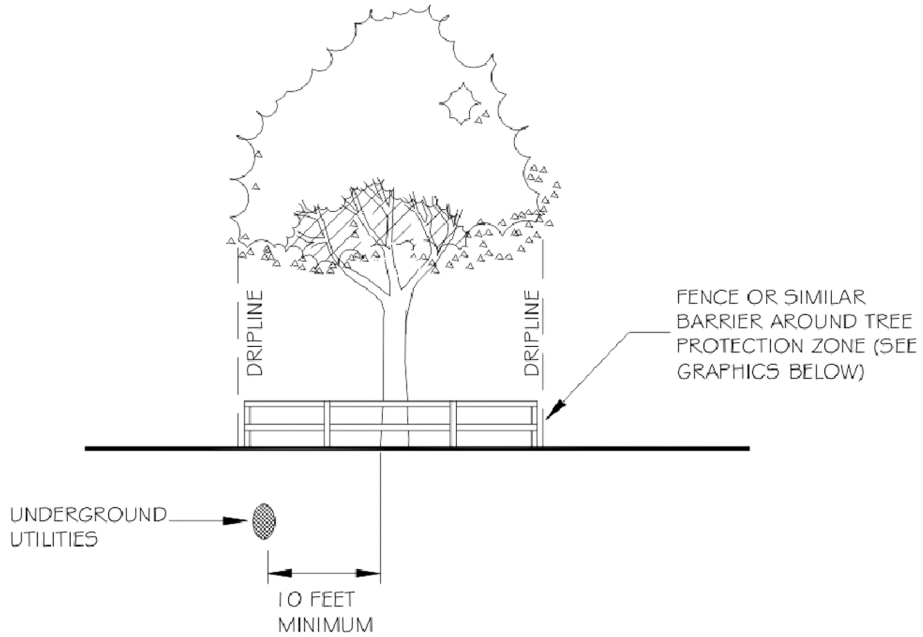
(1) Wooden posts, at least 1.5 by 3.5 inches, shall be implanted in the ground deep enough to be stable and with at least three feet visible above ground.

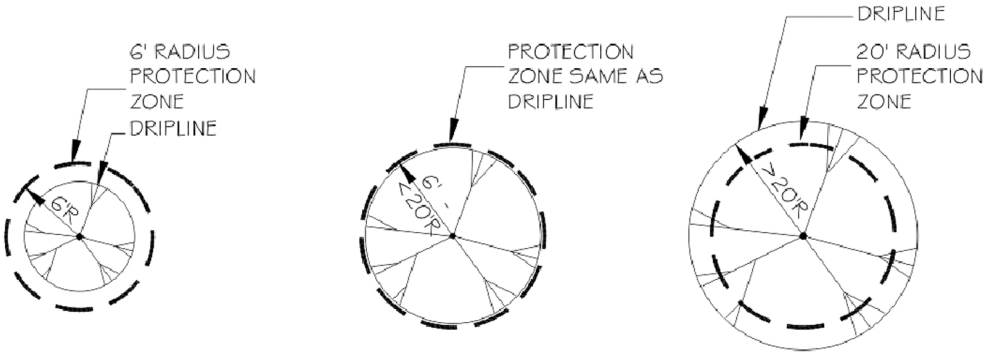
(2) The wooden posts shall be placed not more than six feet apart, and shall be linked together by a rope or chain.

(f) Permitted activities within the tree protection zone:

(1) Excavating or trenching by utilities service providers for installation of underground utilities. Underground utilities shall be no closer to the tree than ten feet.

(2) Placement of sod or other ground covers, and the preparation of the ground surface for such covers.





IF THE DRIPLINE IS LESS THAN SIX (6) FEET FROM THE TRUNK OF THE TREE, THE PROTECTION ZONE SHALL BE THAT AREA WITHIN A RADIUS OF SIX (6) FEET AROUND THE TREE

IF THE DRIPLINE IS MORE THAN SIX (6) FEET FROM THE TRUNK OF THE TREE, BUT LESS THAN TWENTY (20) FEET, THE PROTECTION ZONE SHALL BE THAT AREA WITHIN A RADIUS OF THE FULL DRIP LINE AROUND THE TREE

IF THE DRIP LINE IS TWENTY (20) FEET OR MORE FROM THE TRUNK OF THE TREE, THE PROTECTION ZONE SHALL BE THAT AREA WITHIN A RADIUS OF TWENTY (20) FEET AROUND THE TREE

(Ord. No. 2007-04, § 1, 10-22-2007)

Sec. 74-68. - Specific standards for champion and heritage trees.

(a) Champion trees are those defined by the Florida Department of Agriculture and Consumer Services, Division of Forestry, or the American Forestry Association as being the largest of their species with the State of Florida or within the U.S. and shall include all trees, other than prohibited trees, 36 inches or more DBH.

(b) Heritage trees are trees defined by the City of Dunnellon as native trees, 20 inches or more DBH, except for water oak, laurel oak, sweet gum, and loblolly pine, which must be 30 inches or more to be defined as a heritage tree.

(c) Champion trees and heritage trees are protected trees and shall require a tree removal permit prior to removal, except that approval for removal of champion and heritage trees shall only be granted by the city council.

(d)

The unauthorized removal of a champion or heritage tree shall require that replacement trees are installed on the basis of four inches DBH for each inch DBH of the removed champion or heritage tree, in addition to any other penalty or enforcement action by the City of Dunnellon. The minimum size of trees installed to replace champion or heritage trees shall be eight inches DBH. Replacement trees shall be of the same species as the removed champion or heritage tree.

(Ord. No. 2007-04, § 1, 10-22-2007)

Sec. 74-69. - Street trees required.

Street trees shall be installed in all new subdivisions. Selection and installation of trees shall comply with the specifications set forth in section 74-66 and the additional standards within this section. Street trees shall be located within five feet of the edge of pavement and within the right-of-way. One tree shall be planted for each 50 linear feet of street right-of-way on each side of the street. Existing trees may be counted toward this requirement if such trees are healthy and are permissible as set forth in Section 74-66. Where overhead utilities are located along the street right-of-way, only understory trees shall be installed. The types of trees to be planted as street trees shall be recommended by the tree board.

(Ord. No. 2007-04, § 1, 10-22-2007)

Sec. 74-70. - Standards for tree removal in special circumstances.

(a) The city hereby declares that special circumstances exist with regard to Pond Cypress and Bald Cypress trees, including their knees, located along the shoreline or within 150 feet of the ordinary high water line of the Rainbow River or the Withlacoochee River or their navigable coves.

(1) All Pond Cypress and Bald Cypress trees, and their knees, regardless of size, are protected.

(2) No such trees shall be removed unless a tree removal permit has been issued in compliance with the requirements of section 74-63 and the standards set forth in subsection 74-70(3).

(b) The city hereby declares that special circumstances exist with regard to trees or understory plants, including cypress knees regardless of size, other than prohibited trees as defined in subsection 74-66(3), which are located along the shoreline or within 150 feet of the ordinary high water line of the Rainbow River, Withlacoochee River, or navigable coves, within wetlands, or within areas designated on the Future Land Use Map as "Conservation" or "Preservation." Wetlands are those as defined by F.S. § 373.019(25) which sets forth a unified state definition.

(1) All trees or understory plants, regardless of size, within the area described in subsection 74-70(2), other than prohibited trees as defined in subsection 74-66(3), are protected.

(2) No such trees or understory plants shall be removed unless a tree removal permit has been issued in compliance with the requirements of Section 74-63 and the standards set forth in section 74-70(3).

(c) Tree removal shall be authorized only in compliance with all of the following:

(1) Vacant lots. No tree removal is permitted including dead or diseased trees, unless they present an imminent threat to public safety or present a clear and documented danger to the health and survival of trees in the immediate surrounding area. Evidence of condition is required. Acceptable evidence shall be a written assessment of condition provided by a certified arborist approved by the city.

(2) Occupied lots.

a. The tree is dead or diseased. Evidence of condition is required. Acceptable evidence shall be a written assessment of condition provided by the certified arborist approved by the city. Diseased trees shall only be removed when the disease presents a clear and documented

danger to the health and survival of trees in the immediately surrounding area.

b. Demonstration that the tree poses an imminent threat and removal is required to protect public health, safety, and welfare. Such removal shall be the minimum necessary to accomplish the purposes stated herein. Where such removal is required in order to achieve public access to the shoreline, river, public recreation area, or trail systems, any path built shall not exceed the minimum width necessary to comply with Americans with Disabilities Act regulations. A boardwalk shall be provided in order to minimize the potential for erosion. The path shall not be located in such a manner as to require removal of Pond Cypress, Bald Cypress, champion, or heritage trees.

(3) Replacement of trees authorized for removal under this section shall be replaced on a 2:1 basis, meaning that two inches DBH shall be required for each one inch DBH of removed trees. Replacement trees shall be a minimum of four inches DBH.

(Ord. No. 2007-04, § 1, 10-22-2007)

Sec. 74-71. - Protection of canopy roads (reserved).

(Ord. No. 2007-04, § 1, 10-22-2007)

Secs. 74-72—74-100. - Reserved.

ARTICLE IV. - WATER EFFICIENT LANDSCAPING

Sec. 74-101. - 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. The word "building" includes the word "structure." The word "person" includes a firm, corporation, county, municipal corporation or natural person. The word "used" shall be deemed to include the words "arranged, designed, or intended to be used." The word "occupied" shall be deemed to include the words "arranged, designed, or intended to be occupied." Any word or term not interpreted or defined by this section shall be used with a common dictionary meaning or common or standard utilization.

Automatic controller means a mechanical or electronic timer, capable of operating valve stations to set the days and length of time of a water application.

Emitter means devices which are used to control the application of irrigation water. This term is primarily used to refer to the low flow rate devices used in micro-irrigation systems.

Ground cover means plants, other than turfgrass, normally reaching an average maximum height of not more than 24 inches at maturity.

Infiltration rate means the rate of water entry into the soil expressed as a depth of water per unit of time (inches per hour).

Irrigation system means a permanent artificial watering system designed to transport and distribute water to plants.

Landscaped area means the entire parcel less the building, footprint, driveways, nonirrigated portion of parking lots, landscapes such as decks and patios, and other nonporous areas. Water features are included in the calculation of the landscaped area. The landscaped area includes xeriscape as defined in F.S. § 373.185(1)(b).

Landscaping means any combination of living plants (such as grass, ground cover, shrubs, vines, hedges, or trees) and nonliving landscape material (such as rocks, pebbles, sand, mulch, walls, fences, or decorative paving materials).

Lot coverage includes all buildings and paved areas, including swimming pools and parking areas, and may not exceed 65 percent of the total site.

Micro-irrigation (low volume) means the frequent application of small quantities of water directly on or below the soil surface, usually as discrete drops, tiny streams, or miniature sprays through emitters placed along the water delivery pipes (laterals). Micro-irrigation encompasses a number of methods or concepts, including drip, subsurface, bubbler, and spray irrigation, previously referred to as trickle irrigation, low volume, or low flow irrigation.

Mulch means nonliving organic or synthetic material customarily used in landscape design to retard erosion and retain moisture.

Native vegetation. See *Vegetation, native*.

Naturally occurring existing plant communities. See *Vegetation, native*.

Open space includes total pervious surface, including drainage retention, landscaped areas and sod. Open space areas shall consist of a minimum of 35 percent of the total development site.

Pervious paving materials means a porous asphalt or concrete surface and a high void aggregate base which allows for rapid infiltration and temporary storage of rain on, or runoff delivered to, paved surfaces.

Rain sensor device means a low voltage electrical or mechanical component placed in the circuitry of an automatic lawn irrigation system which is designed to turn on a sprinkler controller when precipitation has reached a preset quantity.

Runoff means water which is not absorbed by the soil or landscape to which it is applied and flows from the area.

Silt texture means the classification of soil based on the percentage of sand, silt, and clay in the soil.

Site-specific plant means a selection of plant material that is particularly well suited to withstand the physical growing conditions that are normal for a specific location.

Turf and *turfgrass* mean continuous plant coverage consisting of grass species suited to growth in the city/county.

Valve means a device used to control the flow of water in the irrigation system.

Vegetation, native, means any plant species with a geographic distribution indigenous to all, or part, of the state.

Water use zone means a grouping of sprays, sprinklers, or micro-irrigation emitters so that they can be operated simultaneously by the control of one valve according to the water requirements of the plants used.

(Ord. No. 00-09, § 1(25-40), 4-24-2000)

Cross reference— Definitions generally, § 1-2.

Sec. 74-102. - Purpose and intent.

(a) The purpose of this article is to establish minimum standards for the development, installation, and maintenance of landscaped areas without inhibiting creative landscape design. This article requires specific water conservation measures, including the preservation of natural vegetation where applicable. Implementation will aid in improving environmental quality and the aesthetic appearance of public, commercial, industrial, and residential areas. It is the intent of this article, therefore, that the establishment of these minimum requirements and the encouragement of resourceful planning be incorporated to promote the public health, safety, and general welfare in the areas of water conservation and preservation.

(b) Creative site development concepts shall be used in order to promote water conservation. Water requirements may be reduced by providing for:

(1) The preservation of existing plant communities;

(2) The reestablishment of native plant communities;

(3) The use of site-specific plant materials;

(4) The use of pervious paving materials;

(5) The use of water efficiency in landscaping; and

(6) Other environmentally sensitive site development concepts.

(c) The land clearing/vegetation protection and preservation objectives are to:

(1) Reduce the use of irrigation water in open space areas by promoting the preservation of existing plant communities.

(2) Prevent the removal of existing vegetation in advance of the approval of land development plans.

(3) Prevent the removal of existing vegetation when no comparable vegetation plan has been prepared for the site.

(d) To achieve the objectives of this article, this article incorporates six basic principles of water efficient landscaping. These principles, listed in this article with detailed explanation, are included in this section for the purpose of giving guidance and direction for the administration and enforcement of the regulations contained in this article:

(1) Planning and design.

(2) Appropriate plant selection.

(3) Practical turf areas.

(4) Efficient irrigation.

(5) Use of mulches.

(6) Appropriate maintenance.

(Ord. No. 00-09, § 1(25-38), 4-24-2000)

Sec. 74-103. - Applicability.

(a) The provisions of this article shall apply to the development, redevelopment, rehabilitation, and maintenance of all property within present or future incorporated areas of the city which are subject to the provisions of chapter 98, pertaining to land development criteria, or appendix A to this Code,

pertaining to zoning. No permit shall be issued for new construction or site development unless the water efficiency actions included within the landscape plan comply with the provisions of this article, and no certificate of occupancy shall be issued until the requirements in this article are met.

(b) Specific application of the provisions shall include, but not be limited to:

(1) All new landscaping for public agency projects and private development projects, including but not limited to industrial, commercial, and recreation projects.

(2) Developer-installed landscaping at entrances into the common area as in single-family and multifamily projects.

(c) Exemptions from the provisions of this article could include one or more of the following as applicable:

(1) Bona fide agricultural activities.

(2) Landscaping for a single-family house or duplex.

(3) Electrical transmission and distribution lines.

(d) Conditional exemptions may be granted by the city for individual projects if the applicant can demonstrate acceptable reasons for the requested exemption.

(Ord. No. 00-09, § 1(25-39), 4-24-2000)

Sec. 74-104. - Administrative standards.

Whenever, in the course of administration and enforcement of this article, it is necessary and desirable to make any administrative decision, then, unless other standards are in this article, the decision shall be made so that the result will not be contrary to the spirit and purpose of this article or injurious to the surrounding neighborhood or the community at large.

(Ord. No. 00-09, § 1(25-37), 4-24-2000)

Sec. 74-105. - Enforcement.

Implementation and enforcement of this article shall consist of the following: The city code enforcement officer or designated inspectors shall be authorized and empowered to make inspections at reasonable hours of all land uses or activities regulated by this article, in order to determine if applicable provisions of this Code and regulations relating to submitted plans for water-efficient landscaping are being followed.

(Ord. No. 00-09, § 1(25-42), 4-24-2000)

Sec. 74-106. - Landscape plan.

When the construction upon or the development of a new site is such that site plan review by the building official is required prior to the issuance of a building permit, the provisions of this article shall be applied to such site. Any such construction or development activity requiring a site plan or landscape plan which requires local approval shall be designed to be consistent with the water-efficient landscaping standards established in this article and submitted in compliance with the principles and practices of Florida Friendly Yards. All site development plans that include parking shall provide landscape plans prepared, signed and sealed by a state landscape architect.

(Ord. No. 00-09, § 1(25-41), 4-24-2000; Ord. No. 2009-04, § 2, 3-23-2009)

Sec. 74-107. - General design standards.

Site plans shall identify all vegetated areas to be preserved. Installed trees and plant materials shall be grouped together into zones according to water use needs. The water use zones shall correlate to the water use zone designations of plants listed in the recommended plant guide of this article. Plants with similar cultural (soil, climate, sun, and light) requirements should be grouped together and irrigated based on their water requirements. The use zones shall be shown on the landscape plan. Newly installed plants may require regular, moderately applied watering for the first year to become established. Installed trees and vegetation shall be spaced and located to accommodate their mature size on the site.

(Ord. No. 00-09, § 1(25-41(A)), 4-24-2000)

Sec. 74-108. - Parking area screening and streetscape requirements.

Standards for parking area screening are as follows:

(1) *Location and design.* Buffers shall be provided on the outer perimeter of a lot or parcel, in accordance with the requirements and standards contained in this article. Buffers shall not be located on any portion of any existing, dedicated, or reserved public or private street or right-of-way. The buffer width is normally calculated parallel to the property line. Design variations are allowed, however, if the average width of the buffer conforms to the standard listed in this section. The average width shall be measured at the two end points of the buffer and two additional points which are each approximately equidistant from themselves and from the closest end point.

(2) *Diversity of tree species.* In order to reduce the monotony of site design, no more than one-third of the canopy and understory trees may be of the same species on a site where a total of 15 or more canopy trees are required.

(3) *Use of buffers.*

a. A buffer may be used for some forms of passive recreation. It may contain pedestrian, bike or equestrian trails, provided that:

1. No plant material is eliminated.
2. The total width of the buffer is maintained.
3. All other requirements of this Code are met.

b. In no event, however, shall the following uses be allowed in buffer areas:

1. Playfields.
2. Tennis courts.
3. Stables.
4. Swimming pools.

(4) *Buffers in B-4 zoning district.*

a. *Required width.* A minimum average width of 25 feet is required.

b. *Required landscaping.* Within each 100 linear feet or fraction thereof of boundary, the following plants shall be provided in accordance with the planting standards and requirements of this article: three canopy trees and five understory trees along the property boundaries, together with a minimum three-gallon shrubbery or hedge to provide a continuous visual screen along all streets.

(5) *Buffers in B-3 zoning district.*

a. *Required width.* A minimum average width of ten feet is required.

b. *Required landscaping.* Within each 100 linear feet or fraction thereof of boundary, the following plants shall be provided in accordance with the planting standards and requirements of this article: three canopy trees and five understory trees along the property boundaries, together with shrubs or hedge a minimum of two feet at planting to provide a continuous visual screen along all streets.

c. *Waiver of hedge requirements.* The city council may waive the requirement of a streetfront hedge if it is determined the hedge or shrubbery will interfere with the nature or character of the building or structure.

(6) *Landscaping and streetscape requirements for community redevelopment area.*

a. The streetscape shall be improved in the public right-of-way adjoining any new construction on a vacant or previously used site. The city shall have the right to require the type, quantity and size of streetscape improvements during the site plan review process. The criteria for the improvements shall be based on the city's downtown landscape program. All streetscape improvements throughout the community redevelopment area shall require a drip line irrigation system.

b. In lieu of subsection (6)a of this section, all new developments in the community redevelopment area district will be required to pay a fee to the city. The fee will be used throughout the community redevelopment area to create urban open space parks or areas or to upgrade the streetscape program along identified rights-of-way. The fee for each development will be based on one percent of the cost of the proposed development or redevelopment or a maximum of $5,000.00, whichever is lower.

(Ord. No. 00-09, § 1(25-41(B)), 4-24-2000)

Sec. 74-109. - Parking lot interior landscaping.

(a) Landscaping shall be provided for interior vehicular use areas to provide visual and climatic relief from broad expanses of pavement and to channelize and define pedestrian and vehicular traffic.

(b) For developments requiring less than 200 spaces, a minimum of ten percent of the gross square footage of the paved parking lot area and entranceway shall be devoted to landscaping. For development requiring 200 or more parking spaces, 15 percent of the gross square footage of the paved parking area and entranceway shall be devoted to landscaping.

(c) Interior landscaped areas shall be dispersed so as to define aisles and limit unbroken rows of parking to a maximum of 100 feet. A maximum of ten contiguous parking spaces in a row will be permitted, although adjustments may be made to save specimen trees. Rows shall begin and end with a landscaped area. Interior landscaped areas in parking lots shall be a minimum of ten feet by 20 feet or the equivalent of 200 square feet. One-half of each separate interior landscape area shall contain at a minimum one canopy tree and one-half may contain at a minimum one understory tree.

(d) All interior landscaping shall be protected from vehicular encroachment by curbing or wheel stops. Landscaped dividing strips, with or without walkways, shall be used to subdivide parking areas into parking bays with not more than 40 parking spaces, together with the required landscaped areas.

(e) Each planting area shall be landscaped with an approved ground cover, shrub or other approved landscaping material in addition to the required trees. Sod or turf shall not exceed 40 percent of the planting area; therefore, trees and shrubs should equal or exceed 60 percent of each planting area.

(Ord. No. 00-09, § 1(25-41(C)), 4-24-2000)

Sec. 74-110. - Approval of plans involving historic property.

If a structure requiring a restoration plan, within the designated historic district, proves a hardship due to the historic nature of the site, the restoration plats must be submitted to the historic preservation advisory board for a recommendation to the planning and zoning commission.

(Ord. No. 00-09, § 1(25-41(D)), 4-24-2000)

Sec. 74-111. - Approved tree and plant species list.

The approved tree and plant species list for purposes of this article is as follows:

(1) *Canopy trees.* Canopy trees are trees which normally grow to mature height of 40 feet or more. Canopy trees must have a minimum height of ten feet and a caliper of 2.5 inches measured four feet above the ground immediately upon planting or where required as replacement planting.

a. Live Oak (Quercus virginiana).
b. Laurel Oak (Quercus laurifolia).
c. Shumard Oak (Quercus shumardi).
d. Water Oak (Quercus nigra).
e. Red Maple (Acer rubrum).
f. American Holly (Ilex opaca).
g. Sweetgum (Liquidambar styraciflua).
h. Southern Magnolia (Magnolia grandiflora).
i. Sweet Bay Magnolia (virginiana).
j. Slash Pine (Pinus elliottii).
k. Sand Pine (Pinus clauss).
l. Longleaf Pine (Pinus palustris).
m. Loblolly Pine (Pinus taeda).
n. Bald Cypress (Taxodium distichum).

(2) *Understory trees.* Understory trees are trees which normally grow to a mature height of 15 to 35 feet. Understory trees must have a minimum height of six feet and a caliper of 1.5 inches measured at four feet above the ground at the time of planting.

a. Winged Elm (Ulmus atata).
b. Drake Elm.
c. Chinese Elm (Ulmus parfolia).
d. Yaupon Holly (Ilex vomitoria).
e. Weeping Bottlebrush (Callistemon viminalis).
f. Loquat (Erobotrya japonica).
g. Redbud (Cercia canadensis).
h. Dogwood (Cornus florida).
i. Jerusalem Thorn (Parkinsonia aculeata).
j. Tree of Gold (Tabeguia argentea).
k. Cherry Laurel (Prunus caroliniana).
l. Chicksaw Plum (Prunus angustifolia).
m. Southern Wax Myrtle (Myrica cerifera).

n. Crape Myrtle (Lagerstroemia indica).
o. Citrus trees (all kinds).
p. Walter Viburnum (Viburnum obovatum).
q. Devilwood (Osmanthus americanum).
r. Bumelia (Bumelia tenax).
s. Tar Flower (Befaria racemosa).
t. Fringe Tree (Chionanthus virginicus).

(3) *Shrubs.* Shrubs abutting roadways shall be a minimum of two feet in height immediately after planting and a minimum of three feet in height at maturity.

a. Sandankwa Viburnum (Viburnum suspensum).
b. Glossy Privet (Ligustrum lucidum).
c. Japanese Privet (Ligustrum japonicum).
d. Podocarpus (Podocarpus macrophylla).
e. Pittosporum (Pittosporum tobira).
f. Surinam Cherry (Eugenia uniflora).
g. Cherry Laurel (Prunus caroliniana).
h. Wax Myrtle (Myrica cevifera).
i. Native azaleas (Rhododendron viscosum).
j. Star Anise (Illicum parviflorum).
k. Eleagnus (Eleagnus pungens).
l. Florida Leucothoe (Agavista populifovia).
m. Walter Viburnum (Viburnum obovatum).
n. Sweet Viburnum (Viburnum odoratissium).
o. Devilwood.
p. Red Tip Photinia.

(Ord. No. 00-09, § 1(25-41(E)), 4-24-2000)

Sec. 74-112. - Planting requirements.

(a) *Soil and backfilling.* Backfill for plants and trees may be the native excavated soil provided that all air pockets have been eliminated. All plants and trees must be properly watered in to remove air pockets. Detection or air pockets by the building official will result in removal and replanting of new plants.

(b) *Staking.* All trees ten feet in height or greater, and Sable Palms 12 feet in height or greater, must be staked to state department of transportation staking specifications. An exception to this requirement is Sable Palms, not more than 18 feet in height, with 36-inch by 36-inch by 36-inch square root balls planted in round 36-inch holes. Sable Palms may not be plunged more than six inches.

(c) *Fertilizing and nutrition.* Upon installation of trees, plants and ground cover, a one-year timed-release fertilizer shall be applied at the average rate of material recommended on the container.

(Ord. No. 00-09, § 1(25-41(F)), 4-24-2000)

Sec. 74-113. - Plant selection.

Plant selection should be based on the plant's adaptability to the landscape area, desired effect, color, texture, and ultimate plant size. Plants shall be grouped in accordance with their respective water and maintenance needs. Plant material shall be selected that is best suited to withstand the soil and physical growing conditions which are found in the microclimate of each particular location on a site. Plant species that are freeze resistant and drought tolerant are preferred. Plants having similar water use shall be grouped together in distinct water use zones. Undisturbed native plant communities do not require additional landscaping and may be used as part of the minimum requirements.

(Ord. No. 00-09, § 1(25-41(F)), 4-24-2000)

Sec. 74-114. - Turf areas.

Turf grass areas shall be consolidated and limited to those areas on the site that receive pedestrian traffic, provide for recreation use, or provide soil erosion control such as on slopes or in swales, and where turf grass is used as a design unifier, or other similar practical use. Turf areas shall be identified on the landscape plan.

(Ord. No. 00-09, § 1(25-41(F)), 4-24-2000)

Sec. 74-115. - Irrigation.

(a) If a landscape requires regular watering or if an irrigation system is desired, the system should be well planned and managed. Water can be conserved through the use of a properly designed and managed irrigation system. Full coverage irrigation shall be provided on all pervious areas with the following exceptions:

  (1) All native plant communities that have been preserved undisturbed, providing they are not abutting a street or entranceway.

  (2) All other pervious areas where comprehensive xeriscaping principles are employed, except for those landscaped areas facing any street. Buffers and entranceways must be irrigated. The irrigation system must be on a timer and may be 100 percent coverage. Quality and workmanship are to meet or exceed industry standards. Irrigation plans shall be submitted at the time of building.

(b) Moisture sensor and/or rain shut-off switch equipment shall be required on automatic irrigation systems to avoid irrigation during periods of sufficient rainfall. Such equipment shall consist of an automatic mechanical or electronic sensing device or switch which will override the irrigation cycle of the sprinkler system when adequate rainfall has occurred.

(Ord. No. 00-09, § 1(25-41(F)), 4-24-2000)

Sec. 74-116. - Mulches.

(a) Mulches applied and maintained at appropriate depths in planting beds will assist soils in retaining moisture, reducing weed growth, and preventing erosion. Mulch can also be used in places where conditions are not adequate for, or conducive to, growing quality turf or ground covers. Mulches are typically wood bark ships, wood grindings, pine straw, nut shells, small gravel, and shredded landscape clippings.

(b) A layer of organic mulch to a minimum depth of three inches shall be specified on the landscape plans in plant beds and around individual trees in turf grass area. Mulch shall not be required in annual beds. Mulch shall not come into contact with woody plant or tree trunks.

(Ord. No. 00-09, § 1(25-41(F)), 4-24-2000)

Sec. 74-117. - Maintenance of landscaping; replacement of defective plants.

(a) All landscaping shall be maintained in such a manner as to perpetually sustain the quality of the original landscaping to Florida No. 1 quality level. All trees, plants, ground covers and sod falling below Florida No. 1 quality shall be immediately replaced. If 25 percent or more of the trees, plants, ground covers or sod, or the landscaped areas cumulatively, are allowed to fall below Florida No. 1 standards, then the entire landscape shall be removed and a new landscape shall be installed to the original landscape specifications.

(b) All areas shall be kept weed free and continually maintained for healthy, viable plant and tree life. All plants or trees not in Florida No. 1 condition shall be immediately removed from the job site. Inspection and approval shall be required from the building official prior to a certificate of occupancy or occupational license being issued. All defects shall be corrected within five days and prior to issuance of a certificate of occupancy or occupational license.

(Ord. No. 00-09, § 1(25-41(F)), 4-24-2000)

Secs. 74-118—74-130. - Reserved.

ARTICLE V. - FLORIDA FRIENDLY FERTILIZER USE ON URBAN LANDSCAPES

Sec. 74-131. - Short title.

The ordinance codified in this article shall be known and may be referred to as the City of Dunnellon Ordinance for Florida Friendly Fertilizer Use on Urban Landscapes.

(Ord. No. 2009-06, § 1, 4-27-2009)

Sec. 74-132. - Authority.

The ordinance codified in this article is adopted by City of Dunnellon, Florida under its home rule powers, its police powers to protect the public health, safety, and welfare, and under powers pursuant to the authority granted by F.S. § 166.048, in order to implement and enforce the standards, rules, and regulations set forth herein.

(Ord. No. 2009-09, § 2, 4-27-2009)

Sec. 74-133. - Findings.

As a result of impairment to the county's surface waters caused by excessive nutrients under the Florida Impaired Waters Rule, or, as a result of increasing levels of nitrogen in the surface and/or ground water within the aquifers or springs within the boundaries of Marion County, the city council has determined that the use of fertilizers on lands within Marion County create a particularly high risk to contributing to adverse effects on surface and/or ground water. Accordingly, the board of county commissioners finds that more restrictive measures than are otherwise required by the most recent edition of the "*Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002,"* shall be required. The city council of the city concurs with the findings of the county board of county commissioners.

(Ord. No. 2009-09, § 3, 4-27-2009)

Sec. 74-134. - Purpose and intent.

This article regulates the proper use of fertilizers by any applicator; requires proper training of commercial and institutional fertilizer applicators; establishes training and licensing requirements; specifies allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones, and exemptions. The article requires the use of best management practices which provide specific

management guidelines to minimize negative secondary and cumulative environmental effects associated with the misuse of fertilizers. These secondary and cumulative effects have been observed in and on City of Dunnellon's natural and constructed stormwater and drainage conveyances, rivers, creeks, canals, springs, lakes, estuaries and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of city residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater and drainage conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, will help improve and maintain water and habitat quality.

(Ord. No. 2009-09, § 4, 4-27-2009)

Sec. 74-135. - Definitions.

For this article, the following terms shall have the meanings set forth in this section unless the context clearly indicates otherwise.

"Administrator" means the city manager or an administrative official of the City of Dunnellon designated by the city manager to administer and enforce the provisions of this article.

"Application" or *"Apply"* means the actual physical deposit of fertilizer to turf or landscape plants.

"Applicator" means any person who applies fertilizer on turf and/or landscape plants in the City of Dunnellon, Florida.

"Governing board" means the city council of the City of Dunnellon, Florida. *"Board"* means Marion County Commission.

"Best management practices" means turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

"Code Enforcement Officer, Official, or Inspector" means any designated employee or agent of Marion County and/or the City of Dunnellon whose duty it is to enforce codes and ordinances enacted by City of Dunnellon and/or Marion County.

"Commercial fertilizer applicator" means any person who applies fertilizer on turf and/or landscape plants in the City of Dunnellon in exchange for money, goods, services or other valuable consideration.

"Fertilize", "fertilizing", or *"fertilization"* means the act of applying fertilizer to turf, specialized turf, or landscape plant.

"Fertilizer" means any substance or mixture of substances, except pesticide/fertilizer mixtures such as "weed and feed" products, that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.

"Guaranteed analysis" means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.

"Institutional applicator" means any person, other than a non-commercial or commercial applicator (unless such definitions also apply under the circumstances), that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional applicators shall include, but shall not be limited to, owners and managers of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.

"Landscape plant" means any native or exotic tree, shrub, or groundcover (excluding turf).

"Low maintenance zone" means an area a minimum of six feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.

"Pasture" means land used for livestock grazing that is managed to provide feed value.

"Person" means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.

"City of Dunnellon approved best management practices training program" means a training program approved by the city administrator that includes at a minimum, the most current version of the Florida Department of Environmental Protection's "Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002," as revised and any more stringent requirements set forth in this article.

"Slow release," "controlled release," "timed release," "slowly available," or *"water insoluble nitrogen"* means nitrogen in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant longer than a reference rapid or quick release product.

"Specialized Turf Manager" means a person responsible for fertilizing or directing the fertilization of a golf course or athletic field.

"Turf," "Sod," or *"Lawn"* means a piece of grass-covered soil held together by the roots of the grass.

(Ord. No. 2009-09, § 5, 4-27-2009)

Sec. 74-136. - Applicability.

This article shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the corporate limits of the city, unless such applicator is specifically exempted by the terms of this article from the regulatory provisions of this article. This article shall be prospective only, and shall not impair any existing contracts.

(Ord. No. 2009-09, § 6, 4-27-2009)

Sec. 74-137. - Fertilizer content and application rates.

(a) Fertilizers applied to turf and/or landscape plants within the city shall be applied in accordance with directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements for Urban Turf Fertilizers.*

(b) Fertilizers should be applied to turf and/or landscape plants at the lowest rate necessary. Nitrogen shall not be applied at an application rate greater than 0.7 lbs of readily available nitrogen per 1,000 square feet at any one time based on the soluble fraction of formulated fertilizer, with no more than

one pound total nitrogen per 1,000 square feet applied at any one time, and not to exceed the nitrogen recommendations set forth below on an annual basis:

Grass Species	Maximum N Application Rate (Lbs/1,000 ft.^{2}/ Year)
Bahiagrass:	3
Bermudagrass:	4
Centipedegrass:	2
St. Augustinegrass:	3
Zoysiagrass:	4

(c) For new turf or landscape plants that are being installed or established, a one-time use of starter fertilizer as described in Rule 5E-1.003 shall be allowed at an application rate not to exceed 1.0 pounds of phosphorus (P_2O_5) per 1,000 square feet.

(d) No phosphorus fertilizer shall be applied to existing turf and/or landscape plants within city at application rates which exceed 0.25 pounds phosphorus per 1,000 square feet per application nor exceed 0.50 pounds phosphorus per 1,000 square feet per year.

(e) Nitrogen or phosphorus fertilizer may not be applied to turf or landscape plants except as provided above unless a soil or tissue deficiency has been verified by an approved test by UF/IFAS Extension Soil Testing Laboratory or other accredited laboratory.

(Ord. No. 2009-09, § 7, 4-27-2009)

Sec. 74-138. - Impervious surfaces.

Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces. Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable. Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or any other legal site, or returned to the original or other appropriate container. In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

(Ord. No. 2009-09, § 8, 4-27-2009)

Sec. 74-139. - Fertilizer free zones.

(a) Fertilizer shall not be applied to turf grass within the following areas:

(1) Within 75 feet of the ordinary high water line of a water body for which an environmentally sensitive overlay zone (ESOZ) has been established by Marion County.

(2) 15 feet from the top of the bank of any drainage retention area, canal, wetland or other water body.

(3) 100 feet of a sinkhole or other karst feature that has an opening at the surface.

(4) Within 75 feet of the ordinary high water line of Silver Springs, Silver Run, Rainbow Springs or Rainbow River.

(b) In the event an area is included in one or more of the areas described in subsection (a) above, the more restrictive provision (i.e., the larger distance) shall apply.

(c) No fertilizer shall be applied to any non-turf area within 30 feet of any pond, stream, water course, lake, canal, or wetland as defined in Chapter 62-340, Florida Administrative Code.

(d) Notwithstanding the foregoing provisions, newly planted or renovated turf or landscaping may be fertilized for the first 60 days after being planted or renovated, provided fertilizer application complies with *Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002,* as amended.

(Ord. No. 2009-09, § 9, 4-27-2009)

Sec. 74-140. - Low maintenance zones.

A voluntary six-foot low maintenance zone is strongly recommended, but not mandated, from any pond, stream, water course, lake, wetland or from the top of a seawall. A swale/berm system is recommended for installation at the landward edge of this low maintenance zone to capture and filter runoff. If more stringent county or city regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. No mowed or cut vegetative material shall be deposited or left remaining in this zone or deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products in this zone.

(Ord. No. 2009-09, § 10, 4-27-2009)

Sec. 74-141. - Management of grass clippings and vegetative matter.

Grass clippings and/or other vegetative debris shall not be piled or disposed of in a stormwater system, water body, or wetland. Lawn clippings discharged onto a road or curb shall be swept, blown, or otherwise removed and disposed of in a manner consistent with this code.

(Ord. No. 2009-09, § 11, 4-27-2009)

Sec. 74-142. - Exemptions.

The provisions set forth above in this article shall not apply to:

(1) *Golf courses and athletic fields.* For all golf courses, the provisions of the Florida Department of Environmental Protection (FDEP) document, "*BMPs for the Enhancement of Environmental Quality on Florida Golf Courses, January 2007",* as amended, shall be followed when applying Fertilizer to golf courses. All other specialized turf managers shall use their best professional judgment to apply the concepts and principles embodied in the "*Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002",* as amended, and the instructions in *Rule 5E-1.003(2), Florida Administrative Code,* while maintaining the health and function of their turf and landscape plants.

(2) Bona fide farm operations as defined in the Florida Right to Farm Act, F.S. 823.14, provided that fertilizers are applied in accordance with the appropriate Best Management Practices Manual adopted by the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy for the crop in question.

(3)

Other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock provided that fertilizers are applied in accordance with the appropriate Best Management Practices Manual adopted by the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy for the crop in question.

(Ord. No. 2009-09, § 12, 4-27-2009)

Sec. 74-143. - Training for fertilizer applicators.

(a) All persons applying fertilizer as part of landscape maintenance services for hire shall abide by and be trained in the Florida Yards and Neighborhoods Environmental Landscape Management Course and the *"Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002"*, as amended, by January 1, 2010. New employees who will apply fertilizer shall obtain training by the date of the next available approved training course. Persons who apply fertilizer to lawns or specialized turf for hire will obtain a certificate of completion upon successful completion of the course. Certification is good for four years and must be taken again at the conclusion of the fourth year from issuance. As an alternative to taking such training course, a person may meet the educational requirement by providing proof that a minimum of four continuing education credits (CEU's) were received from an approved training organization in principles of Florida Friendly Landscape Management within the previous 24 months. The county shall maintain a list of approved training organizations.

(b) No person for hire shall apply fertilizer to any lawn or specialized turf unless such person is registered with the county as having met compliance with the training requirements under subsection (a) above. Registrants will pay a registration management fee and will receive an authorization certificate, registration cards for individual employees, vehicle decals, and a copy of the *"Florida Green Industries Best Management Practices for the Protection of Water Resources in Florida, June 2002"*, as amended. Renewal registration shall be required biennially, prior to September 30 in each odd calendar year thereafter. It is a violation of this section for any commercial fertilizer applicator to fertilize any lawn without having been first duly registered, or for any employee of a commercial fertilizer applicator to fertilize any lawn after the date of the next available training course following the date of hire, without having a certificate of completion from such training. A vehicle decal, when available from the county, shall be affixed and maintained to the exterior of all vehicles and trailers used in connection with the application of fertilizer within the unincorporated area of the county.

(c) Commercial fertilizer applicators shall maintain adequate records that demonstrate compliance with the fertilization limits in this section. Invoices and account histories may be required for inspection by the county upon request and shall be made available at the place of business during normal working hours.

(d) Private homeowners are required to follow the recommendations of the University of Florida IFAS *Florida Yards and Neighborhoods* program when applying fertilizers, except to the extent this article provides more stringent requirements.

(Ord. No. 2009-09, § 13, 4-27-2009)

Sec. 74-144. - Enforcement.

Every police officer and code enforcement officer shall, in connection with all other duties imposed by law, be authorized to enforce the provisions of this article. In addition, the city manager may also delegate enforcement responsibility for this article to agencies and departments of the city, in accordance with state and local law.

(Ord. No. 2009-09, § 14, 4-27-2009)

Sec. 74-145. - Penalties.

Violation of any provision of this article shall be subject to the following penalties:

(1) First violation: Written notification and education.

(2) Second violation: Written notification and education.

(3) Third violation: $50.00.

(4) Forth and subsequent violation(s): $100.00.

Each day in violation of this article within a 365-day period, beginning the date of the first violation, shall constitute a separate offense. The city may take any other appropriate legal action, including but not limited to emergency injunctive action, to enforce the provisions of this article.

(Ord. No. 2009-09, § 15, 4-27-2009)

MEMORANDUM

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+++

To: Andrew Hand, City Attorney
From: Virginia Cassady, Esq.
Subject: Proposed tree ordinance – Dunnellon – responses to citizen's questions/comments
Date: August 4, 2016

Following are my responses to a citizen's questions and comments about the May 2016 draft tree ordinance and your May 26, 2016 Memorandum regarding that ordinance. The citizen's versions of these two documents with his questions and comments are attached. For convenience, I have inserted numbers beside each of his comment/question which correspond to the numbers below in my responses.

Comments to your May 26, 2016 Memorandum.

1. There are no missing words. See the Memorandum in its original form contained in the packet for the June 28, 2016 Tree Board meeting. Although that meeting was cancelled, the packet is still available on the City's website, together with the May 2016 version of the proposed ordinance.

2. As your Memo says, exempting residents of existing single family homes and duplexes is a major policy shift. Beginning in April 2014, Council members expressed displeasure and frustration with the existing code regulating tree removal. Most of these discussions occurred in Council meetings in which applications for tree removal permits were before Council. At the request of Council and the former city manager, the city attorney's office began drafting a new tree ordinance in May 2014. Over a period of many months, I modified the contents of the draft ordinance as more discussions occurred at Council meetings and the city attorney heard what policies would be acceptable to City Council. By January 2015, when the first draft was finalized, I included this exemption policy after hearing discussions among Council members.[1] This exemption was not a recommendation of the city attorney; it was included as a direct result of hearing from Council. See note 3 below.

3. The reason for the permitting exemption of single family homes is not because of homestead exemption. The explanation of the Memo was to underscore comments made at Council meetings that the majority of existing single family owners who currently must seek

[1] A number of local governments exempt existing single family resident. I recall reviewing about five codes of local governments, but, without doing further research of our files, I cannot say which local governments' codes were reviewed.

permits to remove trees reside in smaller homes on smaller lots. The expression of Council in 2014 was that it is a burden to residents.

4. The citizen's comment is that the tree ordinance needs to be better publicized so they know the requirements for tree removal. Education of the public is always beneficial. However, many emails to and from City staff since early May, 2014,[2] show that the Tree Board and staff were not enforcing or following portions of the tree ordinance.[3]

5. The downside of requiring the Tree Board to review and make recommendations on tree removal for site plans is that it requires a separate hearing, in addition to coming before the Planning Commission and Council. The benefit is that, since the City has no Development Review Committee, arborist, or planner to provide expertise on the requirements of the tree ordinance, and since the Planning Commission does not normally apply the tree ordinance, the Tree Board's familiarity with the tree ordinance would help in the review of the site plan as it pertains to trees. Council members expressed their opinions that the Tree Board was more familiar with the tree removal process. In an attempt to provide flexibility and avoid delays because of the Tree Board's review, proposed Sec. 74-36(e) allows the Tree Board to review the site plan either prior to or after the Planning Commission's public hearing.

Comments to May 2016 draft ordinance.

Background: I provide the following background as a general response to some of the citizen's comments.[4] Beginning in 2014, I was asked by staff on many occasions to assist in interpreting the tree ordinance for removal permits which were administratively approved or were to go before Council. Sec. 74-63 was especially difficult to interpret and enforce.

After beginning work on revising the tree ordinance when Council directed that the tree ordinance be amended, the City sent this office the Tree Board's recommended version of the ordinance. Not knowing that the Tree Board had produced a recommended rewrite, I started from scratch in the draft process to incorporate the changes which the Tree Board wanted. The revision with all the legislative underscoring was messy and unreadable.

You were initially involved in the rewrite and wrote to me on May 27, 2014: "….I think it would be a good idea to strike Dunnellon's current ordinance [Art. III, Ch. 74) ENTIRELY and then adopt a modified version …. that works for Dunnellon ….. Total overhaul. End result = better and more coherent ordinance, lower bill for the City." I forwarded your email to Eddie Esch and said, "I am very much in agreement with Andrew that it would be less costly to start from scratch with Dunnellon's tree ordinance….[the current ordinance] is not logically ordered and is not written well."

---

[2] In our file, we have two inches of emails regarding tree removal applications, public hearings on tree removal applications, and the tree ordinance. I will be happy to make these available to the Tree Board or Council, although they are all part of the City's public records.

[3] Some examples: The code requires that if certain trees are removed, replacement trees must be planted. Also, the Tree Board was not imposing the required penalties for removal of trees without permits. Notice requirements of the code were not being followed.

[4] The emails going back to May, 2014 confirm the information contained herein.

The May 2016 proposed ordinance therefore does not show what changes were made to the current codified tree ordinance. As we both know from drafting hundreds of ordinances, when legislative underscoring is confusing, interrupts the flow of the ordinance, and could result errors being made when the ordinance is codified by Municipal Code Corporation, the current code provisions should be deleted in their entireties and completely rewritten. This is especially true where, as here, the current ordinance needed to be re-ordered to make logical sense.

Below are Notes corresponding to the numbers of the citizen's comments:

1. The reference to "clean version" is a carryover from the January 2015 version. It communicated that there are no track-changes and that Art. III, Chapter 74 contained no legislative underscoring.

1a. The "Contents" was included in the draft for the convenience of the reader so show the sequence of sections of the proposed Article III rewrite. You will find this sequence is similar to other tree codes.

2. I am not sure what the question marks communicate. See above.

3. The only portion of the ordinance with underlined words and strikethrough or **** is Sec. 2-236 because the revisions to this Section are not so comprehensive that it is required to be deleted and rewritten.

4. When drafting legislation, it is very common to insert the WHEREAS clauses (legislative findings and intent) at the end of the drafting process. In this case, we expected that there may be revisions and changes made by the Tree Board and Council during workshops which would express legislative policies and intent. Thus, the final version prior to first reading would include the WHEREAS clauses.

5. Section 2 does not refer to the original Ordinance. Ordinances are typically divided into Sections. Section 2 shows changes to Sec. 2-236 of Division 4, "Tree Board," Chapter 2 of the Code of Ordinances.

6. There is no discontinuity. See Note 5. When drafting amendments to existing legislation, we typically cite to the sections of the codified version of ordinances rather than citing to ordinances themselves. Section 3 explains the purpose of Section 3.

7. If I had retained the legislative underscoring, it would extremely difficult, perhaps impossible, to read and make any sense of what was being adopted and was being changed. See last paragraph above under *Background.*

8. See Note 2 under Comments to your May 26, 2016 Memorandum above.

9. The underlined subsections (10) – (12) and Sec. 74-63 are in the May 2016 version but are not underlined therein because there is no legislative underscoring when there is a complete rewrite of a Chapter, Section of the Code, or Article.

10. The stricken-through subsection does not appear in the May 2016 version because there is no legislative underscoring when there is a complete rewrite of a Chapter, Section of the Code, or Article.

10.a. See Note 10.

11. The underlining of Sec. 74-64 has been done by the citizen. Sec. 74-64 of the May 2016 version is not underlined for the reasons set forth in Note 9 above.

12. Subsection (b) does not repeat subsection (a) above it. Subsection (a) tells *what* the application for a stand-alone permit must include. Subsection (b) tells *how* stand-alone applications will be processed.

13. Existing 74-65 has not been deleted in its entirety. Under the May 2016 version, it is renumbered to Sec. 74-67.

14. Planting standards in existing Sec. 74-65 were removed in the Tree Board's recommended draft, and that is the reason why they were removed in the May 2016 version (under newly numbered 74-68).

15. Sec. 74-68 regarding champion and heritage trees has not been deleted in its entirety insofar as its contents are concerned. The definition for heritage trees has been moved to the definition section, Sec. 74-61. Champion trees are eliminated because their inclusion is meaningless. Champion trees enjoy distinction because they are on a registry, similar to historic sites. I was advised by the City that there are no designated champion trees in the City.[5] Following are changes in the May 2016 version:

- Under the proposed May 2016 version, the Tree Board hears applications for removal of heritage trees and, if the application is denied, the applicant can appeal to City Council. This was changed because Council thought the Tree Board should be the final Board to hear most applications which are currently coming for Council for decision-making because the Tree Board has the expertise.
- Sec. 74-66(e) of the May 2016 version regarding heritage trees is new. These trees are protected when a parcel is subdivided: "Subdivision plats shall shift lot lines to minimize placing heritage trees in the buildable area of the lot if practicable."

Under Sec. 74-62(b) and the definition of heritage tree under Sec. 74-61, existing single family residences must apply for a permit to remove heritage trees even though they are exempt from obtaining permits for removal of other protected trees (with the exception of the river protection corridor).

[5] Your May 26, 2016, Memo explains this.

16. Sec. 74-68 is in the May 2016 version but is not underlined because there is no legislative underscoring when there is a complete rewrite of a Chapter, Section of the Code, or Article.

17. Sec. 74-66(f) contains tree replacement standards when an applicant obtains a permit to remove a tree. The replacement standards apply whether a stand alone permit or a permit associated with a site plan or plat approval is sought.

18. Secs. 74-71 through 74-74 are in the May 2016 version but are not underlined because there is no legislative underscoring when there is a complete rewrite of a Chapter, Section of the Code, or Article.

Conclusion.

Please let me know if you have any questions or need clarification.

Comments on backup material for Dunnellon Tree Board meeting on 6-28-16

1 The so called "clean version" do not clearly define what documents are being referred to. I did my best to interpret them.

Red Bold Text are my comments.
Green Underlined Text are new insertion to 2007 ordinance (I think)
Yellow ~~Strikethrough~~ are deletions.

This review need more effort but I ran out of time.

Paul Marraffino 6-28-16

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DRAFT - TREE ORDINANCE Clean version – May 2016

1a **This list seems to refer to the muni code paragraphs caused by the Tree Protection Ordinance**

CONTENTS

Sec. No.	**Subject**
74-61	Definitions
74-62	Permit applicability and exemptions
74-63	Tree removal application requirements for site plans and plats; procedures
74-64	Stand alone permit requirements not associated with site plan or plat approval; procedures
74-65	Criteria for removal or relocation of a protected tree
74-66	Standards for preserving, relocating, and replacing trees
74-67	Credit for preservation of existing trees
74-68	Permissible and prohibited trees
74-69	Standards for protecting trees during development and construction activities
74-70	Maintenance of replaced or relocated trees after site plan or plat approval
74-71	Tree restoration trust fund
74-72	Trees in right of way
74-73	Appeals
74-74	Violations and enforcement
74-75	Standards for tree removal in the river corridor protection area

2 **DRAFT I. - TREE ORDINANCE Clean version – May 2016** **???**

LESIGLATIVE UNDERSCORING: Underlined words constitute additions to the City of Dunnellon City Code, strikethrough constitutes deletions from the original, and asterisks (***) indicate an omission from the existing text which is intended to remain unchanged.

3 **I did not find underlined words, strikethroughs or *** in the backup material for the meeting.**

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Dunnellon, Florida, as follows:

SECTION 1. The above recitals (Whereas clauses) are hereby adopted as legislative findings, purpose and intent of the City Council.

4 **Where are the (Whereas clauses) that are referred to? What does Section 1 refer to? Could it refer to the original Ordinance 2007-22 (see attached)**

SECTION 2. Section 2-236 of Division 4, "Tree Board," Chapter 2, is hereby amended as follows:

Sec. 2-236. - Duties and responsibilities.

5 **What document does Section 2 refer to? Could it refer to the original Ordinance 2007-22 (see**

attached)

(a) The board shall review all applications for tree removal permits associated with site plans and preliminary subdivision plats and make recommendation to approve, deny, or approve such permits with conditions to the City Council.

(b) The board shall review and make decisions regarding all applications for stand alone tree removal permits upon commercial non-exempt property of greater than one acre or more in size and make recommendation to approve, deny, or approve such permits with conditions to the City Council.

(c) The board shall review and make decisions regarding and make recommendation on all applications for tree removal permits in the river corridor protection areas as set forth in Chapter 78 and for removal of heritage trees as defined in Chapter 74 of this Code in all residential and nonresidential zoning districts. upon waterfront lands, wetlands, or conservation lands.

(d) The board shall review all applications for tree removal for harvesting trees from a bona fide agricultural land pursuant to F.S. 193.61 and make recommendation to approve, deny, or approve with conditions to the City Council. When monies are paid into the City's Tree Restoration Fund in lieu of replacing or relocating trees by applicants under Chapter 74, the City will seek approval of the board when such monies are to be used to purchase and plant trees on City property.

(e) The board shall hear all appeals from administrative interpretations of the city manager or designee pertaining to tree removal and replacement under Chapter 74, of this Code.

(e f) The board shall develop a written plan for the care, preservation, pruning, planting, replanting, and removal of trees on property owned by the city.

(f g) The board shall develop recommendations to the City Council related to establishing canopy roads, arbor streets, naturescape, Tree City USA, and related programs.

(g h) Any other duties which the City Council may assign to the Tree Board.

6 **Here we have a discontinuity in the backup document where the author appears to change to comments in the Muni Code developed under Ordinance 2007-04 (see attached)**

SECTION 3. Article III, "Trees," of Chapter 74 of the Code of Ordinances is vacated and deleted, and a new Article III, "Trees," of Chapter 74 shall read as follows. For ease in reading, legislative underscoring (underlining) is not used in this Section. **(By not underscoring we do not know what changes are being proposed.)**

7

Sec. 74-61. 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:

After the fact means to remove a tree without obtaining a permit.
Caliper. Measurement of tree twelve (12) inches from soil level.
Certified arborist a person who is currently credentialed through the International Society of Arborculture.
Dead tree means a tree that is still standing but no longer grows or produces leaves, or is damaged from lightning, fire, old age, wind, or other acts of God.

Diameter at breast height (DBH) means the tree trunk diameter as measured at fifty-four (54) inches above the natural grade at the base of the tree.
Diseased tree means a protected tree determined by the City Manager or designee to be damaged from disease or insects and dangerous to the health or safety of other protected trees, structures, objects, or persons. If the City Manager or designee is unable to determine the health of the tree, then a forestry consultant, certified

arborist, or other professionally qualified person shall be required to make the determination.
Drip line means the ground area surrounding the trunk of a tree that is described by the vertical plane enclosing the outermost branches of the tree.

Forestry consultant means a professional certified by the Society of American Forestors or other nationally recognized organizations granting certification in forestry.

Heritage trees are trees defined by resolution of the City Council as native trees, twenty-four (24) inches or more DBH, except for water oak, laurel oak, sweet gum, and loblolly pine, which must be thirty (30) inches or more to be defined as a heritage tree. Trees which would otherwise be defined as heritage trees which are diseased or dead shall not be considered heritage trees. Removal of heritage trees is allowed only upon application of a tree removal permit in all residential and nonresidential zoning districts.

New development means all property developed in all zoning districts after (effective date of this ordinance).

Prohibited tree means a tree identified as prohibited in Section 74-68.

Protected tree means any tree, other than a prohibited tree that is four (4) inches or more DBH.

Pruning means the cutting or removing of any part of the branching structure of a tree in either the crown, trunk, or root areas.

Stand alone permit means a permit to remove a tree or trees, which removal is not associated with any site plan or plat approval. Stand alone permits are required for all vacant single-family or duplex residential lots for which a permit to build a residence is being sought.

Silviculture means the art, science, and practice of managing trees and the forest on bona fide agricultural land. Bona fide agricultural land has been classified as agricultural pursuant to §193.461, *Florida Statutes.*

Tree means any self-supporting woody plant which has at least one main trunk and normally grows to a minimum overall height of fifteen (15) feet. Palm trees are included in the definition of tree.

Tree removal means the felling and/or topping of trees, pruning of more than 30 percent of the crown of any tree, or otherwise causing damage to the branches, trunk, or root system of any tree to shorten its life. Determination of such damage can be provided by a forestry consultant, certified arborist, or other professionally qualified person.

Tree restoration fee means a fee established resolution of City Council, to be paid in lieu of tree replacement.

Understory means any plant growing beneath the forest canopy including shrubs, seedlings, or saplings.

Wetlands mean those areas that are saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Wetlands are identified by the uniform methodology adopted in §373.421, *Florida Statutes.*

Sec. 74-62. Permit applicability and exemptions.

(a) Except as provided below, a permit is required to clear land or otherwise remove any protected tree (as defined in this article) on property within the City.

(b) Permitting exemptions.

(1) Lots with existing single-family or duplex residential dwellings and the developed portion (yard) of any property over two acres in actual single-family residential use are exempt from the requirements of this Section except that residents of residential properties shall be required to obtain tree permits for the removal

of living heritage trees and trees within the river corridor protection areas.

B

This exemption would mean that every residence owner in the City of Dunnellon could cut down all their trees without getting a permit or the City having any recourse to say no. This change would completely destroy the meaning of Tree City and the respect for the value of trees that it represents.

Example: A parcel contains a single family residence on 2.1 acres. The developed portion, the yard of the parcel, is only 1 acre. Any trees removed from the yard (1 acre) are exempt. Trees removed from the undeveloped portion of 1.1 acres are not exempt, and the owner must obtain tree removal permits. This example does not apply to the exceptions.

(2) Applications for permits for interior construction, renovation, or remodeling shall not require proof of compliance with this article. If the interior construction, renovation, or remodeling increases the footprint of the building such that removal of trees is required, a tree permit is required.

(3) Licensed plant or tree nurseries or botanical gardens which contain plants and trees that are planted and grown for sale to the general public in the ordinary course of the licensed business or for public purposes are exempt from the provisions of this article.

(4) The City of Dunnellon or its authorized agents are exempt from the provisions of this article for the purpose of removal of a tree on City-owned property that is dead or a hazard to the public.

(5) Utility companies, the Florida Department of Transportation, Marion County, or their authorized agents are exempt from the provisions of this article for the purpose of removal of a tree that is a substantial hazard to overhead wires or for trimming that is necessary for establishment or maintenance of utility service. All such agencies shall provide notification to the City of Dunnellon prior to engaging in tree removal or maintenance, except in the case of a declared emergency. However, utility companies other than electrical utilities, the Florida Department of Transportation, Marion County, or their authorized agents are required to seek a permit for removal of a heritage tree that is a substantial hazard to overhead lines or for removal of trees identified in Section 74-75.

(6) The removal of understory vegetation and the removal of trees less than four (4) inches DBH shall not require a tree removal permit, except as set forth in Section 74-75.

(7) The removal of a prohibited tree shall not require a tree removal permit.

(8) The removal of dead or diseased trees shall not require a fee for a removal permit, provided that the property owner notifies the City in advance of such removal and provides evidence of the condition of the tree. Acceptable evidence shall be a photographs or a written assessment of condition provided by a forestry consultant, certified arborist, or other professionally qualified person. Notification shall be on a form provided by the City and shall not require any fee. However, dead or diseased trees on vacant lots within the river protection corridor shall not be removed without a permit under the provisions of Section 74-75 of this article.

(9) The provisions of this article shall not apply to activities directly resulting from, as well as occurring, during a declared federal, state, or local emergency.

a

From here on in this section is new and should be highlighted.

(10) Emergency removal: Where a tree presents a clear and immediate danger to a structure or person, a tree removal permit may be obtained after its removal; however photographic evidence shall be presented with the after the fact application to substantiate the immediate danger asserted. Emergency after the fact permits shall be processed in accordance with this article. Emergency permits that are determined by the City Manager or Tree Board to have not posed a clear and immediate danger are subject to penalties under this article. Emergency removal applications determined by the City Manager or City Tree Board to have posed a clear and immediate danger are not subject to penalties.

(11) Removal of a non-heritage tree located within ten feet (10') from an existing principal structure or pavement shall not require a tree removal permit.

(12) All trees planted specifically for silvicultural purposes shall be exempt from the provisions of this article provided the property owner can provide documentation to the City evidencing that:

a. The property is registered as a silvicultural site with the division of forestry; and

b. Trees of typical harvestable size and type exist on the property which are capable of being harvested for income and that the property owner has, or intends to, generate income from the harvested trees.

Sec. 74-63. Tree removal application requirements for site plans and plats; procedures.

(a) Every reasonable effort should be made to minimize tree removal. Tree preservation shall be an integral part of the site planning or subdivision design process. Tree preservation shall be conceived in a total pattern throughout the site, integrating the various elements of site design, preserving and enhancing the particular identity of the site.

(b) The preservation of existing trees and vegetation for use as perimeter land use buffers shall be considered during the site design process and implemented to preserve habitat while lowering the cost of development.

(c) A tree survey, grading plan, tree replacement plan if any, and an aerial map shall be submitted with any application for a a site plan or a preliminary subdivision plat. Signing the application form shall grant the City access to the site for inspection during consideration of the permit application.

(1) A tree survey shall be prepared at the same scale as an associated site plan or preliminary subdivision plat.

(2) The tree survey shall identify each protected tree and each prohibited tree, indicate the DBH, and identify the species. Where protected trees are located in a group or a cluster, the survey may identify the tree group rather than individual trees, including the number of trees, the range of DBH, and the species within the group.

(3) The tree survey shall identify protected trees to be retained, removed, and relocated and shall indicate that prohibited trees will be removed. When protected trees are proposed for

relocation, the new location shall be indicated.

(4) The tree survey shall show the location of all proposed and existing structures, parking areas, driveways, and other planned improvements.

(5) A grading plan shall be provided to identify any proposed grade changes and methods to ensure that such changes will not adversely impact or endanger any protected trees that are proposed for retention.

(6) A tree replacement plan, if applicable, shall be provided, at the same scale as the tree survey, showing the location, size, and species of all proposed replacement trees. Such replacement trees shall comply with the requirements of this article. The replacement plan may be shown on the tree survey.

(7) The tree survey shall be sealed by a land surveyor, licensed in the State of Florida. The grading plan and any tree replacement plan shall be sealed by a landscape architect or civil engineer licensed in the State of Florida.

10 ~~(8) Where a tree survey is required for one single-family lot, the survey may be a sketch provided by the property owner for purposes of identifying tree locations and trees sought to be removed.~~

(8) An aerial map for parcels of two (2) or more acres shall be provided.

10a ~~(b) A permit is required for the removal of any protected tree, unless such removal is exempt as set forth in section 74-62.~~

(d) Where an agent is authorized to apply for a tree removal permit on behalf of the owner, a signed and

notarized affidavit shall be provided on a form provided by the City, to authorize the agent.

(e) Removal of any non-exempt protected tree must be approved as part of the site plan or plat approval process.

(1) Where an application for site plan or preliminary subdivision plat is submitted, a separate tree permit application is not required. The preservation, relocation, replanting, or removal of protected trees shall be considered as part of the site plan or preliminary subdivision plat review and approval process. Tree removal shall not be authorized prior to the final approval of a site plan or preliminary subdivision plat.

(2) No authorization shall be granted to remove a protected tree where the developer or property owner has failed to take reasonable measures to design and locate the proposed improvements such that the minimum required number of protected trees is maintained.

(3) Removal of any protected trees, unless exempt as set forth in Section 74-62, shall be reviewed by the Tree Board at a public hearing prior to or after consideration of the site plan or plat by the planning commission. Notice of the time, date, and place of the public hearing before the Tree Board shall be given or mailed to the applicant at least 15 days prior to the date of the hearing. Notice shall also be posted on the City website. The City Manager or designee shall prepare a staff report for the Tree Board regarding the proposed tree removal. The Tree Board shall make recommendation to approve, deny, or approve with conditions to the City Council. If denied, the applicant has the right to appeal the decision of the Tree Board to City Council pursuant to Section 74-73 below.

(4) The City Council may approve, deny, or approve with conditions during the site plan

or plat review process.

(f) The recommendation to deny or a denial of any request for tree removal by the City Manager or designee, Tree Board or City Council shall be in writing, citing to the Section of this article as the reason for the denial.

11

Sec. 74-64. Stand alone permit requirements not associated with site plan or plat approval; procedures.

(a) An application for a stand alone tree removal permit shall include the following:

(1) A completed application on a form provided by the City. Signing the form shall grant access to the site for inspection during consideration of the permit application and subsequent to permit issuance for determination of compliance with the permit.

(2) Payment of the applicable permit fee.

(3) Legal description of the property.

(4) Name, phone number, and address of the property owner. If the property owner does not have local contact information, a local agent is required.

(5) Where an agent is authorized to apply for a tree removal permit on behalf of the owner, a signed and notarized affidavit shall be provided, on a form provided by the City, to authorize the agent.

(6) A tree survey or a sketch which is of a scale that will be directed by the City Manager or designee. The tree survey or sketch shall identify each protected tree and each prohibited tree, indicate the DBH, and identify the species. Where protected trees are located in a group or a cluster, the survey or sketch may identify the tree group rather than individual trees, including the number of trees, the range of DBH, and the species within the group.

(7) The tree survey or sketch shall identify protected trees to be retained, removed, and relocated and shall indicate that prohibited trees will be removed. When protected trees are proposed for relocation, the new location shall be indicated.

(8) The tree survey or sketch shall show the location of all proposed or existing structures, parking areas, driveways, and other planned improvements.

(9) For parcels of two (2) or more acres, an aerial map shall be provided. Photographs of trees proposed to be removed shall be provided for parcels of less than two (2) acres.

12 **The section below appears to repeat the new text above.**

(b) An application for a stand alone tree removal permit shall be processed as follows:

(1) The City Manager or designee shall determine that the application is complete and contains all required submittals. An incomplete application shall not be processed for review. Where an application is incomplete, the City Manager, or designee, shall notify the applicant of missing information within eight (8) working days. If the missing information is not provided to the City within thirty (30) working days, the application shall be deemed withdrawn and returned to the applicant. An extension of the thirty (30) day time limit may be granted by the City Manager or designee upon written request from the applicant. No more than one thirty (30) day extension shall be granted.

(2) *Property of less than one acre.* The City Manager or designee shall review a complete application and approve the application when it fully complies with the standards and criteria of this article. An application that does not fully comply with the standards and criteria of this article shall be denied, and the applicant shall be notified of the denial in writing, citing to the Section of this article as the reason for the denial. If denied, the applicant has the right to appeal the administrative interpretation to the Tree Board pursuant to Section 74-73 below.

(3) *Property of one acre or more.* After the the City Manager or designee determines an application is complete, removal of any protected trees on parcels of one (1) acre or more, unless exempt as set forth in Section 74-62, shall be reviewed by the Tree Board at a public hearing. Notice of the time, date, and place of the public hearing before the Tree Board shall be given or mailed to the applicant at least 15 days prior to the date of the hearing. Notice shall also be posted on the City website. The City Manager or designee shall prepare a staff report for the Tree Board regarding the proposed tree removal. The Tree Board shall approve, deny, or approve with conditions. If denied, the applicant has the right to appeal the decision of the Tree Board to City Council pursuant to Section 74-73 below.

(4) *Removal of heritage trees and trees within the river corridor protection area.* Removal of healthy heritage trees or protected trees within the river corridor protection ordinance shall be approved, denied, or approved with conditions by the Tree Board, and the procedures set forth in subsection (3) above shall apply.

(5) A stand alone tree removal permit shall be valid for a period of up to six (6) months from the date of issuance. The permit may be renewed one time for a period not to exceed six (6) months.

(6) A stand alone tree removal permit shall be valid only so long as any conditions of approval continue to be met. Failure to meet permit conditions will require that the Code Enforcement Officer issue a Stop Work Order and rescind the permit.

13 ~~Sec. 74-65. - Credit for preservation of existing trees.~~

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Existing Section 74-65 has been deleted in its entirety.

Sec. 74-65. Criteria for removal or relocation of a protected tree.

(a) Removal or relocation of a protected tree may be approved by the City Manager or designee, Tree Board, or City Council based upon one of the following findings:

(1) The tree has been weakened by disease, age, storm, fire or other injury; or

(2) The tree has severe structural defects that pose a clear and obvious safety hazard to people, nearby trees, structures, or objects on a lot or parcel of land; or

(3) The tree contains a disease or infestation that could spread to other trees; or

(4) The tree prevents the reasonable development of the site, including the installation of solar energy equipment, clothesline, or other energy device, or the installation or replacement of utility lines; or

(5) The tree is causing or is likely to cause (as evidenced by competent substantial evidence) structural damage or problems to buildings or underground facilities due to excessive root or trunk growth, or soil expansion and contraction caused by uneven water uptake. Ordinary small cracks or uplifts in pavement, sidewalks, and non-occupied structures that are typically caused by settling shall not be considered a safety hazard; or

(6) The tree poses a clear and obvious safety hazard to pedestrian or vehicular traffic or threatens to cause disruption to public services or a significant obstacle to accessing and utilizing public easements and rights-of-way; or

(7) The extent to which tree removal is likely to result in damage to the property of other owners, public or private, including damage to lakes, ponds, streams, or rivers through runoff or erosion.

(b) Consideration may also be given, as applicable to:

(1) Any proposed landscaping including plans whereby the applicant has planted or will plant trees to replace those that are proposed to be cleared; or

(2) Topography of the land and the effect of tree removal on erosion, soil retention and the diversion or increased flow of surface water; or

(3) Good forestry practices, such as the number of healthy trees that a given parcel of land will reasonably support and the proven techniques that sustain healthy trees; or

(4) Certain protected trees within clusters may be removed if there is a need to relieve overcrowding between dissimilar tree species or tree thinning as part of an approved fire mitigation plan; or

(5) Necessity to remove trees in order to construct approved and permitted improvements to allow economic enjoyment of the property, including:

a. Need for access around a proposed structure for construction equipment (maximum of ten (10) feet).

b. Need for access to the building site for construction equipment.

c. Essential grade changes.

d. Need for locating street or road rights-of-way, utilities, drainage ways, as well as the need to provide reasonable use and property access; or

(6) The extent of any damage or demonstrated hardship which would result to the applicant from a denial of the requested permit; or

(7) The species and size of the trees proposed for removal; or

(8) Preservation of the next generation of trees.

Sec. 74-66. Standards for preserving, relocating, and replacing trees.

(See existing Sec. 74-64 which has been rewritten here)

(a) All new development with fewer than sixteen (16) protected trees per acre prior to construction shall, to the greatest extent possible, preserve these protected trees.

(b) Applicants are strongly encouraged to preserve as much of the existing protected trees as possible. By saving protected trees, rather than planting new ones, applicants can achieve the minimum planting requirements in a more efficient and economical manner.

(c) Where the footprint of a proposed building cannot be reasonably shifted on the lot or located in compliance with the applicable zoning standards, protected trees may be relocated to another portion of the lot or parcel. Where preservation of protected trees is not possible due to physical limitations of the land or where relocation would result in conditions where the relocated trees could not thrive, removal may be authorized on condition that a replacement tree be planted on the property.

(d) Developments shall be designed to the extent reasonably possible to protect existing trees and their tree protection zone from stormwater facilities, drainage lines, utilities, or grade changes, building footprints, parking areas, drives, and walkways.

(e) Subdivision plats shall shift lot lines to minimize placing heritage trees in the buildable area of the lot if practicable.

(f) As a condition for the removal of a non-exempt protected tree, the applicant shall be required to relocate the tree or replace each removed non-exempt protected tree with a permissible tree as set forth in Section 74-68, of the following sizes and heights:

(1) Residential:

a. Protected trees: Minimum replacement tree size: 2" caliper, 7' – 8' high.

b. Heritage trees: Minimum replacement tree size: 6" caliper.

(2) Nonresidential:

a. Protected trees: minimum replacement tree size: 3 ½ " caliper, 12' – 14' high.

b. Heritage trees: 6" caliper.

(3) Wetland:

a. Protected trees: Minimum replacement size: 2" caliper, 7'—8' high.

b. Heritage treess: 6"caliper.

(e) When a prohibited tree is removed, no replacement tree is required to be planted.

(f) Where trees are authorized for removal on a parcel where a certificate of occupancy will not be issued, replacement trees shall be planted not later than six (6) months following issuance of the tree removal permit.

(g) Where a delay in planting replacement trees is necessary due to the growing season, the applicant shall provide a performance bond acceptable to the City guaranteeing that replacement trees will be planted not later than six months following issuance of the certificate of occupancy.

(h) The City Manager or designee may offer a choice to an applicant, especially when space limitations or other conditions exist, to make payment into the tree restoration trust fund in accordance with Section 74-71 in lieu of replacing trees to be removed.

Sec. 74-67. Credit for preservation of existing trees. **(Formerly Section 74-65)**

(a) For new development, credit may be granted for the preservation of existing protected trees based upon the size of the protected trees. Such credit is intended to provide an incentive for preserving larger trees when it is necessary to remove trees in order to allow development of a lot or parcel. This Section describes the method of determining credit for retaining trees. Credit is not based on an exact inch-for-inch calculation, but provides a table to assign a number of trees as credit for the preservation of a tree within a size range.

(1) Credit shall not be granted for any tree that is not adequately protected during construction and development of the lot or parcel or for any tree that is not healthy and thriving at the time that the certificate of occupancy is issued. Tree protection requirements during construction are set forth in Section 74-69.

(2) Credit shall not be granted for any prohibited tree.

(3) Credit shall not be granted for any tree with less than four (4) inches DBH.

(b) Credit, when granted, shall be based on the following standards:

DBH	**Number of Trees Credited**
36 inches or greater	7
30 to 35 inches	6
26 to 29 inches	5
20 to 25 inches	4
13 to 19 inches	3
8 to 12 inches	2
4 to 7 inches	1

Sec. 74-68. Permissible and prohibited trees. **(Formerly Section 74-65)**

The following table identifies permissible trees and trees that are prohibited within the City. The City may consider other trees, where the applicant provides evidence that the proposed trees are appropriate and expected to thrive in the Dunnellon area. Evidence may include written information from the Institute of Food and Agricultural Sciences at the University of Florida, the Florida Department of Agriculture and Consumer Services or the Certified Arborist approved by the City. The Tree Board shall develop a list of permissible understory trees.

Permissible Canopy Trees	**Prohibited Trees**
American Elm	Australian Pine
American Holly	Brazilian Pepper
American Hornbeam	Camphor Tree
Bald Cypress	Chinaberry
Bluejack Oak	Chinese Tallow
Cabbage Palm	Melaleuca/Punk Tree
Carolina Basswood	Silk Oak
Chinese / Drake Elm	
Florida Basswood	
Hophornbeam	
Red Oak	
Live Oak	
Loblolly Bay	
Longleaf Pine	
Persimmon	
Pignut Hickory	
Pond Cypress	
Red bay	
Red Maple	
River Birch	
Sabal Palm	
Slash Pine	
Southern Magnolia	
Sugarberry	
Sugar Maple	
Sweet Bay Magnolia	
Sweet Gum	
Sycamore	
Turkey Oak	
Water Tupelo	
White Ash	

14

Planting standards have been removed from the existing 74-65

Sec. 74-69. Standards for protecting trees during development and construction activities. **(Formerly Sec 74-67)**

(a) In conjunction with any development, building, or land clearing it shall be unlawful for any person to cause, authorize, assist, or permit the removal of or damage to any protected tree; or to root rake, grade, or permit the movement or storage of equipment, material, debris or fill within the drip line of any protected tree

which is not authorized or approved for removal in accordance with the provisions of this Section. Protected trees are those trees identified on the required tree survey, pursuant to the standards of this article.

(b) Protective measures are required during site development in order to assure the health and survival of protected trees. Protective measures are required to avoid:

(1) Mechanical injuries to roots, trunk, and branches;
(2) Injuries by chemical poisoning;
(3) Injuries by grade changes;
(4) Injuries by excavations; and
(5) Injuries by paving.

(c) A circular tree protection zone shall be established around each protected tree as follows:

(1) The drip line shall be 1.25 times the drip line of the tree, or as close as practicable.

(d) All development activities shall be prohibited within the tree protection zone, including any construction of buildings, structures, paving surfaces, stormwater retention or detention ponds, and temporary construction activities, including all digging, storage of construction material, and parking of construction vehicles. Hand pruning is authorized to remove understory vegetation.

(e) Prior to the commencement of construction, the tree protection zone shall be enclosed within a fence or similar barrier as follows:

(1) Wooden posts, at least 1.5 by 3.5 inches, shall be implanted in the ground deep enough to be stable and with at least three (3) feet visible above ground.

(2) The wooden posts shall be placed not more than six (6) feet apart, and shall be enclosed with orange safety fence.

(f) Permitted activities within the tree protection zone:

(1) Excavating or trenching by utilities service providers for installation of underground utilities. Underground utilities shall be no closer to the tree than ten (10) feet.

(2) Placement of sod or other ground covers, and the preparation of the ground surface for such covers.

15 **Existing Sec. 74-68. - Specific standards for champion and heritage trees has been deleted in its entirety.**

Sec. 74-70. Maintenance of replaced or relocated trees after site plan or plat approval.

16 All trees planted in compliance with an approved site plan or plat or as mitigation for the removal of protected trees shall be maintained in good health for a period of two years after construction approval. Within six months of a determination by the City Manager or designee that a replaced or relocated tree is dead or severely damaged or diseased, the tree shall be replaced by the owner or applicant in accordance with the standards in Sec. 74-64 (stand alone).

17 **Sec 74-64 is the section for getting a permit for a stand alone tree removal and does not define a replacement process.**

18 **Sec. 74-71. Tree restoration trust fund.**

(a) When it is impossible or impracticable for the applicant to meet the requirements for tree density and/or replacement on-site due to site conditions or configuration, the City Manager or designee may offer the option to pay fees of equivalent value into the tree restoration trust fund or plant the trees off-site upon approval of a suitable site or sites by the City.

(b) The tree fund shall be a separate account set up and shown in City financial records in which all receipts are detailed. All monetary contributions paid to the tree fund pursuant to this Section shall be used exclusively for the planting or replanting of mitigation trees, installation and establishment of shade trees, and installation and maintenance of irrigation systems on public land.

(c) Valuation of contributions to the tree fund shall be $100.00 for removal of each non-heritage protected tree and $250.00 for removal of each heritage tree.

(d) An applicant making a payment to the tree fund is responsible for paying the full amount to the City prior to issuance of a certificate of occupancy for the development.

(e) All trees planted utilizing tree trust fund revenues shall have adequate irrigation.

(f) The Tree Board will oversee the tree restoration trust fund.

Sec. 74-72. Trees in right of way.

(a) *Street trees in new development.* Street trees shall be installed in all new development. Selection and installation of trees shall comply with the specifications set forth in this article and the additional standards within this Section. Street trees shall be located within five (5) feet of the edge of pavement and within the right-of-way. One (1) tree shall be planted for each fifty (50) linear feet of street right-of-way on each side of the street. Existing trees may be counted toward this requirement if such trees are healthy and are permissible as set forth in Section 74-68. Where overhead utilities are located along the street right-of-way, only understory trees shall be installed. The types of trees to be planted as street trees shall be recommended by the Tree Board.

(b) *Planting trees.* No tree shall be planted within any right-of-way of the City without first obtaining a permit from the City. There will be no charge for such a permit. The permittee shall submit with the application for permit a sketch showing where the tree will be planted, the spacing between trees or plants, if applicable, and the species proposed to be planted. The City Manager or designee shall approve of such plan before the permit is be granted.

(c) *Maintaining trees.* Upkeep, trim, and maintenance of all trees, shrubs, or plants on any right-of-way which abut private property shall be the responsibility of the abutting private property owner between the private property line and the curb of the street, except that the City shall be responsible for trimming and maintaining portions of trees on the street side so as to allow clearance for vehicles.

(d) When any maintenance or trimming of trees in any right-of-way is necessary to afford clearance for wires or cables, it shall be the responsibility of a public utility company to trim and maintain said trees after seeking a permit for such trimming and maintenance from the City. It shall be unlawful for any person to maintain any tree, shrub or plant within any right-of-way of the City in such a manner that will damage or constitute a hazard to any street, sidewalk, curb, driveway, drainage, water line, sewer line or any other public utility.

(e) *Removing trees.* No tree shall be removed from any public right-of-way without first obtaining a tree removal permit. The City Manager or designee may, in some instances, recommend that the City share the costs for removal of said trees.

(f) *Removing fallen trees.* The City shall be responsible for removing any fallen tree planted in the right-of-way upon being notified of such fallen tree. A tree planted on private property which falls on any right-of-way shall be removed by the property owner within a reasonable period of time, not to exceed 60 days, or sooner if the City deems necessary to protect public safety. If said fallen tree is not removed within the designated periods of time, the City may remove the fallen tree and assess costs for removal to the property owner.

Sec. 74-73. Appeals.

(a) Any person adversely affected by an administrative interpretation of the City Manager or designee may appeal that interpretation to the Tree Board by filing a written notice of appeal of said interpretation within thirty (30) calendar days of said interpretation. The Tree Board shall hear and decide said appeal at its next available meeting date. The applicant shall be sent via U.S. Mail a notice at least fifteen (15) days prior to the hearing of the time, date, and place when the Tree Board will hear the appeal.

(b) Any person adversely affected by a decision of the Tree Board under this article may appeal that decision to the City Council by filing a written notice of appeal of the decision within thirty (30) calendar days of said decision.

(c) The City Council shall hear and decide appeals under this article at its next available meeting date. The applicant shall be sent via U.S. Mail a notice at least fifteen (15) days pror to the hearing of the time, date, and place when the City Council will hear the appeal.

(d) All appeal decisions denying a tree removal permit shall be given to the applicant in writing, citing

to the Section of this article as the reason for the denial.

Sec. 74-74. Violations and enforcement.

(a) *Violators.* For purposes of this Section, "violators" means tenants in possession of property, landlords of property, property owners, and persons or entities hired by such tenants, landlords, or property owners to remove or have removed trees on the property, or to replace or have replaced trees on the property. Entities hired by tenants, landlords, or property owners shall be jointly and severally responsible in the event of a violation under this article.

(b) *Enforcement.* The City may enforce the provisions of this article by any lawful means including, but not limited to, issuing a civil citation, bringing charges before the City's special magistrate, and seeking injunctive and equitable relief.

(c) *Penalties.* In addition to all other remedies set forth in this article, including paying any after the fact tree removal permit fee set by resolution of City Council, one or more of the following fines may apply to violations of this article:

(1) *Removal of a tree without a permit:* Fine of up to two hundred fifty dollars ($250.00) per tree.

(2) *Removal of a heritage tree without a permit:* Fine of up to five hundred dollars ($500.00) per tree.

(3) *Any other violation of this chapter:* Fine as provided by law or the City's Code.

(d) In determining the amount of the fine under subSection (c) above, the following factors shall be considered:

(1) The gravity of the violation.

(2) Any actions taken by the violator to correct the violation.

(3) Any previous violations of this article committed by the violator.

(4) The number and size of the trees removed, if any.

(5) Whether the violation is irreparable or irreversible in nature.

(6) The remedial actions offered by the violator to restore the property consistent with this article.

(e) *Replacement of trees after violation.* In addition to the fines set forth in this Section, the following shall be required:

(1) Violators must replace trees removed without a permit within 90 days in accordance with this article.

(2) Heritage trees removed without a permit must be replaced with a tree of comparable type with four trees for every one tree removed without a permit. Each replacement tree shall be a minimum of 12 feet tall. The violator shall guarantee survival of replaced trees for two years from the date of planting.

(3) When space limitations or other conditions exist, the violator shall be required to make payment into the tree restoration trust fund within 90 days in accordance with this article in lieu of replacing trees to be removed.

(4) Violators who timely fail to replace trees or make payment into the tree restoration trust fund shall be considered guilty of a separate violation, and a fine not to exceed $100.00 per day shall be imposed for each day the violation exists, until the required replacement trees are installed or payment is made into the tree restoration trust fund. Upon request of the violator, the City Manager or designee may extend the replacement time period for thirty (30), sixty (60), or ninety (90) days upon submission of a written request of the violator detailing the reasons for the extension prior to the expiration of the original ninety (90) days.

(4) When applicable, a certificate of occupancy will not be granted for property where unlawful tree removal or has occurred until a tree replacement plan has been implemented.

Sec. 74-75. Standards for tree removal in designated river protection corridors. (Existing Sec 74-70)

(a) The City hereby declares that special circumstances exist with regard to Pond Cypress and Bald Cypress trees, including their knees, located along the shoreline within river corridor protection areas designated under Chapter 78 of this Code.

(1) All Pond Cypress and Bald Cypress trees, and their knees, regardless of size, are protected.

(2) No such trees or cypress knees shall be removed unless a tree removal permit has been issued in compliance with the requirements of the standards set forth in Section 74-75(c) below.

(b) The City hereby declares that special circumstances exist with regard to trees or understory plants,

including cypress knees regardless of size, other than prohibited trees as defined in Section 74-68, which are located along the shoreline within river corridor protection areas designated under Chapter 78 of this Code.

(1) All trees, cypress knees, or understory plants, regardless of size, within the river corridor protection areas designated under Chapter 78 of this Code, other than prohibited trees as defined in Section 74-68, are protected.

(2) No such trees, cypress knees, or understory plants shall be removed unless a tree removal permit has been issued in compliance with the requirements of this article and the standards set forth in this Section. The removal of vegetation to allow river front property access to navigable waters shall be in accordance with Chapter 78 of this Code.

(c) Tree removal shall be authorized within the river corridor protection areas only in compliance with the following:

(1) Vacant Lots. No tree removal is permitted including dead or diseased trees, unless they present an imminent threat to public safety or present a clear and documented danger to the health and survival of trees or structures, objects, or persons in the immediate surrounding area. Evidence of condition is required. Acceptable evidence shall be a written assessment of condition provided by a certified arborist.

(2) Occupied Lots.

a. Tree removal is only allowed when a tree is dead, diseased, or has been weakened by age, storm, fire, or other injury. Evidence of condition is required. Acceptable evidence shall be a written assessment of condition provided by a certified arborist. Diseased trees shall only be removed when the disease presents a clear and documented danger to the health and survival of trees or structures, objects, or persons in the immediately surrounding area.

b. Demonstration that the tree poses an imminent threat and removal is required to protect public health, safety, and welfare. Such removal shall be the minimum necessary to accomplish the purposes stated herein. Where such removal is required in order to achieve public access to the shoreline, river, public recreation area, or trail systems, any path built shall not exceed the minimum width necessary to comply with Americans with Disabilities Act Regulations. A boardwalk shall be provided in order to minimize the potential for erosion. The path shall not be located in such a manner as to require removal of Pond Cypress, Bald Cypress, or Heritage trees, unless it poses an undue hardship to relocate the path, in which case the applicant shall seek a variance before the Planning Commission under Section 14.2 of the Zoning Code.

(3) Replacement of trees authorized for removal under this Section shall be replaced on 2:1 basis, meaning that two (2) inches DBH shall be required for each one (1) inch DBH of removed trees. Replacement trees shall be a minimum of four (4) inches DBH.

(d) The approval process for tree removal with new construction within the river corridor protection areas shall comply with Chapter 78 of this Code.

SECTION 4. Severability. The provisions of this Ordinance are declared to be severable, and if any Section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining Sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 5. Repeal of Inconsistent Ordinances. Any Ordinance in conflict with this Ordinance is hereby repealed.

SECTION 6. Inclusion in the Code. It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Dunnellon; that the Sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

SECTION 7. Effective Date. This Ordinance shall be effective immediately upon adoption at the second

public hearing. This Ordinance shall apply to any applications pending between first and second reading and adoption.

Upon motion duly made and carried, the foregoing Ordinance was approved upon the first reading/public hearing on the _____ day of _____ 2016.

Upon motion duly made and carried, the foregoing Ordinance was approved and passed upon the second and final reading and public hearing on the ____ day of _____ 2016.

Advertised on _____ and _____ in the Riverland News and Ocala Star Banner.

ATTEST: **CITY OF DUNNELLON**

_____ _____

Dawn M. Bowne, M.M.C. Nathan Whitt, Mayor
City Clerk

Approved as to Form and Legal Sufficiency:

_____

Andrew J. Hand, City Attorney

I HEREBY CERTIFY that copies of the foregoing Ordinance were posted at City Hall, the Chamber of Commerce, and the Dunnellon Library, in the City of Dunnellon, Florida, and on the City's Official Website this _____ day of _____ 2016.

_____

Dawn M. Bowne M.M.C.
City Clerk

MEMORANDUM

Shepard, Smith & Cassady, P.A.
2300 Maitland Center Parkway, Ste. 100
Maitland, Florida 32751
Toll Free (866) 247-3008
Telephone (407) 622-1772
Facsimile (407) 622-1884
+++
To: Members of Tree Board, City of Dunnellon
cc: Eddie Esch, City Manager
From: Andrew Hand, City Attorney
Subject: Proposed tree ordinance
Date: May 26, 2016

Background.
This office's goals in preparing revisions to the City's tree ordinance are as follows:
(1) preserve the work which was already done by the Tree Board;
(2) include policies discussed at Council meetings;
(3) incorporate proposed policies which find a balance between those who want strict policies regarding tree preservation and those who desire to promote the property rights of property owners;
(4) create an ordinance which would pass legal muster;
(5) re-order the sections of the tree ordinance for ease in reading for owners of property who are bound by it and for those who must enforce it (Staff, Code Enforcement Office, Special Magistrate, Tree Board, and City Council); and
(6) ensure that an approved ordinance can be accurately codified by Municipal Code Corporation.
Changes required for legal purposes.

1. When a City requires applicants to seek a permit for approval, the ordinances must have criteria for the Staff, Tree Board, or Council to apply. This is a due process requirement. Section 74-65 was therefore added.

2. All ordinances of this kind must allow an aggrieved party to appeal an adverse decision. Section 74-73 was therefore added.

3. Payment into a tree replacement trust fund is required to be afforded as an option when a non-exempt protected tree is removed. The City must afford this alternative in case tree replacement is impossible or impractical. The typical alternative is for local governments **??? missing words** 1

to afford an opportunity to pay money into a tree replacement trust fund. Whenever a party pays money into a restoration fund, the ordinance has to set forth specifically when payment is to be made in lieu of replacing trees, the account must be a trust fund, and the ordinance has to specifically limit how the monies are to be spent. Under this ordinance, the Tree Board will approve any spending of the monies for planting of trees on public property to provide the necessary "checks and balances" since it is a trust fund. See Section 74-71.

4. Current Sec. 74-63(b)(2) states: "No authorization shall be granted to remove a protected tree where the developer or property owner has failed to take reasonable measures to design and locate the proposed improvements so that the number of protected trees to be removed is minimized." New Sec. 74-63(e)(2) reads: No authorization shall be granted to remove a protected tree where the developer or

property owner has failed to take reasonable measures to design and locate the proposed improvements such that the minimum required number of protected trees is maintained. Current Sec. 74-63(b)(2) is inconsistent with the section which sets out the minimum number of protected trees (16 trees per acre). To deny a site plan or building permit because a tree must be removed to accommodate the location of an improvement if an owner already has the minimum number of protected trees is arbitrary.

5. The following was added, as it is a requirement of state law and due process: "The recommendation to deny or a denial of any request for tree removal by the City Manager or designee, Tree Board or City Council shall be in writing, citing to the section of this article as the reason for the denial." See Sec. 74-63(f).

Major policy changes in the proposed Ordinance.

1. Residents of existing single family homes or duplexes are exempt from obtaining a permit to remove a tree. This is in accordance with a policy trend in Marion, Alachua, and other counties and cities. Even Gainesville, which in the 1990's was in the forefront in the State in tree protection, now exempts single family residences. However, under the proposed Ordinance, owners of *vacant* single family or duplex lots who wish to build are required to obtain tree permits. Also, residents must obtain a permit for removal of healthy heritage trees and trees within the river corridor protection areas. Whether to maintain this exemption and exceptions will be a policy decision of Council, who can take into consideration that:

2 **This exemption would mean that every residence owner in the City of Dunnellon could cut down all their trees without getting a permit or the City having any recourse to say no. This change would completely destroy the meaning of Tree City and the respect for the value of trees that it represents.**

(a) the City, due to its size, has limited staff and resources to process these applications;

(b) a majority of these property owners have small homes and do not even have to pay *any* taxes after claiming their homestead exemption; and

3 **Having a Homestead Exemption is not a valid reason to not follow the Ordinances of the City of Dunnellon.**

(c) when ordinances are too onerous or heavy-handed, owners simply violate them (which, if caught, can lead to code enforcement violations), or commissions/boards ignore, waive, or exempt requirements even though the ordinance do not provide
waivers or exemptions (which is illegal). When this is occurring, it is a good indication that it is time to revise the policy. **Or to publicize the policy.** 4

In spite of this exemption, owners of single family homes and duplexes must still seek permits for removal of heritage trees and trees within the river protection corridor.

2. Champion trees are eliminated from the ordinance. These trees enjoy distinction because they are on a registry, similar to historic sites. If there are designated champion trees in the City, then the definition and provisions can be re-inserted at a later time.

3. To provide flexibility for applicants and property owners, forestry consultants and other persons who are professionally qualified can make a determination as to the status of a tree, in addition to certified

arborists. Also, certified arborists "approved by the City" was eliminated because (1) it infers that the City will have an approved list of arborists (which some larger cities do); or (2) the City does not have to recognize a person who it does not believe is qualified, nor does the City have to follow a recommendation of such person. However, the requirement for an assessment by a certified arborist has been preserved for tree removal in the river protection corridors.

4. Land used for silvicultural purposes is exempt from permitting.

5. The definitions of "hat rack," "critically diseased tree," and other definitions were eliminated because the terms are not used elsewhere in the ordinance.

6. The current ordinance only exempts diseased trees which present a clear and documented danger to the health and survival of trees in the immediately surrounding area. What about diseased trees which are determined to be dangerous to the health or safety of other protected trees, structures, objects, or persons? The definition of "diseased tree" includes these added provisions, and they are exempt.

7. The ordinance recognizes different procedures and decision making processes for tree permits associated with site plan approvals and preliminary subdivision plats and for tree permits not associated with site plan approvals and preliminary plats ("stand alone" permits). For the former, the Tree Board makes a recommendation, and City Council considers the Tree Board's recommendation at the public hearing for the site plan/preliminary plat. For stand alone permits, the procedures are less extensive.

5 **In the past the City staff was effective in requiring a new site plan to have an appropriate number of trees however the Tree Board was never asked to review the site plan, only the Planning Commission.**

8. Decision making of the City Manager, Tree Board, and City Council is streamlined.

a. City Manager or designee makes decisions regarding whether tree removal permit applications are complete, whether trees should be removed on parcels less than one acre (stand alone), and makes any other administrative decision not specifically delegated to the Tree Board or City Council (i.e., whether a tree is dead).

b. Tree Board makes final decisions for stand alone permits for parcels of one acre or more and whether heritage trees or trees within the riverfront protection corridor should be removed. Tree Board also hears appeals from administrative interpretations of City Manager or designee (a. above).

c. When monies are paid into the Tree Restoration Fund in lieu of replacing or relocating trees by applicants, the City will seek approval of the Tree Board when it wants to use any of the monies to purchase and plant trees on City property.

d. City Council makes final decisions for tree removal associated with site plans and preliminary subdivision plats. City Council also hears appeals from Tree Board decisions.

9. The notice requirements are changed and simplified. Newspaper notices are no longer required. For public hearings before the Tree Board or City Council, the applicant must receive notice within 15 days of the hearing. This includes appeals. Notices must also be posted on the City's website.

This is a needed improvement.

10. Trees in rights of way are more completely addressed in Sec. 74-72, to include regulations regarding: planting trees in rights of way; maintaining trees; and removing trees in rights of way.

11. Sec. 74-74 is solely dedicated to violations and enforcement. There is no excuse when an individual or company contracted by a property owner says (s)he did not know or realize that a tree removal permit was required. This section makes tenants, landlords, property owners, and persons or entities hired by such tenants, landlords, or property owners jointly and severally responsible in the event of a violation under the ordinance.

12. Fines should normally be imposed by the code enforcement special magistrate. Fines are "up to" a certain amount to afford flexibility, consideration being given to the gravity of the violation and other criteria under Chapter 162, Fla. Statutes. See Sec. 74-74.

13. Sec. 74-75 addresses tree removal in certain circumstances; namely, trees in the river protection corridor. The section refers to Chapter 78, which is currently under review by the City, as are the applicable elements of the Comprehensive Plan. I have added changes to this section to be consistent with other changes throughout this ordinance and will explain other changes which I have made.

14. Section 74-66(f) requires that all non-exempt protected trees be replaced. The current ordinance states that replacement trees shall be a minimum of 4" DBH. This ordinance, Sec. 74-66(f) has specific sizes to replace specific trees in residential, nonresidential, and wetlands; and whether the removed tree is protected or a heritage tree.

15. New Sec. 74-70 of the ordinance calls for replacement of trees which are planted, should the new trees fail. It also requires that new trees be maintained in good health for a period of two years after construction approval when site plans are approved.