Agenda
City of Dunnellon
Tree Board
20750 River Drive
Dunnellon, FL 34431
July 26, 2016 at 5:30 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**.

Call to Order
Pledge of Allegiance
Roll Call
Proof of Publication (Posted on City's website and City Hall bulletin board on Friday, July 22, 2016)

1. MINUTES FOR APPROVAL

Minutes Of The April 26, 2016 Meeting

Documents:

20160426.pdf

2. TREE ORDINANCE

Discussion - White Paper and Proposed Tree Ordinance

Board Member Comments and Recommendations

Documents:

White Paper - tree ordinance 20160526.pdf
TREE ORDINANCE Clean 20160526.pdf

3. PUBLIC COMMENT

4. 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.

Minutes
City of Dunnellon
Tree Board
April 26, 2016 at 5:30 p.m.

Member, Candy Craig, called the meeting to order at 5:30 p.m. and led the Pledge of Allegiance.

Roll Call

Members Present: Candy Craig, Jack Baird, Sally Chesterfield

Members Absent: Jan DeWitt

Staff Present: Lonnie Smith, Teresa Malmberg

Proof of Publication: The agenda was posted on City's website and City Hall bulletin board on Friday, April 22, 2016.

1. MINUTES FOR APPROVAL

The minutes of the March 22, 2016, meeting were approved as written.

2. CHAIR'S COUNCIL REPORT – No report.

3. PZ1516-047 TREE REMOVAL APPLICATION

Applicant: Trenton Tree Service / Matthew Remai
Property Owner: John Beyersdorfer
Property Address: 11680 Cherokee Circle
Request: Remove Cypress tree causing property damage

Following discussion, questions and answers, Jack Baird made a motion to recommend to Council approval of the application for tree removal. Sally Chesterfield, seconded. The motion passed by unanimous vote, 3-0.

The recommendation for approval will be heard at City Council on May 9, 2016.

4. ARBOR DAY 2016 PLANNING: Arbor Day Tree Planning is Friday, April 29. Trees will be planted at the Dunnellon Elementary School and the 125 Anniversary Park. Members and staff will meet at the school at 8:45 a.m.

5. PUBLIC COMMENT: Members discussed continuing the vote for Chair/Vice Chair next month.

6. ADJOURNMENT: The meeting was adjourned at 5:41 p.m.

_____ _____

Candy Craig, Member Teresa Malmberg, Admin. Coordinator

MEMORANDUM

Shepard, Smith & Cassady, P.A.
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Maitland, Florida 32751
Toll Free (866) 247-3008
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+++

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

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 <u>minimum required number of protected trees is maintained.</u> 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).

<u>Major policy changes in the proposed Ordinance.</u>

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:

   (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

   (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.

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 <u>not</u> 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.

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.

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.

DRAFT - TREE ORDINANCE Clean version – May 2016

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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.

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.

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

Sec. 2-236. - Duties and responsibilities.

(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.

<u>SECTION 3.</u> 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.

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.

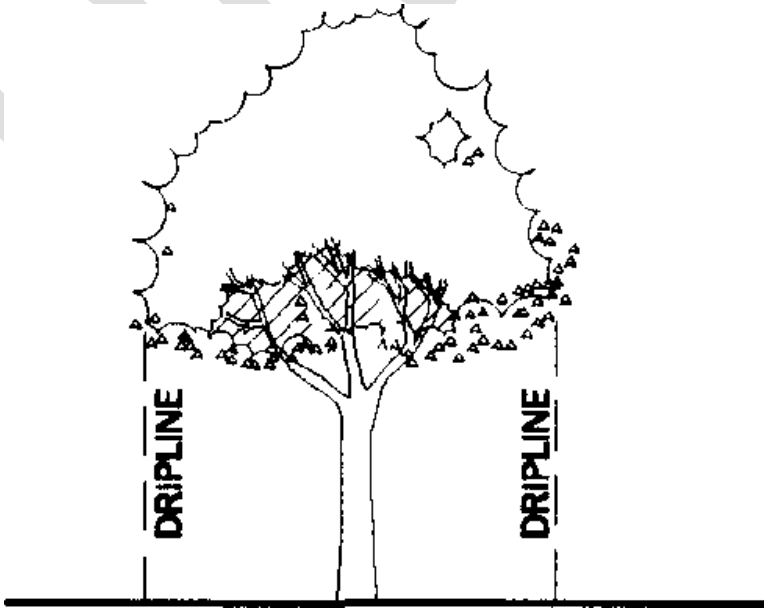
Certified arborist a person who is currently credentialed through the International Society of Arborculture.

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

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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.

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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

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

(7) 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.

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(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.

(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 Manger 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.

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

(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

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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.

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.

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

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(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.

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

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(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.

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(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.

(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.

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

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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	

Sec. 74-69. 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;

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(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.

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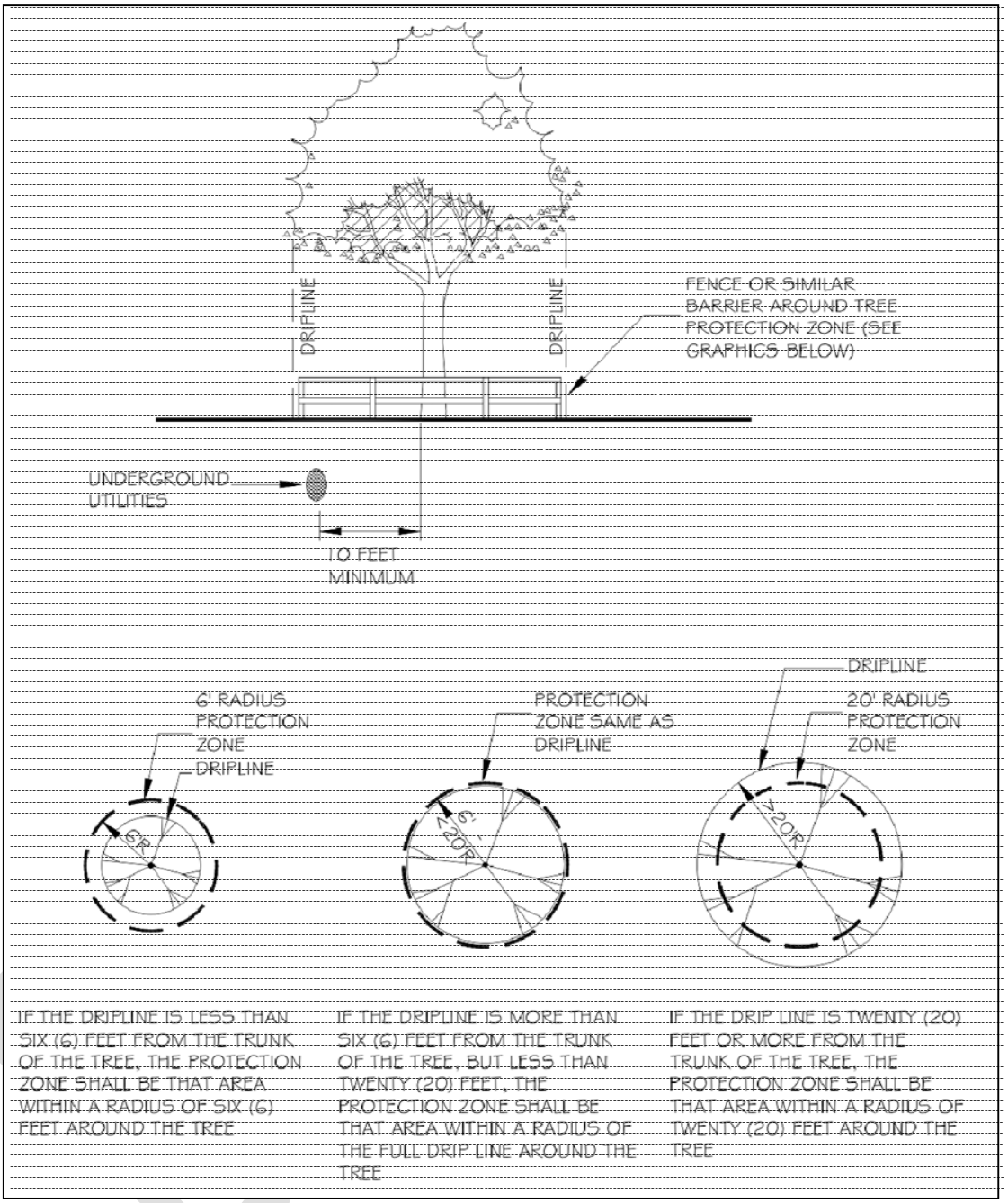

Sec. 74-70. Maintenance of replaced or relocated trees after site plan or plat approval.

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).

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 pror 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.

(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.
City Clerk

_____
Nathan Whitt, Mayor

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

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