

MEMORANDUM

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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 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:
 - (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 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.
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.