AGENDA
PLANNING ADVISORY BOARD
WORKSHOP
JANUARY 22, 2020
5:00 PM
CITY HALL COMMISSION CHAMBERS
204 ASH STREET
FERNANDINA BEACH, FL 32034

1. CALL TO ORDER / ROLL CALL / DETERMINATION OF QUORUM

2. NEW BUSINESS

2.1 Review and Discuss: Draft Tree Protection Ordinance Revisions
Proposed changes following input as provided at the PAB regular meeting on January 8, 2020 and through follow-up with Amelia Tree Conservancy. The intent is to finalize language for formal action at the PAB regular meeting on February 12, 2020.

3. PUBLIC COMMENT

4. ADJOURNMENT

All members of the public are invited to be present and be heard. Persons with disabilities requiring accommodations in order to participate in this program or activity should contact the City Clerk at (904) 310-3115 or TTY/TDD 711 (for the hearing or speech impaired). All interested parties may appear at said meeting and be heard as to the advisability of any action, which may be considered with respect to such matter. For information regarding this matter, please contact the Planning Department (904) 310-3135.

PLANNING ADVISORY BOARD AGENDA ITEM
City of Fernandina Beach

SUBJECT:

ITEM TYPE: LDC Text Amendment

REQUESTED ACTION:

SYNOPSIS:

CITY ATTORNEY COMMENTS:

Kelly N. Gibson, AICP

Submitted By: Kelly Gibson, AICP, Planning Director

Date: January 15, 2020

4.05.14 TREE PROTECTION REQUIREMENTS

A. Intent:

The intent of this section is to provide standards and regulations to ensure a minimum number of trees on any lot or parcel, protect and preserve native tree species, protect and preserve the natural landscape, foster and encourage maintenance of natural vegetation, and minimize loss of trees to development. It is the intent of the City that:

1. There shall be no net loss of canopy within the City;
1. Preservation of the City's existing canopy is achieved by managing the impact of development and preventing unreasonable or unnecessary damage to the community's existing native tree canopy and vegetative understory;
2. The diversity of tree species indigenous to Amelia Island shall be maintained;
3. Existing mature growth native trees important to the City's tree canopy are protected and maintained to the fullest extent possible;
4. Structures and all impervious surfaces will be placed in such a way as to protect the survivability and substantial growth of the healthiest shade trees on the property;
5. The natural environment is preserved, enhanced, and restored through the protection and establishment of native trees and existing natural systems for the enjoyment of present and future populations;
6. Achieving greater energy conservation by maximizing the shading and cooling effects of existing native, healthy trees and native replacement trees;
7. The health and well-being of Fernandina Beach residents and visitors is protected by providing shade and otherwise moderating potential dangerous summer temperatures; and
8. The unique aesthetic character of the City is preserved, enhanced, or restored.

B. Permitting Requirements:

Protected Trees are any existing, healthy tree having a five (5) inch DBH, or greater and not identified on the most recent Florida Exotic Pest Plant Council Invasive Plant list (Category I or II). Tree removal permits are required for the removal of any protected tree, except as set forth below. There shall be three categories of exemptions or partial exemptions, as follows:

1. *Exemption from permit, permit fee and replacement requirements*:
   a. Trees and landscaping specifically grown as landscape material for resale by duly approved and licensed plant nurseries and botanical gardens.
   b. Damaged or hazardous trees during and for a one (1) month period following a declared disaster.
   c. Minor maintenance activities such as removal of sucker growth, water sprouts, and overhanging branches on mature trees. All work shall be performed in compliance with the current ISA Arborist standards and best practices.
2. *Exemption from fee and replacement requirements.*

   A permit shall be required for removal of the following trees, however, removal of these shall be exempt from the permit fee and replacement and replacement plan requirements of this article as follows unless the removal of such tree results in the property not achieving the City's minimum landscape standards as specified in LDC Sections 4.05.05:
   a. Any tree other than a protected or heritage tree;
   b. Trees damaged by disease, fire, windstorm, lightning, insect infestation or other acts of nature, which pose an imminent danger to life, property or other protected trees; The administrative official may require a written certification of the need to remove

such a tree or trees, at the property owner's expense, from an ISA certified Arborist prior to authorizing such a removal.

c. Removal of trees (thinning) within a forested area in order to reduce overcrowding and competition and to promote the health, growth, and resistance to stress may be permitted only when accompanied by written certification of the need to remove such tree(s) at the property owner's expense, from an ISA certified Arborist prior to authorizing such removal.

d. Major and minor maintenance of trees located adjacent to utility lines; and

e. Removal of trees by the City on City rights of way.

f. The tree prevents access to a lot and no feasible alternative access points exist.

3. *Partial Exemptions from replacement requirements for site development.*
A permit and permit fee shall be required for removal of protected trees for purposes of site development provided that mitigation requirements have been met through either on-site retention of existing healthy native trees or through the planting of replacement trees required as follows:

a. For one- and two-family residential properties:
~~Eighty percent (80%)~~ Fifty percent (50%) of the total DBH of the protected trees shall be exempt from replacement. Replacement of ~~twenty percent (20%)~~ fifty percent (50%) of the total DBH of the protected trees located within the area of the building footprint, or within five (5) feet thereof, to be constructed on the property, when such improvements have been authorized by a duly approved and issued building permit shall be required.

b. For affordable housing units, the City Manager or designee is authorized to issue an administrative waiver pursuant to the procedures set forth in Chapter 10.

c. For non-residential and mixed use or multi-family residential properties:
~~Seventy-five percent (75%)~~ Fifty percent (50%) of the total DBH of the protected trees shall be exempt from replacement. Replacement of ~~twenty-five percent (25%)~~ fifty percent (50%) of the total DBH of protected trees located within the area of the impervious improvements, or within five (5) feet thereof, to be constructed on the property, when such improvements have been authorized by a duly approved and issued building permit shall be required.

STAFF NOTES: A change to the "fee in lieu" for tree replacement needs to be made in the City's Fee Schedule to reflect current cost estimates. It is recommended that the fee be increased from $255 to $350. Additionally, the board may wish to consider amending language for administrative deviation of setbacks for tree protection. This would allow flexibility in site design to preserve trees. Reference LDC Section 10.03.01(A) – Language provided at end of this document.

C. Tree Survey or Inventory:
All protected trees shall be shown on a tree survey or a tree inventory prepared by a certified arborist, submitted with an application for a tree removal permit or with an application for development approval as set forth in Chapter 11.

D. Replacement trees Requirements:

1. When authorization has been granted to remove protected trees, replacement trees shall be planted. The combined DBH of replacement trees shall equal or exceed the combined DBH of trees authorized for removal subject to any preservation credits available from the retention of protected trees on the site. Preservation credits are set forth in Section 4.05.14 (E)(5).

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2. Replacement trees shall meet the standards set forth in Section 4.05.03, and shall be balled and burlapped or container-grown.
3. Protected trees authorized for removal may be relocated to locations compliant with the specifications set forth in Section 4.05.03 and approved by the City Manager or designee.
4. An applicant shall be permitted to pay a fee to the City Tree Replacement Fund for up to fifty (50) percent of the cumulative DBH of protected trees removed, less the credits accumulated from preservation of trees on the site. The fee will be set by resolution of the City Commission and will be based on the average cost for the City to replace the tree with the same species, excluding invasive species, the fiscal year in which the permit is issued.

E. ~~Preservation Credits:~~ ***NOTES: ATC REECOMENDATION TO STRKE ENTIRE SECTION - STAFF HAS NO ISSUE WITH THE REQUST TO ELIMINATE IT AS IT WOULD SERVE TO INCREASE THE TREE CANOPY GOALS.***

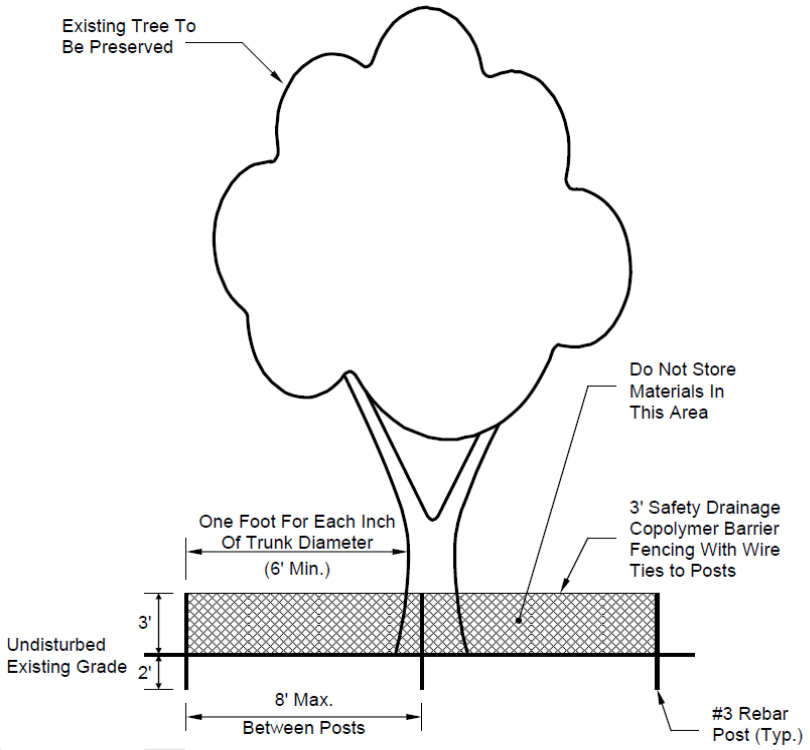
~~1. On-site retention of native, healthy trees shall receive benefit of tree preservation credits to reduce the overall tree replacement requirements as follows:~~
~~a. Trees equaling 8" – 13" shall receive a 1.5x credit~~
~~b. Trees equaling 14" – 20" shall receive a 2x credit~~
~~c. Trees equaling 20" 24" or greater shall receive a 3x 2x credit.~~
~~2. In order to qualify for on-site tree preservation credits, each tree proposed for retention must be evaluated by a certified arborist to ensure that the tree is healthy and compatible with the proposed development of the site.~~
~~3. These credits shall only be applied towards tree replacement requirements created by the removal of protected trees as set forth in 4.05.14(B) (3). These credits may be transferred only on unified multiple lot developments.~~
~~4. Preservation credits for the total DBH of protected trees retained on the site will be applied during the review of the replacement plan.~~

F. Protection of Trees During Development Activities:
1. Protective measures are required during site development in order to assure the health and survival of protected trees. Storage of construction materials or fill dirt is expressly prohibited within the tree protection area.
Protective measures are required to avoid:
a. Mechanical injuries to roots, trunk, and branches;
b. Injuries by chemical poisoning;
c. Injuries by grade changes;
d. Injuries by excavations; and
e. Injuries by paving.
2. A tree protection zone shall be established around each protected tree(s) as follows:
a. If the drip line is less than six (6) feet from the trunk of the tree, the zone shall be that area within a radius of six (6) feet around the tree.
b. If the drip line is more than six (6) feet from the trunk of the tree, but less than twenty (20) feet, the zone shall be that area within a radius of the full drip line around the tree.
c. If the drip line is twenty (20) feet or more from the trunk of the tree, the zone shall be that area within a radius of twenty (20) feet around the tree.
d. Prior to commencement of construction, the tree protection area shall be enclosed and installed as required in the detail provided and described herein. An approved inspection of the tree protection area by a Certified Arborist must be completed prior to all site clearing activity. For all subdivision projects and non-residential projects, a Certified Arborist is required to be present for clearing activities and must provide an affidavit attesting to compliance of tree removal permits and installation of protective fencing once clearing activities are complete.

NOTES: STAFF WILL DEVELOP A PRE-QUALIFIED LIST OF ARBORISTS TO ASSIST WITH SCHEDULING AND FEE SCHEDULE MODIFIED TO RECOUPERATE COSTS ASSOCAITED WITH THE ACTIVITY. The tree protection barricade shall be at least three (3) feet tall. The barrier shall consist of either a wood fence with 2x4 posts placed at a maximum of eight (8) feet apart, with a 2x4 minimum top rail, or a temporary wire mesh fence, chain link or other similar barrier which limits access to the protected area. The fence must remain in place through the duration of construction activities. Beyond the dripline of the canopy, a 3" mulch bed shall be established to avoid compaction from heavy machinery. Trenching close to a preserved tree on-site must be done by hand or air spading only. Preserved trees that may have root impacts resulting from the surrounding development shall be handled through hand cut root pruning practices only. Root ripping equipment is not permitted.

e. An exception shall be granted if the required protection zone prohibits access to the site. Consultation with a certified arborist is required to determine a proper access plan and provide measures to ensure protection of the tree during construction activities.

Example:



3. All development activities, except those specifically permitted by Section 4.05.14(F)(4), 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.
4. Permitted activities within the tree protection zone:
   a. 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.
   b. Placement of sod or other ground covers, and the preparation of the ground surface for such covers.
5. The root systems of protected trees shall be preserved when installing fences and walls. Postholes and trenches located close to trees shall be dug and adjusted as necessary to avoid damage to major roots. Continuous footers for masonry walls shall be ended at the point larger roots are encountered and the roots bridged.

6. In order to control air and water pollution from dust from traveling across the landscape, a detailed and site specific plan for dust control measures is required. Control measures may include, but are not limited to: sprinkling or irrigation, vegetative cover, mulch, wind breaks, or soil treatments.

G. Abused Trees:

Abused trees shall not be counted toward fulfilling tree replacement or preservation requirements. The City may require the abused trees to be replaced and are subject to penalties provided for in LDC section 11.08.04. A tree shall be considered abused if one (1) or more the following actions have taken place:

1. Significant damage has been inflicted upon any part of a tree, including the root system by machinery, storage of materials, soil compaction, excavation, vehicle accidents, chemical application, or change to the natural grade;
2. Damage inflicted to or cutting upon a tree which causes infection or pest infestation;
3. Pruning any tree to permanently reduce the function of the tree or cause it to go into shock;
4. Pruning a tree to destroy its natural shape;
5. Hatracking;
6. Removal of bark which is detrimental to the tree;
7. Tears and splitting of limb ends or peeling and stripping of bark;
8. Use of climbing spikes, or cutting into the tree for the purposes of climbing on any species of tree for any purpose other than total removal, except as the same may be required to comply with federal, state or local laws and regulations, including, but not limited to, the Occupational Safety and Health Act; and
9. Girdling a tree with the use of wires (e.g., use of weed eater, mower damage, or improper cabling around branches).

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11.08.04 Specific Penalties for Violation of Tree Permit Requirements

A. When unauthorized removal of trees has occurred, the owner shall submit fines and a restoration plan within thirty (30) days after being cited for the violation.

1. Individual residential property owner(s) of a single lot of record will be fined $_____ for the first unauthorized tree removal violation and subject to additional fines as provided in Table 11.08.04 and required to comply with restoration planting criteria. Multi-family, subdivisions, mixed use, and non-residential landowner(s) will be fined $_____ for the first unauthorized tree removal violation and subject to additional fines as provided in Table 11.08.04 and required to comply with restoration planting criteria.

Table 11.08.04 Fines for Unauthorized Tree Removal (2 or More)

Trees Removed	Fine Amount Per Tree
2-10	$
11-20	$
21+	$

ATC Proposal for Subcommittee Consideration:

Size of Tree Removed (DBH)	*Fine Amount Per Tree*
6-17"	*$5,000*
18-25"	*$10,000*
26-35"	*$15,000*
36" DBH and above	*$20,000*

*Green Highlight = Proposed Fine Amounts

NOTES: Staff would like to see board consensus for both the fine structure and direction for proposed amounts.

2. In addition to fines, an approved restoration plan is required for all unauthorized tree removal which ~~shall~~ replaces, "one for one" (one (1) inch for every inch of DBH), any and all trees that are removed without authorization. No preservations credits shall be applicable for the unauthorized removal of trees. Failure to submit a restoration plan within thirty (30) days shall result in a double fine. In the event that an insufficient trunk of the removed tree exists to determine replacement requirements, including the size and number of required replacement trees, these facts shall be determined by the City Manager based upon any available information, including photographs or a survey of trees of the same species existing within the City. In making such determinations, the opinion of the City Manager shall control. If the City Manager cannot determine with reasonable certainty the number of protected trees removed, the violation shall be corrected by paying a civil fine of up to one dollar ($1.00) per square foot of land cleared. All amounts received by the City pursuant to this section shall be deposited in the Tree Replacement Fund.

   A. In evaluating a proposed restoration plan, the City shall consider the following:
      1. The cross-sectional area of trunk(s) removed;
      2. The specific aesthetic character of the tree removed;
      3. Any special function the tree carried out as a screen or buffer;
      4. Amount of other trees preserved on the site, and the opportunities for planting additional trees;

5. Any short-term or long-term negative environmental impacts from the unauthorized tree removal, including, but not limited to, erosion, siltation, impacts on listed plant and/or animal species, water circulation patterns, water quality standards, and floodplain capacity or conveyance (including, but not limited to, swales or overland sheet flow, where pertinent).

B. The City Manager shall review the proposed restoration plan. The City Manager may require any bonding or other guarantees deemed necessary to insure the performance and completion of the restoration plan, and/or the maintenance and survival of the implemented restoration plan. If a bond is required, the bond amount shall be one dollar ($1.00) for every square foot of land cleared in violation of this section, or $~~12,500~~ $50,000 if a heritage tree has been removed.

C. The City Manager shall, within 30 days of submission of a restoration plan, either:
1. Approve the restoration plan after rendering a finding that implementation of the restoration plan, will ensure restoration of the quality and screening functions previously provided on site, according to the criteria set forth herein by the removed or otherwise destroyed trees; or
2. Deny the restoration plan and levy appropriate fines based on a finding that said restoration plan, upon implementation, cannot restore the quality and screening functions previously provided by the removed or otherwise destroyed trees; or
3. Deny said plan and inform the owner or developer of what the City requires in order to approve said restoration plan. Such plans shall be resubmitted within thirty (30) days of the denial. Failure to resubmit or appeal within this time period shall subject the property owner to a fine of $100.00 per day.

D. If the City Manager determines that implementation of a restoration plan cannot replace the quality and screening functions of the trees removed or otherwise destroyed then the City Manager may assess the following fines for the unauthorized removal of trees in addition to any other fines required pursuant to other City ordinances or by state or federal rules and laws:
1. $~~125.00~~ $500.00 per inch DBH for each tree removed that was not located in a designated wetland, coastal upland protection zone, approved upland landscaped buffer areas or conservation easement, tract or similarly designated area; and
2. $~~250.00~~ $1,000.00 per inch DBH for each tree removed that was located within a designated wetlands, coastal upland protection zone, approved landscape buffer areas or conservation easement, tract or similarly designated area. This shall include landscape buffer areas previously required as part of an approved landscape plan or other development plan or order, upland buffers around wetlands and habitat or riparian protection zones; and
3. $~~12,500.00~~ $50,000 for each heritage tree removed.

E. No further City permits for the subject property or project shall be issued or inspections provided until all violations of this article are corrected or a restoration plan has been accepted by the City Manager. The building official or designee, may issue a stop work order to any person, firm, owner, contractor, or agent performing construction who violates or fails to comply with any provision of the City's tree protection ordinance. No certificate of occupancy shall be granted unless

and until the restoration plan is implemented or a performance bond satisfactory to the City and its attorney is submitted and approved by the City.

10.03.00 ADMINISTRATIVE WAIVERS

10.03.01 Authority and Limitations

The City Manager is authorized to reduce specific site design and development standards of this LDC where the intent of the LDC can be achieved and equal performance obtained by granting a waiver. The authority to grant a waiver shall be limited to the following:

A. A reduction in the minimum front, side, or rear yard setbacks for a single residential lot, provided the following standards are met:
1. The reduction is necessary in order to implement tree protection standards of this LDC; and
2. ~~The reduction is limited to a maximum of ten (10) percent of the minimum standard development.~~ Building setbacks may be reduced to within five feet from the front and rear property line.

NOTES: Modifying provisions of this section only allows for administrative waivers when associated with tree protection and enables more site design flexibility to retain healthy mature trees without forcing a variance request.

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Notes on tree removal fines, etc.

Stop work order: Since this is the only thing anyone pays attention to, something to this effect needs to be included somewhere.

As soon as the City becomes aware of the improperly permitted tree removal, a stop work order will be issued until the fine is paid and the restoration plan is approved.

Restoration + Fines: We need both, unfortunately. Note Naples attachment. I started off with lower penalties, but don't really feel they get anyone's attention. In general, I feel we need to do better than the State because of what the State has allowed to happen and promoted. Maybe we need to push the envelope, even if it takes us to court. I think most people here realize the importance of these issues for our future now. If the fees have to be lower than this, someone other than ATC needs to recommend that.

Several years ago, I recommended the use of a program like i-Tree in determining tree value, but that is so general that I think we need something better. I like the type of combination below—a general fine and then an additional fine based on impact and expert assessment for development/redevelopment. Let me know what you think. This may give you other ideas.

In terms of whether to apply the same fines to homeowners, I have ambivalent feelings. We definitely need to get people's attention and I have seen some fairly dramatic tree removal on the part of property owners. Also, we are unfortunately no longer the tiny backwater town of twenty years ago. On the other hand, penalties for homeowners shouldn't get too high.

Individual homeowner and development/redevelopment
6-17" DBH ($5,000 per tree)
18-25" ($10,000 per tree)
26-35" ($15,000 per tree)
36" and above ($20,000 per tree)

Designated heritage trees and "specimen oaks" (add county definition) carry a penalty of $25,000 each.

Variables that can be utilized in determining <u>additional</u> fines in cases of development and redevelopment: All of these variables result in substantial additional costs for the homeowner, neighbors, HOA, City and/or County. Estimates of impact will be obtained from an ISA-certified arborist, the city building engineer and the city stormwater management engineer.

- **Number of trees** removed or damaged
- **Number of remaining trees to compensate** for temperature moderation, protection from wind and stormwater management (assessment & estimate by ISA-certified arborist)

- **Impact of removal on stormwater management, drainage and potential for erosion** (assessment & estimate by city stormwater management engineer and city building engineer, perhaps together with ISA-certified arborist)
- **Whether this tree removal impacts other trees** in the area: The trees in an area are interdependent and removal of some may leave the others vulnerable to wind damage. (assessment & estimate by ISA-certified arborist)
- Whether this tree removal impacts the **understory** of the tree and therefore the future health of the tree. (assessment & estimate by ISA-certified arborist)
- **Prior violations**: Prior violations within the prior 10 years adds an additional $10,000 for each prior violation (or a doubling of the fine, which I have seen elsewhere). It also places the violator (property owner, developer, builder, and contractor) on a City list of Tree Ordinance violators available to the public on the City web site and posted in the News Leader annually.

Inspection:

Re. the inspection issue, here is some language related to inspections from Deland, although their penalties are pitiful. This needs the addition of an initial inspection prior to tree removal by city staff, similar to what you already have.

(a) *Inspections.*

1. *Construction inspection.* During the process of site clearing, an authorized agent of the city may make periodic inspections to ensure that the proposed work is being done in compliance with the Tree Removal Permit and the requirements of this article.

2. *Final inspection.* After all proposed clearing has been completed and all required tree and soil preservation measures have been implemented, an authorized representative of the city shall make a final inspection to verify that all work has been completed in compliance with the Tree Removal Permit and the requirements of this section. No building permit or certificate of occupancy may be issued until the terms of this section have been met.