

ARTICLE IV. - TREE PRESERVATION

Sec. 5-81. - Purpose.

The City Council finds and determines that it is in the best interest of the public health, safety and welfare to protect and preserve trees and enhance tree cover in the City. The value of trees is many and varied and includes, but is not limited to, the following:

- (1) Trees are valuable producers of oxygen, a necessary element to the human survival, and serve to reduce the environmentally dangerous carbon dioxide concentration in the air;
- (2) The leaves of the trees trap and filter out ash, dust and pollen in the air;
- (3) Trees may reduce wind velocity and noise levels;
- (4) Trees may prevent erosion by stabilizing the soil through their root system and by breaking the force of raindrops pounding upon soil surfaces;
- (5) Trees reduce the quantity of surface runoff and reduce the percentages of impervious surfaces;
- (6) Trees help purify water by removing the nutrients from waters passing through the ground from the surface to the groundwater table;
- (7) Trees provide shade and transpire water which helps to moderate temperatures and cleanse the air;
- (8) Trees provide food, shelter and essential habitat for wildlife;
- (9) Trees provide valuable visual aesthetics and psychological contrast to the urban environment;
- (10) Trees are a valuable asset and increase the economic and aesthetic value of developed and undeveloped properties.

Sec. 5-82. - Penalty.

- (a) Violations of this article are punishable as provided in section 1-14 and Chapter 2, Article III, Code Enforcement, of the City of DeBary Code of Ordinances and penalties set forth in this article. In the event of a violation, the penalties set forth in this article shall be applicable to the offending property owner, tenant, any contractor clearing the owner's property or any other person operating on behalf of the owner.
- (b) Any person who violates a provision of this article may be required to replace an affected tree, at the option of the City Manager. Application and approval of a tree permit in accordance with the requirements of section 5-87 must be obtained. Replacement stock must be planted within 90 days of permit issuance. The cross sectional area of the replacement stock shall be taken at the tree's caliper and shall be equal to 150 percent of the cross sectional area of the tree removed. The City Manager may reduce the replacement schedule based on the nature of the violation. All other tree replacement provisions of section 5-93 shall apply.

(Ord. No. 08-07, § 1(B), 3-7-2007)

Sec. 5-83. - Documents incorporated by reference.

When a word, term, or phrase is not defined in section 1-3, the definitions set forth in publications recognized as authoritative in the scientific and engineering fields, as applicable, shall apply. Such publications shall include the latest edition of *Trees Native to Tropical Florida*, by Tomlinson; *Dig Manual*, by the State of Florida; *Guide for Plant Appraisal*, by the Council of Tree and Landscape Appraisers; *Trees and Development*, by Jim Clark and Nelda Matheny; *Tree, Shrub and Other Woody Plant Maintenance—Standard Practices*, by the American National Standards Institute (ANSI A-300); and

Grades and Standards for Nursery Plants, by the Florida Department of Agriculture and Consumer Services. These publications, as amended, are adopted and incorporated into this article by reference.

Sec. 5-84. - Reserved.

Sec. 5-85. - General prohibitions.

Unless otherwise authorized by this article, no person shall cause, suffer, permit or allow:

- (1) The removal of any historical tree without first obtaining approval from the City Council to conduct the removal.
- (2) The removal of any tree without first obtaining a tree removal permit from the City as herein provided.
- (3) Any encroachments, excavations, or change of the natural grade within the drip line of a tree unless it can be demonstrated to the City Manager, prior to the commencement of said activity, that the activity will not negatively impact any tree.
- (4) Land clearing or the operation of heavy equipment in the vicinity of a tree without placing and maintaining a protective barrier around the drip line of the tree. The protective barrier shall be conspicuous enough and high enough to be seen easily by operators of trucks and other equipment. Tree protection provisions of section 5-95(1) shall apply.
- (5) The storage or use of materials or equipment within the drip line of any tree, or attachments, other than those of a protective and nondamaging nature, to any tree.

Sec. 5-86. - General exemptions.

- (a) During emergency conditions caused by a hurricane or other natural disaster, the provisions of this article may be suspended by the direction of the City Manager.
- (b) Nuisance trees, as specified in section 1-3 are exempt from the provisions of this article.
- (c) Deteriorated trees which have been removed with prior approval of the City Manager or his designee are exempt from the provisions of this article. Trees removed without prior approval of the City Manager shall be presumed to have been in good condition. Removal of said trees without review by the City shall be considered a violation of this Code and subject to the provisions of section 5-82.
- (d) Trees with trunks which lie wholly within the property boundaries as described herein are exempt from the requirements of this article if the following conditions are met:
 - (1) *Existing rights-of-way and easements.*
 - a. Any trees, except historic trees, within an existing private right-of-way or maintenance easement which must be removed or thinned to ensure the safety of the motoring public and to maintain visibility of oncoming traffic at intersecting public streets. Trees which may disrupt public utilities such as power lines, drainage ways and similar public needs may be removed only upon prior written approval by the City Manager and pursuant to the requirements of subsection (d)(3) of this section. However, historic trees located in public or private rights-of-way or utility easements may only be impacted pursuant to city permit requirements.
 - b. Planned public or private rights-of-way shall be designed to preserve as many trees as possible. However, historic and specimen trees located in public or private rights-of-way or utility easements may only be impacted pursuant to city permit requirements.
 - (2) *Trees for sale.* Trees which are planted and grown for sale to the general public or for some public purposes. Licensed wholesale plant or tree nurseries and botanical gardens are exempt from this article.
 - (3) *Tree removal.* Removal of trees, except historical or specimen trees, by franchised utility companies, provided that:

- a. The utility company provides prior written notice of its intention to remove trees to the City Manager and the record property owner. The written notices shall be delivered, at minimum, 15 days prior to the intended tree removal; and
- b. The utility company can demonstrate to the City Manager prior to tree removal that:
 1. The tree will cause a continual disruption of service; and
 2. The threat of service interruption cannot be remedied by tree pruning in accordance with standards as set by the American National Standards Institute, as amended.

(Ord. No. 08-07, § 1(E), 3-7-2007; Ord. No. [05-19](#), § 4, 8-7-2019)

Sec. 5-87. - Tree permit application requirements.

- (a) *Application forms.* A complete permit application for removing or relocating trees shall be submitted by a property owner or authorized agent of the owner, on City approved application forms.
- (b) *Fees.* Each permit application must be accompanied by the appropriate fees as established by the City Council. The permit application fees are nonrefundable and nontransferable.
- (c) *Required application data.* The City approved permit application must be accompanied by surveys, and other documents as required by the City Manager, that describe the proposed activities to be performed in sufficient detail to meet the standards of this article and to clearly identify all potential impacts to the environment and public health. A property boundary survey shall be submitted with the application. Property boundaries must be locatable in the field by the inspectors. As a minimum, property corners must be located and so designated to be clearly identifiable and visible on-site. Property corners shall be intervisible or line markers shall be provided.
- (d) *Action on permit application.* The City Forester or his designee shall, in a timely manner, determine if the application is complete. If it is determined the application is incomplete, it shall be returned to the applicant. If the application is determined to be complete, the City Forester shall have 15 working days from the date of receipt of a complete application to approve or deny the permit.
- (e) *Modification of application requirements.*
 - (1) Application requirements may be modified upon agreement of the City Manager to reflect specific on-site needs for information. Modification would be based on the type of development proposed, the vegetative cover being impacted, and the degree of impact anticipated.
 - (2) Statistical tree survey information may be considered at the discretion of the City Manager. However, such statistical surveys shall be limited to sites containing an overstory consisting predominantly of trees uniform in age, species and distribution, which do not contain specimen or historic trees. Statistical surveys must be conducted in compliance with accepted forestry practices.

Sec. 5-88. - Area tree protection requirements.

Fifteen percent of the square footage of any development shall be designated for the protection of trees. The area required to protect specimen trees may be included to satisfy this requirement. This required area may be constituted as one or more subareas within the development. Said area may include any landscape buffer or other landscape buffer or other landscape areas required by this Code, as amended, on a development. Such designated areas shall be a minimum width and depth of 20 feet to comply with minimum tree protection standards to adequately protect the trees contained within the areas. A minimum of 50 percent of the required minimum number of trees as provided in section 5-89 shall consist of existing trees within said area. The City Forester may provide for a waiver or modification of this requirement if the development contains an insufficient amount of existing trees to meet this requirement or if the City Forester determines that modification of this requirement is warranted by specific on-site conditions. On new subdivision plats or replats, the required tree protection/preservation areas shall be exclusive of any lots, stormwater retention, utility easements, or any other area not

compatible with the preservation of existing trees and native vegetation. All tree preservation/protection areas shall be located in separate tracts dedicated to the Home Owners Association or Property Owners Association for the subdivision for preservation/protection by that organization. Such a tract shall not be transferred to any entity other than the City, subject to the City's acceptance. No lot shall contain any portion of a required tree preservation/protection area. A tree preservation/protection area shall not be included in the calculations for the developable area of any lots. On commercial site plans the required tree protection/preservation areas shall be exclusive of any stormwater retention, utility easements, or any other area not compatible with the preservation of existing trees and native vegetation. All tree preservation/protection areas shall be clearly labeled as such on the site plan and shall not be altered except as approved by the City Forester.

(Ord. No. 08-07, § 1(G), 3-7-2007)

Sec. 5-89. - Minimum tree coverage requirements.

Each lot shall contain a minimum of one tree for each 2,500 square feet of lot area (rounded up to the nearest whole number). If the lot contains an insufficient number of existing trees to meet this requirement, or if the lot has no existing trees, replacement trees shall be provided in accordance with section 5-93.

Sec. 5-90. - Natural vegetation retention (areas).

- (a) Areas of the property may be designated as natural vegetation retention areas indicating that all existing vegetation will remain on that area of the site.
- (b) Under this designation, trees meeting the minimum replacement size criteria, up to trees of the minimum tree definition criteria, may be retained as replacement stock for trees to be removed elsewhere on the site.
- (c) Cross sectional area of these replacement trees must be calculated and may be applied toward replacement volume needed on the site as a whole. Trees designated as replacement stock pursuant to this method become protected trees.

Sec. 5-91. - Tree permits.

- (a) *Standards for issuance.* The City Manager shall consider the following standards in reviewing the application:
 - (1) The extent to which the actual or intended use of the property requires cutting down or destruction of vegetation and trees, including whether the applicant has made every reasonable effort to incorporate existing trees into the project and to minimize the number of trees removed.
 - (2) The desirability of preserving any tree by reason of its size, age or some other outstanding quality, such as uniqueness, rarity or status as a historic or specimen tree.
 - (3) The extent to which the area would be subject to increased water runoff and other environmental degradation due to removal of the trees.
 - (4) The heightened desirability of preserving tree cover in densely developed or densely populated areas.
 - (5) The need for visual screening in transitional areas, or relief from glare, blight, commercial or industrial unsightliness, or any other affront to the visual or aesthetic sense in the area.
 - (6) The effect that changes in the natural grade will have on the trees to be preserved.
 - (7) The removal of trees will significantly affect the natural clearing of the atmosphere by vegetation through particulate matter interception, and the ingestion of oxygen released to the atmosphere as a by-product of photosynthesis.

(b) *Requirements for subdivision development.*

- (1) Except as otherwise exempted in this article, compliance with the provisions of this article shall be required of all subdivisions subject to requirements of this Code. Review for compliance shall be a function of subdivision review pursuant to this Code, as amended, and shall be clearly documented in the subdivision planning documents.
- (2) Tree removal on individual lots within the subdivision may be permitted either as a part of the subdivision review process or independently under the requirements of this section following approval of the subdivision.
- (3) If said lots are to be cleared as part of the subdivision review process, clearing may be limited, based on a determination made by the City Forester. If permitted with the subdivision process, tree replacement requirements must be provided with the subdivision approval. Permitting fees for tree removal on lots within the subdivision shall be determined based on the number of protected trees removed and shall be calculated independently of the fees for the subdivision in section 5-99.
- (4) Lots to be cleared as part of the subdivision review process shall be subject to the following:
 - a. The developer must demonstrate a site-specific need for lot clearing based upon the type of trees on-site, the topography of the site, and other factors as may be determined by the City Manager.
 - b. The developer must demonstrate that clearing can be accomplished without damage to other protected trees within the subdivision.
 - c. The developer must demonstrate that clearing is in compliance with an approved preliminary plat.
 - d. Clearing does not violate any provision of the Code of Ordinances of the City or of this Land Development Code.
 - e. The development agreement specifies permitting fees and replacement requirements for lots to be cleared.
 - f. The developer shall provide documentation of financial hardship to justify the need for lot clearing within the subdivision.
 - g. Clearing would be limited to an amount not to exceed 20 percent of the approved lots with the subdivision during any one calendar year.
 - h. In the event the majority of the trees to be cleared are sand pines, then the 20 percent limitation may be modified in accordance with a tree removal and abatement plan approved by the City Manager.

(c) *Tree permit issuance.*

- (1) If the application meets the requirements of this article, the City Manager shall approve the application subject to appropriate permit conditions. In the event that the application does not comply with the requirements set forth in this article, said application shall be denied, with reasons stated.
 - (2) Upon approval or denial of the application, the City Manager shall notify the applicant. If the application is approved, the City Manager will notify the applicant that the tree permit is approved subsequent to the requirement of section 5-95. If the application is denied, the City Manager shall notify the applicant, stating the reasons for the denial.
- (d) *Posting of permit.* A copy of the approved tree permit shall be clearly posted on the job site during all phases of clearing and construction activities.
- (e) *Termination of permit.* All tree permits shall expire one year from the date of issue unless time extensions are granted by the City Manager. Application for extensions of time shall be made in writing to the City Manager at least 30 days prior to the expiration of the permit.

- (f) *Notification of impending activity.* The person holding an approved permit shall notify the City Forester prior to the start of any land activity that will affect trees. Notification shall be timely, allowing the City Manager sufficient notice to perform necessary site inspections. The City Manager or his/her designee will inspect the site for compliance with section 5-95. A tree removal permit will be issued only after these pre-activity inspections are complete.

Sec. 5-92. - Tree relocation option.

Any person may elect to relocate a nonhistoric tree subject to prior approval by the City Manager. Any person electing to relocate a tree, rather than remove it, shall receive credit for successful relocation equal to 100 percent of the cross sectional area of the tree, deducted from the tree replacement requirements as specified in section 5-93.

- (1) *Tree relocation requirements.* To ensure successful relocation and transplanting of trees to the following guidelines shall be adhered to:
- a. No other trees on-site shall be unnecessarily damaged by the relocation.
 - b. A relocated tree shall not interfere with existing or proposed utilities, either above or below ground. A relocated tree that may reach a height of 30 feet shall not be placed within 20 feet of an overhead powerline.
 - c. A tree should be relocated within the vicinity from which the original tree was removed, where practicable.
 - d. Any tree being relocated shall not be unnecessarily damaged during removal, transport or replanting of that tree.
 - e. If a tree has a dormant period, it should be transplanted during that time. A tree should not be transplanted during periods of strong, dry winter winds or during droughts.
 - f. Adequate space for root and canopy development shall be provided.
 - g. Prior to transplanting, the tree shall be root and canopy pruned according to sound arboricultural standards. All crown pruning shall be done in accordance with standards set by the American National Standards Institute, as amended.
 - h. During and following transplanting of a tree, the root ball and trunk shall be protected. The root ball must be kept moist at all times.
 - i. A transplanted tree shall be braced for at least one year after its relocation.
 - j. A transplanted tree shall be fertilized as appropriate and shall be watered sufficiently until tree growth is re-established.
- (2) *Tree relocation maintenance/monitoring requirements.* Any person conducting tree relocation activities shall:
- a. Maintain the health of a relocated tree for a period of two years following final inspection and approval.
 - b. Replace, with a equivalent cross sectional area, within 60 days, a relocated tree that dies or is determined by the City Forester to be effectively destroyed within two years of being relocated. The two-year maintenance period shall begin anew whenever a tree is replaced.
- (3) *Tree relocation bond requirements.*
- a. Unless otherwise exempted by this article, any person conducting tree relocation activities must post a bond to insure the survival of the relocated trees designated for preservation. Said bond shall meet the approval of the City attorney and may be in the form of a letter of credit drawn upon banks or savings and loan institutions legally doing business in the state, cash bonds issued by an insurance company legally doing business in the state or other acceptable means as approved by the City attorney. This bond shall be in addition to any other bond that may be required by any other governmental entity.

- b. Determination of the bond amount shall be computed based upon the most current version of the Guide for Plant Appraisal, published by the International Society of Arboriculture.
- c. Government entities are exempt from bond requirements.
- d. Release of bonds. Tree relocation bonds will be released upon successful tree relocation as set forth in this article and written approval by the City Manager.
- e. Drawing on bonds. If a tree is determined by the City Forester to be effectively destroyed within two years from the date of relocation, the bond shall be drawn upon and funds will be deposited into the tree replacement trust fund. Said funds will be expended pursuant to section 5-97.

Sec. 5-93. - Tree replacement requirements.

- (a) Trees identified for removal on the tree permit application shall be replaced by replacement stock. Replacement shall be based on the replacement of 15 percent of the total of the cross sectional area of the trunk of the tree removed. Replacement for sand pine (*Pinus clausa*) shall be based on replacement of seven percent of the total cross sectional area of the trunk of the tree removed.
- (b) Diameter used to determine cross sectional area shall be as defined in the Grades and Standards for Nursery Plants, State of Florida, Florida Department of Agriculture and Consumer Services.
- (c) Single trees may be replaced with two or more trees provided the cross sectional requirements are met. In no event shall replacement stock be less than six feet in height nor have a caliper of less than two inches.
- (d) Replacement species shall be the same general species as the tree removed or an alternative species acceptable to the City Forester.
- (e) Replacement trees shall meet the requirements for Florida No. 1 or better grade, as provided in Grades and Standards for Nursery Plants, State of Florida, Florida Department of Agriculture and Consumer Services.
- (f) Replacement trees provided in conjunction with the site plan or subdivision approval shall be considered required improvements.
- (g) Palms may be used as replacement stock up to the full cross sectional replacement area of palms being removed from the site. Palms may be substituted as replacements for other species being removed under the following conditions:
 - (1) If the cross sectional area of palms being removed from the site comprises zero to 25 percent of the total cross sectional area of trees being removed, palms may be substituted for replacement of nonpalm species up to a maximum of 25 percent of the total replacement cross sectional area required.
 - (2) If the cross sectional area of palms being removed exceeds 25 percent of the total cross sectional area of trees being removed, no substitution of palms for nonpalm species will be allowed. The use of palms will be restricted to the replacement cross sectional area originally calculated based on palms that are being removed.
 - (3) Since palms are generally moved as mature trees, it is necessary to equate cross sectional area of commonly moved palms to cross sectional area of commonly planted nonpalm species when substituting palms for nonpalm species pursuant to subsection (g)(1) of this section. For the purpose of substitution of palms for nonpalm species, a ratio of 16 square inches of replacement cross sectional area of palms may be substituted for one square inch of replacement cross sectional area of nonpalm species. For example, a six-inch DBH palm tree containing 28.26 square inches may be substituted for a two-inch caliper hardwood tree containing 3.14 square inches of cross sectional area. The following informational chart indicates common size comparisons:

TABLE VI

DBH of Palm	Caliper of Nonpalm Species
6" equates to	2"
8" equates to	2½"
10" equates to	3"
12" equates to	3½"
14" equates to	4"
16" equates to	4½"

This substitution ratio applies only when replacing nonpalm species with palms.

- (h) General requirements for replaced trees. Any person conducting tree replacement activities shall:
 - (1) Refrain from unnecessarily damaging any other tree or trees remaining on-site while planting or preparing the site for any replacement tree;
 - (2) Plant the replacement tree so that it will not interfere proposed utility lines or cables, either above or below ground. A tree which may reach a height of 30 feet shall not be planted within 20 feet of an overhead powerline;
 - (3) Plant replacement tree species and use installation and maintenance methods that follow xeriscape principles, where practicable;
 - (4) Plant a replacement tree in an area with adequate space for root and canopy development;
 - (5) Complete tree replacement within 180 days of the issuance of a tree removal permit unless granted an extension by the City Manager.
- (i) Maintenance/monitoring requirements for replaced trees. Any person conducting tree replacement activities shall:
 - (1) Maintain the health of a replacement tree for a period of two years from the date of planting;
 - (2) Replace, within 60 days, any replaced tree that dies or is determined to be effectively destroyed within two years of being planted, as determined by the City Manager. The two years' maintenance period shall begin anew whenever a tree is replaced.
- (j) Remuneration in lieu of tree replacement. If it is determined by the City Manager that the replacement is not feasible due to lack of available planting space, the following applies:

- (1) The person conducting the tree replacement activity shall, in lieu of actual tree replacement, pay a replacement contribution into the City tree replacement trust account.
- (2) The replacement contribution will be determined using a replacement tree fee schedule/formula in compliance with the accepted national value per square inch of tree diameter at breast height and as sanctioned by the America Society of Landscape Architects (ASLA) and the Florida Nursery Standards and as accepted by the City Manager.

([Ord. No. 07-13, § 2\(Exh. A\), 8-7-2013](#))

Sec. 5-94. - Historic and specimen trees.

- (a) *Historic trees.* Historic trees shall only be removed or relocated upon approval of a permit granted by the City Council. However, if said trees are deteriorated, dying, or considered to be a hazard, the City Manager, upon prior review, may grant approval for removal under the terms of section 5-86(c).
 - (1) For historic tree removal, a tree permit application shall be filed, processed and reviewed in accordance with section 5-91. For historic tree relocation, a permit application shall be filed, processed and reviewed in accordance with sections 5-91 and 5-92.
 - (2) The City Manager shall prepare a report and recommendation on the application within 15 working days of receipt of the application for inclusion on the next available City Council agenda.
 - (3) The City Council shall consider the report and shall approve, approve with conditions, or deny the application. The report of the City Council action shall be transmitted back to the City Manager, stating any reasons for denial or conditions.
 - (4) Upon receipt of the City Council actions, the City Manager shall immediately act concerning issuance of the permit.
- (b) *Specimen trees.*
 - (1) Specimen trees shall only be removed or relocated in accordance with a permit issued by the City Manager, upon compliance with the following requirements:

TABLE VII. MINIMUM SPECIMEN TREE PROTECTION

Number of Specimen Trees per Acre	On-Site Protection Required
Less than 3 or a portion thereof	80 percent of all specimen trees
3.0 to 5.0	65 percent of all specimen trees
5.1 to 8.0	50 percent of all specimen trees

8.0 or more	4 specimen trees per acre
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- (2) Any specimen tree removed in accordance with a permit must be replaced pursuant to section 5-93.

Sec. 5-95. - Standards for tree protection during development activities.

The following are minimum standards necessary to protect trees designated for preservation from damage during development activities after a permit has been approved:

- (1) *Protection of existing trees.* Prior to the commencement of construction of a development, the applicant shall clearly mark any tree or tree groups to be maintained in the proximity of any area where land clearing equipment is to be operated. In addition, prior to any clearing of improved, vacant or unimproved land unless specifically exempted from this article, trees to be preserved shall have barriers constructed around them by the developer to prevent physical damage from heavy equipment and other activities incidental to development. Required barriers shall be subject to inspection by the City as a condition of permit approval and prior to any clearing. The barriers shall be:
 - a. Large enough to include the entire area inside the drip line of the tree or one foot of radius per inch of the diameter, whichever is greater;
 - b. Conspicuous enough and high enough to be easily seen by operators of trucks and other equipment;
 - c. Constructed of sturdy material as approved by the City Forester based on professional judgment that the intent of this provision shall be met; and
 - d. Constructed as a condition of the issuance of any tree permit, building permit, and any other development permit and prior to any construction or other development activities and required to remain in place throughout the construction.

Barriers or barricades shall be completely removed from the site at the end of the construction, unless otherwise stipulated on the approved tree preservation plan.

- (2) *Tree protection zones.* The area within the drip line of trees designated for preservation is considered the tree protection zone. Only hand clearing is permissible within the tree protection zone, unless otherwise stipulated in the approved tree permit. Encroachments into the tree protection zone will require submittal and approval of a drip line encroachment plan outlining tree protection measures to be utilized.
- (3) *Other required protection of trees and understory.* Developers shall, as required by the approved tree permit, protect the trees and understory plants designated for preservation from chemical poison, excavation, and grade changes to at least the following minimum standards:
 - a. Utility line trenches. Utility line trenches shall be routed away from trees to an area outside of the drip line. If underground utilities must be routed through a tree protection barrier zone, tunneling will be required.
 - b. Grade changes. The site shall be utilized as to require the smallest possible grade change around existing trees. The project shall be designed to utilize site topography to the greatest extent possible. No grade changes are to be allowed within the drip line of existing trees unless approved by the City Forester.

- c. Tree wells of an approved design shall be constructed around all trees to be preserved when fill material will be deposited within the drip line of protected trees and utilize retaining walls and drywells to protect any tree to be preserved from severe grade changes.
 - d. Swaling and minor negative grade changes shall be designed outside the drip line of the area of trees to be preserved. If ditches, swales, or other significant grade changes are required near a tree that is designated to be preserved, piping shall be used. Trenching within the drip line of trees to remain shall be avoided. Tunneling shall be used in lieu of trenching within the drip line of trees to remain.
 - e. Where automobile traffic areas are proposed within the drip line of trees to be preserved, and less than two inches of grade change is proposed, surfaces that allow air and water in the soil shall be used in lieu of asphalt or other impervious surfaces.
- (4) *Pruning of trees and vegetation.* The developer is permitted to properly cut or prune branches and roots of trees designated for preservation under the supervision of the City Forester. However, tree pruning shall be accomplished in accordance with the procedures set forth by the American National Standards Institute, as amended.
- (5) *Root system protection.* The root systems of trees shall be protected as follows:
- a. *Excavation within a drip line.* The City Manager may approve a drip line encroachment plan upon the applicant's request to excavate within the drip line of a tree as part of a clearing permit.
 - b. *Standards for root protection.* The following standards shall apply and the City Manager may establish additional standards for root protection consistent with this section if deemed warranted by site conditions or the project proposal:
 - 1. If roots are exposed, the developer shall provide temporary earth cover, mixed with peat moss and wrapped with burlap, to prevent exposure from drying out before permanent backfill is placed.
 - 2. The developer shall also fertilize, water and maintain in a moist condition and otherwise temporarily support and protect the tree root from damage until the tree root is permanently covered with earth.
 - c. *Protection of the tree root system.* The developer shall protect tree root systems from damage due to noxious material in solution caused by runoff, or spillage during mixing and placement of construction materials, or drainage from storage materials. The developer shall also protect the root systems from flooding, erosion and excessive wetting resulting from dewatering or grading operations.
- (6) *Trees damaged during construction.* The developer shall have trees damaged by construction repaired by a professional arborist in a manner acceptable to the City Manager as follows:
- a. *Immediate notification to the City.* The City Manager must be notified immediately after any damage to any tree damaged by construction operations.
 - b. *Prompt repair.* Repairs shall be made promptly, as necessary, after damage occurs, to prevent progressive deterioration of damaged trees.
 - c. *Removal and replacement of damaged trees.* The developer shall remove trees which are determined by the City Manager as being incapable of restoration of normal growth pattern. Such trees shall be subject to replacement pursuant to section 5-82(b).

Sec. 5-96. - Tree relocation by City.

Where a tree is intended to be removed pursuant to the provisions of this article, the City may, with the owner's permission, relocate the tree at the City's expense. The tree will be relocated within the incorporated area on public land. If the City does not elect to relocate a tree, it may give the tree to the school board, the county, or any other municipality within the county the right to acquire the tree, at its

expense, for relocation within the incorporated areas for public use, or to a school board owned site. The relocation shall be accomplished within 15 working days of the issuance of a permit. If it is necessary to root prune the tree to insure survival, the relocation shall be accomplished within a time frame agreed to by all parties.

Sec. 5-97. - Tree replacement trust account.

- (a) *Establishment.* A City tree replacement trust account is hereby established as a depository for tree replacement fees and monies.
- (b) *Dispersal of assets.* The funds in said account shall be expended, utilized and disbursed for the planting of trees, and to cover any other ancillary costs, including but not limited to landscaping, sprinkler systems and other items or materials necessary and proper for the preservation, maintenance, relocation or restoration of tree ecosystems on any public land within the City. These monies may also be utilized to engage support elements such as landscape architects and additional personnel, if deemed necessary in the opinion of the City Manager, following established City procedures.
- (c) *Deposit of monies in trust account.* All monies deposited for use as specified in this section shall be deposited in trust, in a separate account established and maintained apart from the general revenue funds and accounts of the City.

Sec. 5-98. - Issuance of certificates of occupancy.

Compliance with this article, including any conditions attached to the clearing permit, shall be a condition to the issuance of certificates of occupancy from the City or any agency or entity retained by the City for such purposes. Under certain circumstances, conditions may warrant postponing installation of replacement trees due to unfavorable planting conditions. If conditions warrant, and if acceptable to the applicant and the City Manager, a certificate of occupancy may be granted without completion of the replacement requirements under the terms of this article, provided the applicant agrees to be bound by said conditions, and appropriate performance guarantee is provided in accordance with the requirements of this Land Development Code, as amended.

Sec. 5-99. - Tree permit requirements for residential construction.

- (a) *Residential construction application requirements.* At the time of application for building permits for residential construction, the applicant must submit a tree survey, that at a minimum, identifies all trees over six inches DBH on the site by size and species, the footprint of the house and driveway, and the location of the well and septic system if applicable. The City Forester or his designee will determine which trees must be removed to accommodate the home and required infrastructure. Those trees may be removed and replacement shall be five percent of the total cross sectional area (cssi) of trees removed. Additional trees may be approved for removal at the time of permit application at the request of the applicant. Those trees will require replacement at 15 percent of cssi. If, at the time of final inspection, it is found that trees not approved by the tree removal permit were removed, replacement will be 100 percent of cssi.
- (b) *Exemptions.* Each section of this article shall apply to residential construction except:
 - (1) The area tree protection requirements of section 5-88;
 - (2) The specimen tree requirements of section 5-94(b); and
 - (3) Tree replacement requirements of section 5-93, within the buildable area. Historic tree removal for residential construction is not exempt.
- (c) *Application for tree permit prior to building permit.* A tree clearing permit may be issued prior to the issuance of a building permit application. It shall remain valid for one year unless extended by the application for a building permit. If no such application is tendered, then replacement of protected trees shall be required.

- (d) *Optional residential tree permit procedures.* At the developer's option, and with concurrence of the City Forester, the following tree permit standards for residential development may be utilized:
- (1) Lots containing less than 20,000 square feet in lot area shall contain a minimum of one tree per 1,000 square feet of lot size, rounded up to the next whole tree.
 - (2) Replacement trees may be existing trees, planted trees, or a combination thereof. Existing trees remaining on the property after construction will meet this requirement as long as adequate protection has been provided during construction in accordance with section 5-95. Planted trees must consist of a variety of species.
 - (3) Except for the historic tree provisions of section 5-94(a), tree removal on lots developed pursuant to this option are exempt from the replacement schedule set forth in section 5-93. However, a tree permit must be obtained in compliance with the requirements of this article.

(Ord. No. 08-07, § 1(R), 3-7-2007)

Sec. 5-100. - Appeals.

Aggrieved parties may appeal any decision of the City Manager to the City Council under section 1-7.

Secs. 5-101—5-120. - Reserved.