



AGENDA
ENVIRONMENTAL ADVISORY BOARD
CITY OF PORT ORANGE

Meeting Date: Tuesday, October 24, 2017

Time: 5:15 PM

Type of Meeting: Regular

Location: 2nd Floor Conference Room
City Hall, 1000 City Center Circle

A. CALL TO ORDER

1. Roll Call

B. DISCUSSION/ACTION

2. Consideration of Minutes
3. Tree Protection Ordinance Follow up
4. Update to the Tree Abuse Ordinance

C. PUBLIC COMMENTS

D. BOARD COMMENTS

E. NEXT MEETING DATE

5. Next Meeting Date: January 16, 2018

F. ADJOURNMENT

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION MADE BY THE **ENVIRONMENTAL ADVISORY BOARD** WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE HE OR SHE MAY NEED TO ENSURE AT HIS OR HER OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE OF THE PROCEEDINGS UPON WHICH THE APPEAL IS TO BE BASED. NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-8771. UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

ENVIRONMENTAL ADVISORY BOARD MEETING MINUTES
CITY OF PORT ORANGE
1000 CITY CENTER CIRCLE – CITY HALL
2ND FLOOR CONFERENCE ROOM
JULY 25, 2017 AT 5:15 P.M.

A Regular Meeting of the Environmental Advisory Board was called to order by Chairman LaMontagne at 5:15 p.m.

Present: Derek LaMontagne, Chairman
 Newton White, Vice Chairman
 Philip Klema
 Danielle Elwood
 Kristine Cunningham
 Nancy Vaughn

Absent: John Macaluso (Excused)

Also Present: Margaret Thomlinson, Construction and Engineering
 Manager
 Michelle Cusella, Sr. Administrative Assistant

B. DISCUSSION/ACTION

2. Consideration of Minutes

- April 25, 2017 – Regular Meeting

Motion was made by Member White to approve the minutes for the meeting held April 25, 2017, Seconded by Member Elwood. Motion carried unanimously by voice vote.

- June 20, 2017 – Special Meeting

Motion was made by Member White to approve the minutes for the meeting held June 20, 2017, Seconded by Member Elwood. Motion carried unanimously by voice vote.

3. Tree Protection Ordinance Updates

Chairman LaMontagne, does not believe the city protects the trees within the city as well as other cities do.

Member Vaughn asked how it's determined what the tree contributions will be and how is it enforced.

Margaret Tomlinson, Construction and Engineering Manager, stated the contributions are spelled out in the City's Code Chapter 9 Article II. She also stated that City Council had adopted an ordinance for historic trees.

Ms. Tomlinson advised the board when a commercial project is proposed they are to come before the Environmental Advisory Board and explain what they are trying to do and why it would be necessary to remove any historical trees. After the board has heard the proposed project, the board would recommended to City Council their mitigation.

Chairman LaMontagne provided the board with the City of Jacksonville's Tree Protection Ordinance as an example and listed some ideas as a reference for Port Orange to adopt.

Chairman LaMontagne suggested board members come up with a more reasonable, higher percentage of tree preservation for commercial lots, which is currently set at 15%.

Motion was made by Member White to continue this item until October 24, 2017, Seconded by Member Cunningham. Motion carried unanimously by voice vote.

C. PUBLIC COMMENTS

4. Judith Milcarsky - Public health concerns with feral cats

Ms. Milcarsky provided a few packets on environmental health concerns regarding feral cats. She stated the worms and rabies these feral cats are carrying are dangerous and a huge issue within Port Orange.

Motion was made by Member White to support public education of animal safety and feral cats in the form of signs at public parks/areas, Seconded by Member Cunningham. Motion carried unanimously by voice vote.

D. BOARD COMMENTS

Member Ellwood suggested the possibility of bringing to City Council the idea of adopting new environmental standards as some other cities have. She will work on gathering some letters that citizens have emailed her about this topic and do further research.

E. NEXT MEETING DATE

3. Next Meeting Date: October 24, 2017

Motion was made by Member Cunningham to adjourn, Seconded by Member Elwood. Motion carried unanimously by voice vote.

F. ADJOURNMENT 6:53 p.m.

Chairman LaMontagne

ARTICLE II: - TREE PRESERVATION

Section 9: - Purpose and intent.

The purposes of this article are to: 1) acknowledge the environmental benefits of trees and natural vegetation, 2) prohibit the destruction of natural vegetation until a development plan, or other specific plan for interim land management plan has been approved, and 3) provide specific criteria for allowable clearing and grading activities as they affect tree preservation.

Section 9.5: - Definitions.

Act of God. An act that is direct, immediate, and by exclusive operation of the forces of nature, uncontrolled and uninfluenced by the power of man and without human intervention and is of such a character that it could not have been prevented or escaped from by any amount of foresight or prudence, or by any reasonable degree of care or diligence, such as lightning, tempests, perils of the seas, tornadoes, earthquakes, sudden death.

Caliper. The minimum trunk diameter of a replacement tree as measured at a predetermined required point of measurement. Trunk diameter for trees up to four inches shall be measured six inches above the soil line. All trees over four inches in diameter shall be measured 12 inches above the soil line.

Cross sectional area.

$$(Pi d^2)/4$$

d = diameter of tree (measured at diameter at breast height (DBH))

Pi = 3.1417 (rounded)

Dead tree. A tree which has lost its ability to absorb nutrients and has ceased producing live foliage or green wood during its normal growing season.

Deteriorated tree. A tree which is degenerated or damaged to the point where the death of the tree is imminent or to the point where the tree poses a significant hazard.

Diameter at breast height (DBH). Trunk diameter of tree measured four and one-half feet above soil level. If a tree forks within four and one-half feet of the soil line, each fork shall be considered a separate tree.

Diseased tree. A tree which is degenerated or damaged by a biological pathogen or pest to the point where the death of the tree is imminent or to the point where the tree poses a significant hazard.

Drip line. A line extending vertically and at right angles between the outermost portion of the tree crown and the ground.

Historic tree. Any Live Oak (*Quercus virginiana*) or Bald Cypress (*Taxodium distichum*) 36 inches DBH or greater or any other tree which is 36 inches DBH or greater and is determined by the local governing body to be of such unique and intrinsic value to the general public because of its size, age, historic association, or ecological value as to justify this classification. Any tree in this county selected and duly designated a Florida State Champion, United States Champion or a World Champion by the American Forestry Association shall likewise be within this definition.

Mitigation. Actions including but not limited to planting of replacement tree(s) and/or contribution to a tree bank, required to be taken by a person to offset environmental impacts of permitted activities.

Replacement tree. A tree of Florida grade #1 or better quality, with a caliper and minimum height as determined by section 15(b) for replacement of trees other than historic and section 16.5 for replacement of historic trees. Replacement trees must be of a species on the approved tree list found in chapter 13, section 6.

Remove or removal. Actual or effective displacement of trees through killing, damaging or destroying.

Specialist. Person certified by the International Society of Arboriculture or having a degree in forestry management, horticulture or landscape architecture and having worked in the field of tree maintenance for at least four years.

Specimen tree. Species listed in section 16(a).

Tree. Any woody self-supporting plant characterized by having a single trunk or multistem trunk system with well-developed crown, capable of reaching ten feet high as measured from its base.

Tree bank. City account for purchase and installation of trees and irrigation in city parks, rights-of-way, and public open spaces.

(Ord. No. 2002-36, § 1, 9-17-02)

Section 10: - Permit requirements for tree removal.

- (a) It is hereby unlawful for any person to cut down, move, remove or destroy through damaging or to authorize the same, of any tree or natural vegetation referenced in this article without obtaining a tree removal permit in accordance with the provisions of this article.
- (b) It is hereby unlawful for any person to change or modify the grade of any land without obtaining a change of grade permit in accordance with the provisions of chapter 10, article I. Where both clearing and changing of grades are proposed, the permit requirements of chapter 10, article I shall apply, in addition to the standards of this article.
- (c) Tree removal permits for historic trees may only be approved by the city council. Historic trees shall be deemed specimen trees for purposes of the requirements of this article, and shall comply with the requirements for specimen trees except that the additional specifications set forth in subsection 16.5 of this chapter shall apply to removal and replacement of historic trees.
- (d) The following procedure shall apply for tree removal on unsubdivided property or subdivided lots with no approved development or building plan:
 - (1) *Application procedure.* Application shall be made to the department on an appropriate form provided for that purpose. Application submittal shall include the necessary drawings or documents to show the following:
 - (a) All existing trees six inches or greater at DBH; other vegetation depicted by canopy area or spread with average density height and trunk dimensions; the trees and vegetation to be removed shall be clearly noted and all specimen and historic trees proposed for removal shall be individually noted.
 - (b) The name, address and telephone number of the applicant to which all notices and communications relating to such application may thereafter be sent, as well as a brief statement describing the need for, and intent of the proposed work.
 - (2) *Standards of review.* The application shall be reviewed on the following criteria:
 - (a) The extent to which the actual or intended use of the property requires removal, cutting down or destruction of trees.
 - (b)

The desirability of preserving any tree by reason of its size, age, or some other outstanding quality, such as uniqueness, rarity or status as an historic or specimen tree.

- (c) The extent to which the area would be subject to increased water runoff and other environmental degradation due to removal of the trees and vegetation.
- (d) The heightened desirability of preserving or enhancing tree cover in densely developed populated areas.
- (e) 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.

(Ord. No. 1999-4, § 3, 2-16-99; Ord. No. 2002-36, § 2, 9-17-02)

Section 11: - Land clearing; approved subdivision development plan.

The approval of subdivision development plans and subsequent issuance of a development permit shall authorize all clearing necessitated by the installation of the approved public improvements or other work as specifically depicted on the plans. However, all soil and tree preservation measures required by this code shall be applicable to subdivision construction. The implementation of these measures shall be agreed upon during the preconstruction meeting, including necessary inspections.

Section 12: - Tree and vegetation removal; approved site plans.

Subsection 5, chapter 3 of this code shall apply with respect to the removal of trees and vegetation in connection with an approved site plan.

(Ord. No. 1995-43, § 42, 12-19-95; Ord. No. 2012-16, § 6, 12-11-2012)

Section 13: - Tree and vegetation removal; single- and two-family lots.

Tree and vegetation removal from single- and two-family lots shall be permitted in accordance with section 5.5, chapter 13 of this code. However, if any tree to be removed is located within a conservation easement, the requirements of section 19 of this chapter shall prevail. In addition, historic tree removal and replacement shall require approval by city council and shall be in accordance with section 16.5 of this chapter.

(Ord. No. 1992-29, 11-3-92; Ord. No. 1993-58, 1-18-94; Ord. No. 1994-44, § 1, 1-17-95; Ord. No.

1995-43, § 43, 12-19-95; Ord. No. 2002-36, § 3, 9-17-03)

Section 14: - Required tree preservation measures.

The following tree preservation measures shall be implemented on all construction sites as applicable.

- (a) *Clearing procedures.* The owner or developer shall be responsible for insuring that all possible measures are taken during the clearing process to avoid damage to trees and vegetation designated to remain after construction. This shall include use of hand labor rather than large machinery where necessary to protect trees to be preserved. All felled material shall be promptly and carefully removed from the site in order to avoid potential damage to remaining trees and vegetation and the harboring of insects and rodents.
- (b) *Protective barricades.* Protective barricades shall be constructed around all trees and vegetation designated to remain. These barricades shall be located at the edge of construction or the dripline of the trees or vegetation, whichever is closer, and shall be approximately three to four feet in height. The barricade should be rigid and sturdy enough to survive the construction period, however, any suitable new or scrap material may be used in its construction. Absolutely no fill, building materials, trash or other objects shall be placed inside these barriers. If fill is deposited adjacent to these areas, a suitable temporary or permanent straining structure shall be constructed to prevent siltation of the barricaded area.
- (c) *Construction of tree wells.* Tree wells of an approved design shall be constructed around all trees where over six inches of fill is proposed within the dripline area. Design shall generally be as specified in the Tree Protection Manual for Builders and Developers, published by the Florida Department of Agriculture and Consumer Services, Division of Forestry, latest edition. Specific details shall be approved by the city and where deemed appropriate, in consultation with the county forester.
- (d) *Use of alternate surfaces in traffic areas.* Where traffic areas are proposed at or near natural grade, alternate pervious surfaces such as "Turf-block" may be required in tree dripline areas. Specific details shall be approved by the city and, where deemed appropriate, in consultation with the county forester.
- (e)

Excavations. Swaling and minor negative grade changes should be designed around the dripline area to the greatest extent possible. Piping should be used where deep swales or ditches would require significant grade changes adjacent to specimen trees. Trenching of any tube should be avoided in the dripline area. Where underground installations are required adjacent to the trunks of specimen trees, tunneling should be used. When trenching or tunneling near trees to remain, protective measures should be taken as specified in the Tree Protection Manual for Builders and Developers.

Section 15: - Minimum tree coverage requirements.

- (a) *Minimum number of trees.* In connection with the new construction on any lot or parcel, each lot shall contain a minimum of one tree for every 2,500 square feet of lot area (rounded to the nearest whole number). Specific landscaping requirements of chapter 13 or other sections of this code may exceed these requirements. If the lot contains an insufficient number of existing trees to meet either requirement, replacement trees shall be provided.
- (b) *Replacement tree specifications.* Replacement trees for multifamily, commercial, industrial and institutional lots or parcels shall be a minimum size of four-inch caliper, 14 feet high. Replacement trees for single-family and two-family lots subsequent to the issuance of a certificate of occupancy shall be a minimum size of two-inch caliper, ten feet high. The city council shall adopt by resolution a list of accepted replacement tree species.

(Ord. No. 1994-44, § 2, 1-17-95; Ord. No. 1999-4, § 4, 2-16-99; Ord. No. 2002-36, § 4, 9-1-7-03; Ord. No. 2007-63, § 1, 1-15-08)

Section 16: - Specimen tree protection requirements.

- (a) *Definition of specimen trees.* The following species of trees with the minimum specified diameter at breast height are determined to be specimen trees in the city:

Common Name	Botanical Name	Size
Turkey Oak	(Quercus Laevis)	12 inches and larger
Other Oak species	(Quercus spp.)	18 inches and larger
Maple	(Acer spp.)	18 inches and larger

Cypress	(Taxodium Distichum)	18 inches and larger
Sweet Gum	(Liquidambar styraciflua)	18 inches and larger
Hickory	(Carya spp.)	18 inches and larger
Elm	(Ulmus spp.)	18 inches and larger
Loblolly Bay	(Gordonia lasianthus)	12 inches and larger
Sweet Bay	(Magnolia virginiana)	12 inches and larger
Red Bay	(Persea borbonia)	12 inches and larger
Swamp Bay	(Persea palustris)	12 inches and larger
Sycamore	(Platanus occidentalis)	18 inches and larger
Magnolia	(Magnolia/grandiflora)	12 inches and larger
Red Cedar	(Juniperus silicicola)	12 inches and larger

- (b) *Required preservation.* All specimen trees not exempted by this article shall be preserved and protected by the use of tree conservation easements granted to the city. For the purpose of platting new residential subdivisions, tree conservation easements are to be contained wholly on common area maintained by an HOA and never located on an individual residential lot. Said common areas shall be contiguous to a public right-of-way or access easement to ensure public and/or resident benefit or enjoyment. Existing residential properties with tree conservation easements are not required to mitigate for the loss of protected trees that have died or have been destroyed by acts of God. The number of specimen trees required to be preserved on a site shall be determined according to the schedule below. The minimum size of such easement shall be one foot diameter for every one inch diameter at breast height or the dripline of the tree, whichever is greater, unless

otherwise approved by the administrative official. A greater size may be required based on canopy size, soil conditions, or other factors that would affect the long-term health of the tree.

Number of Specimen Trees	Minimum Specimen Tree Protection Requirements
Less than 3 per acre	80 percent of all specimen trees
3.0 to 5.0 per acre	65 percent of all specimen trees
5.1 to 8.0 per acre	50 percent of all specimen trees
8.1 or more per acre	4 specimen trees per acre

- (c) *Required replacement.* The administrative official may allow replacement of specimen trees in cases where such trees are diseased or dead. In such cases, the developer may replace the trees according to the city's tree replacement formula specified in subsection 19(b) of this chapter, or may make a contribution to the city's tree bank based on the tree banking formula listed below. Replacement trees allowed under this subsection shall not count toward individual lot requirements. Specimen trees left unprotected by a conservation easement shall not count toward the required specimen tree protection requirements. The accepted national value shall be based upon the Guide for Plant Appraisal, 9th Edition (United States), as amended from time to time.

Specimen Tree Banking Formula

12.57 square inches x number of replacement trees × accepted national value per square inch

- (d) *Tree survey/final plats and plans.* A tree survey shall be required to locate all specimen and historic trees on the site. The developer of a subdivision shall provide legal mechanisms which insure the protection of specimen trees after building construction has occurred on the site. Such mechanisms may include, but shall not be limited to, conservation easements, common open space, tree protection easements, deed restrictions and homeowner association documents. Such protected trees shall only be removed based on imminent danger caused by death, deterioration or disease.
- (e) *Tree survey/site development plans.* A tree survey shall be required for all site development plans. The tree survey shall locate all trees having a caliper of six inches or greater at DBH which are species of specimen trees. The tree survey shall also identify all other trees having a caliper of six inches or greater at DBH which are located within required landscape buffers, along rights-of-way, and within required perimeter buffers.

(Ord. No. 1994-44, §§ 2, 3, 1-17-95; Ord. No. 1995-43, § 44, 12-19-95; Ord. No. 1999-6, §§ 16, 17, 2-23-99; Ord. No. 2002-36, § 4, 9-1-7-02; Ord. No. 2007-63, § 2, 1-15-08; Ord. No. 2011-27, § 4, 10-25-11)

Section 16.5: - Historic tree protection requirements.

- (a) Upon receipt of an historic tree removal request city staff shall inspect and determine whether or not a historic tree is healthy, deteriorated, diseased or dead. If the applicant is in disagreement with staff's determination as to the health of the tree then staff shall hire a specialist to determine whether the tree is healthy, deteriorated, diseased or dead. The specialist shall report to staff and not the applicant. However, the applicant shall pay the cost of the specialist. Any objections to the choice of specialists shall be heard by the environmental advisory board. On a finding of bias or other valid reason the environmental advisory board shall disqualify the specialist and choose another specialist. The new specialist shall report to staff and not the applicant. The applicant shall pay for the disqualified specialist and the new specialist.
- (b) Removal of historic trees on multifamily, commercial, industrial and institutional lots or parcels shall be mitigated by the party removing the trees with replacement trees or by a contribution to the tree bank or a combination of replacement trees and a contribution to the tree bank.

- (1) Historic trees which are not diseased, deteriorated or dead shall be mitigated in an amount as established by resolution by city council. If a tree is removed without city staff having an opportunity to inspect the tree to determine whether the tree is healthy, deteriorated, diseased, or dead, then the tree shall be considered healthy and shall be mitigated in amount as established by resolution by city council. Failure to obtain a permit for tree removal may subject the party to penalties as set forth in section 22.6.
 - (2) Historic trees that are determined to be deteriorated and/or diseased shall be mitigated in an amount as established by resolution by city council.
 - (3) Historic trees determined to be dead by city staff or a specialist as proscribed in part (a) above shall require no mitigation.
 - (4) Replacement trees shall be a minimum of four and one-half-inch caliper measured 12 inches above the ground, at least 14 feet in height at time of planting.
 - (5) The environmental advisory board (EAB) is established as the body with the authority to decide mitigation requirements based upon the resolution adopted by city council and after city council grants approval of historic tree removal. In the interest of flexibility and fairness, the environmental advisory board (EAB) may allow a party to mitigate the replacement of a historic tree through any combination of replacement trees, and/or contribution to the city's tree bank provided that the combination equals or exceeds the required percentage of the total cross sectional area of the removed historic tree as established by resolution by city council.
 - (6) The city council shall establish by resolution the amount of replacement trees which shall be planted or the amount of money which shall be deposited in the tree bank in order to mitigate for removal of various sizes of historic trees.
- (c) Historic trees on single-family and two-family lots that are approved for removal by city council shall be replaced whenever the proposed removal will result in less trees than required for single and two-family residences as outlined in section 5.5, chapter 13. Replacement trees for historic trees on single-family and two-family lots shall be a minimum of one-inch caliper, at eight feet high.
- (d) City staff or an authorized representative of the city may allow removal of a historic tree in an emergency prior to city council approval in cases where such trees are diseased, dead, deteriorated or damaged by fire, windstorm, lightning, or other acts of God, and pose imminent danger to life or property. Whether a historic tree is diseased, dead, or damaged by fire, windstorm, lightning, or other acts of God shall be determined according to the

process under part (b) of this section. In such a case, the item would go before city council after the fact, and mitigation would require approval by the environmental advisory board for lots other than single or two-family residential.

(Ord. No. 2002-36, § 5, 9-17-02)

Section 17: - Area tree protection requirements.

Fifteen percent of the square footage of any development shall be designated for the protection of existing 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. This area may include required landscape buffer or other landscape areas. Such designated areas shall contain sufficient land area 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 15(a) of this article, shall consist of existing trees within said area. This requirement may be waived or modified if the development contains an insufficient amount of existing trees to meet this requirement or if the modification of this requirement is warranted by specific on-site conditions.

Section 18: - Tree survival.

Except for any exemptions contained in section 21 of this article, all trees relocated, replaced, or existing within the terms of the article shall be replaced in the event said trees expire. If the development otherwise contains trees which meet the minimum requirements of this code, the city may waive the replacement requirements. To insure survival of trees, the city shall enforce the provisions of the Tree Protection Manual for Builders and Developers or other comparable protection requirements.

(Ord. No. 1993-58, 1-18-94)

Section 19: - Tree replacement.

- (a) *In general.* In order to maintain the wooded and natural character of the city and provide for perpetual reforestation of the urban forest, the replacement of trees removed from the site after final acceptance or issuance of a certificate of occupancy shall be required. Such replacement shall apply to all development excluding single-family dwellings, two-family dwellings, and structures of up to four dwelling units in planned unit developments.

- (b) *Replacement schedule for trees which are not historic trees.* Replacement trees shall be provided in accordance with the following schedule.

Tree Diameter at Breast Height	Required Replacement Trees
2—8"	1
9—16"	2
17—24"	3
25—32"	4
33—40"	5
41" +	6

- (c) *Replacement species and size.* Historic and specimen trees to be removed shall be replaced with the most similar species listed in section 15(b) of this article. The minimum specifications for replacement of specimen trees shall be in accordance with the same section. The minimum specifications for historic tree replacement shall be in accordance with section 16.5 of this chapter.
- (d) *Replacement location.* Replacement trees should be planted in the same location as the original tree, wherever possible. Replacement trees planted in areas other than the original location shall be accessible to irrigation or hand watering to ensure survival.
- (e) *Tree bank for specimen and historic trees.* The city finance director shall establish a separate project account for the tree bank for the deposit of mitigation payments as required in chapter 9, article II. All monies deposited for use as specified in section 19(e) of this article, shall be deposited in a separate project account established and maintained apart from other project accounts of the City of Port Orange. 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, labor, consultant services

and other services or materials necessary and proper for the preservation, maintenance, relocation or restoration of tree ecosystems on any public land within the jurisdiction of the City of Port Orange. These monies may also be utilized to purchase land intended for conservation, tree preservation or public open space.

(Ord. No. 1993-58, 1-18-94; Ord. No. 2002-36, § 6, 9-17-02; Ord. No. 2007-63, § 3, 1-15-08)

Section 19.5: - Tree and vegetation replacement, single- and two-family lots.

Tree and vegetation replacement for existing single- and two-family lots shall be provided in accordance with section 5.5, chapter 13 of this code. However, if any tree to be removed is located within a conservation easement, section 19 of this chapter shall prevail. Historic tree removal and replacement shall require approval by city council and be in accordance with section 16.5 of this chapter.

(Ord. No. 1999-6, § 18, 2-23-99; Ord. No. 2002-36, § 7, 9-17-02)

Section 20: - Stop work order.

The city shall issue a stop work order to any person found in the act of cutting down, destroying, damaging or removing trees in violation of this article.

Section 21: - Exemptions.

The following activities are exempt from the permitting and review process of this article unless the tree being removed is a historic tree. A historic tree shall not be exempt from the permitting and review process of this article:

- (a) The removal of trees damaged by fire, windstorm, lightning, or other acts of God, which pose imminent danger to life or property.
- (b) The removal of trees specifically grown as landscape material for resale, including all licensed nurseries and botanical gardens.
- (c) The removal of species considered to be invasive. The city council shall adopt by resolution a list of invasive species.
- (d) The removal of trees that are dead.
- (e)

The removal of trees, except historic trees, within State of Florida owned lands as authorized in an amendment or an addendum to the Doris Leeper Spruce Creek Preserve Land Management Plan to include the habitat restoration plan and to be implemented consistent with the buffer plan as shown on Exhibit A and as follows:

- (1) Maintain the vegetation within the trail buffers along Zone A to a minimum of 50 feet and in some places 100 feet depending on the biology of the area; and
- (2) Maintain the northern trails for all habitat restoration areas 300 feet from the bluff adjoining Spruce Creek; and
- (3) Maintain the vegetation within the trail buffers within Zone B for the eastern trail to at least 25 feet; and
- (4) Maintain the existing 7/10 trail in Zone C with 25-foot vegetated buffers on both sides and a maximum vegetation height of 15 feet during the construction and until completion of an enhanced trail along the southern boundary of Zone D; and
- (5) Maintain meaningful opportunity for inclusion and participation of all interested persons, in the development of a master trail plan for the Doris Leeper Spruce Creek Preserve Management Plan.

(Ord. No. 2002-36, § 8, 9-17-02; Ord. No. 2007-63, § 4, 1-15-08; Ord. No. 2012-35, § 1, 1-22-2013)

Section 22: - Violation and enforcement.

- (a) *Restoration plan required.* All violations of this article involving the unauthorized removal of trees and vegetation shall require the land owner to file a restoration plan as provided for below.
- (b) *[Referral to code enforcement board].* Other violations of this article involving reversible conditions may be referred to the code enforcement board as outlined in chapter 3.
- (c) *Stop work order.* A stop work order shall be issued for all sites in violation, upon which construction has been authorized. No further city permits for the subject property or project shall be issued, or attendant inspections completed, until such violations are corrected or a restoration plan has been accepted by the city. This shall include the certificate of occupancy for the attendant structure.
- (d) *Restoration plan criteria.* When unauthorized removal of trees or vegetation has occurred, the owner or developer shall submit a restoration plan within 30 days after being cited for such violation. All restoration plans involving removal of specimen trees on raw land without

development approvals, or those specimen trees specifically designated for preservation, shall be approved by the city council. Other restoration plans may be approved by the department.

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 material removed.
- (3) Any special function the material carried out as a screen or buffer.
- (4) The amount of other natural material preserved on the site, and the opportunities for planting additional materials.

The primary consideration of the restoration plan shall be to return the affected portion of the site to its natural state, or, if that is impossible, to mitigate the negative effects of the violation over the entire site to the greatest extent possible. The implementation of the plan shall be inspected by the city, and the city may require any guarantees deemed necessary to insure the maintenance and survival of the implemented restoration plan.

Section 22.5: - Administrative variances.

- (a) *In general.* The administrative official may grant administrative variances from the specimen tree protection requirements and area tree protection requirements prescribed in sections 16 and 17 of this chapter in accordance with this section.
- (b) *Application for administrative variance.* Application for administrative variance shall be made on the appropriate form provided by the department for that purpose, and shall be accompanied by the appropriate review fee.
- (c) *Review criteria.* When reviewing any variance request, the administrative official shall consider the following:
 - (1) The extent of the variance requested. In no case shall an administrative variance be granted when such variance proposes the removal of more than five specimen trees required to be protected, or proposes a reduction of the area tree protection requirements by more than 33 percent.
 - (2) Mitigation for proposed tree and vegetation removal based upon the tree banking formula prescribed by section 16 of this chapter.
 - (3) The impact of tree preservation requirements on economic development goals established for designated redevelopment districts.

- (4) The review criteria for all other variances described in paragraph 1(g)(2), chapter 19 of this code.

(Ord. No. 1995-43, § 45, 12-19-95)

Section 22.6: - Penalties.

- (a) Any party found to have removed, or killed a historic tree without a permit, shall pay up to a \$5,000.00 fine and shall be required to mitigate the cross sectional area of the tree removed as required by this article. Failure to mitigate the cross sectional area of a historic tree removed by permit or without a permit shall subject the party to a fine as required under section 1-8(a) of this code. For purposes of this section each day a party fails to mitigate the cross sectional area of the tree removed shall constitute a separate offense.
- (b) Nothing in this section shall be interpreted to limit enforcement of this article by any other remedy including but not limited to remedies provided in the land development code, the city ordinances or general law.

(Ord. No. 2002-36, § 9, 9-17-02)

DRAFT

ORDINANCE NO. 17-xx

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING THE FOLLOWING SECTIONS OF THE LAND DEVELOPMENT: CHAPTER 9, SECTION 9.5, TO ADD THE DEFINITION FOR "HATRACKING"; AMENDING CHAPTER 9 TO CREATE A "TREE ABUSE" SECTION; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council finds it necessary to make the following amendments to ensure and enhance the preservation and protection of trees within the municipality; and

WHEREAS, for purposes of this ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

SECTION 1. The City Council of the City of Port Orange, Florida hereby amends Chapter 9, Section 9.5 of the City of Port Orange Land Development Code to read as follows:

Section 9.5: - Definitions.

Act of God. An act that is direct, immediate, and by exclusive operation of the forces of nature, uncontrolled and uninfluenced by the power of man and without human intervention and is of such a character that it could not have been prevented or escaped

from by any amount of foresight or prudence, or by any reasonable degree of care or diligence, such as lightning, tempests, perils of the seas, tornadoes, earthquakes, sudden death.

Caliper. The minimum trunk diameter of a replacement tree as measured at a predetermined required point of measurement. Trunk diameter for trees up to four inches shall be measured six inches above the soil line. All trees over four inches in diameter shall be measured 12 inches above the soil line.

Cross sectional area.

$$(Pi d^2)/4$$

d = diameter of tree (measured at diameter at breast height (DBH))

Pi = 3.1417 (rounded)

Dead tree. A tree which has lost its ability to absorb nutrients and has ceased producing live foliage or green wood during its normal growing season.

Deteriorated tree. A tree which is degenerated or damaged to the point where the death of the tree is imminent or to the point where the tree poses a significant hazard.

Diameter at breast height (DBH). Trunk diameter of tree measured four and one-half feet above soil level. If a tree forks within four and one-half feet of the soil line, each fork shall be considered a separate tree.

Diseased tree. A tree which is degenerated or damaged by a biological pathogen or pest to the point where the death of the tree is imminent or to the point where the tree poses a significant hazard.

Drip line. A line extending vertically and at right angles between the outermost portion of the tree crown and the ground.

Hattracking. To flat-cut the top of a tree, severing the leader or leaders; or pruning a tree by stubbing off mature wood; or reducing the total circumference or canopy spread not in conformance with the American National Standards Institute, A-300 standards or other accepted standards as published.

Historic tree. Any Live Oak (*Quercus virginiana*) or Bald Cypress (*Taxodium distichum*) 36 inches DBH or greater or any other tree which is 36 inches DBH or greater and is determined by the local governing body to be of such unique and intrinsic value to the general public because of its size, age, historic association, or ecological value as to justify this classification. Any tree in this county selected and duly designated a Florida State Champion, United States Champion or a World Champion by the American Forestry Association shall likewise be within this definition.

Mitigation. Actions including but not limited to planting of replacement tree(s) and/or contribution to a tree bank, required to be taken by a person to offset environmental impacts of permitted activities.

Replacement tree. A tree of Florida grade #1 or better quality, with a caliper and minimum height as determined by section 15(b) for replacement of trees other than historic and section 16.5 for replacement of historic trees. Replacement trees must be of a species on the approved tree list found in chapter 13, section 6.

Remove or removal. Actual or effective displacement of trees through killing, damaging or destroying.

Specialist. Person certified by the International Society of Arboriculture or having a degree in forestry management, horticulture or landscape architecture and having worked in the field of tree maintenance for at least four years.

Specimen tree. Species listed in section 16(a).

Tree. Any woody self-supporting plant characterized by having a single trunk or multistem trunk system with well-developed crown, capable of reaching ten feet high as measured from its base.

Tree bank. City account for purchase and installation of trees and irrigation in city parks, rights-of-way, and public open spaces.

SECTION 2. The City Council of the City of Port Orange, Florida hereby amends Chapter 9, Article II, of the Land Development Code to establish a new Section 20.5 to read as follows:

Section 20.5 – Tree Abuse.

- (a) Generally. Tree abuse is prohibited. Abused trees may not be counted toward fulfilling landscape requirements. The city may require the abused trees to be replaced in accordance with Ch. 9, Art. II, LDC.
- (b) Prohibited acts. A tree shall be considered abused if a person takes an action so that one of the following occurs:
 - 1) Cutting upon a tree which alters the natural shape.
 - 2) Hatracking as defined in Section 9.5.
 - 3) Trimming of more than one-third (1/3) of the tree canopy within a one year period.
- (c) Exceptions. Exceptions to this section are as follows:
 - 1) Understory trees and any trees listed on the most recent edition of the Florida Exotic Pest Plant Council Invasive Plant List are not protected by this section.
 - 2) Utility line clearing in conformance with ANSI A-300 and ANSI Z133.1 safety standards and National Electrical Safety Code clearances does not constitute tree abuse.
 - 3) Trees severely damaged by hurricane, windstorm, flood, lightning or other natural phenomena does not constitute tree abuse.
- (d) Penalties and enforcement . The provisions of this section shall be enforced and penalties imposed pursuant to [Chapter 2](#), Article V, Code Enforcement, of the City of Port Orange Code of Ordinances, and any other remedies allowed by law or equity.

SECTION 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 4. The provisions of this Ordinance shall become and be made a part of the City of Port Orange Land Development Code and the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 5. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 6. This ordinance shall become effective immediately upon adoption by the City Council.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin Fenwick, City Clerk

Passed on first reading on the _____ day of _____, 2017.

Passed and adopted on second and final reading on the ____ day of _____, 2017.

Reviewed and Approved: _____
Assistant City Attorney