

CITY OF APALACHICOLA, FLORIDA

**ORDINANCE NUMBER 2011-01
“TREE ORDINANCE”**

AN ORDINANCE BY THE CITY COMMISSION OF THE CITY OF APALACHICOLA, FLORIDA ADOPTING A TREE ORDINANCE; PROVIDING FOR IT’S INCLUSION IN THE LAND DEVELOPMENT CODE OF THE CITY OF APALACHICOLA, FLORIDA; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Apalachicola, Florida finds it necessary for the purpose of promoting, protecting and preserving the general historic and pristine nature of the City of Apalachicola to adopt a tree ordinance, and

WHEREAS, Chapter 163, Florida Statutes, empowers and requires the City to establish land-use codes and provide for its administration, enforcement and amendments, and

WHEREAS, the Planning and Zoning Commission of the City of Apalachicola, after public hearings pursuant to due public notice, has recommended to the City Commission a proposed amendment to the Land Development Code of the City of Apalachicola, Florida by adding a section to the zoning regulations for tree protection and preservation within the City, and

WHEREAS, the City Commission, after due public notice and advertising of the proposed amendment of the Land Development Code of the City of Apalachicola, Florida by amending the zoning regulations for tree protection and preservation within the City, as recommended by the Planning and Zoning Commission, accept and enact such proposed amendment as set forth herein.

NOW THEREFORE BE IN ENACTED BY THE PEOPLE OF THE CITY OF APALACHICOLA, FLORIDA, THE FOLLOWING ORDINANCE PROVISIONS REGARDING THE ZONING REGULATIONS AND LAND DEVELOPMENT CODE FOR THE CITY OF APALACHICOLA:

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- II. Definitions
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- C. City Property
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I. PURPOSE AND INTENT

Trees are recognized to be a valued asset, providing a healthier and more beautiful environment in which to live. Tree preservation enhances the value and marketability of property and thereby promotes the stability of residential neighborhoods, making them more livable and desirable.

This ordinance establishes protective regulations for tree preservation and a permitting process to insure good management practices on private and city-owned property, including utility easements for continued healthy and beautiful trees.

II. DEFINITIONS (ok to leave for clarification but need to incorporate into definition section of zoning code)

1. Board – The Planning and Zoning Board for the City of Apalachicola
2. Caliper – Standard measure of tree size for trees on a lot or a portion of a lot
3. Citizens Tree Trimming Committee – A citizen advisory group appointed by the City Commission to review and make recommendations regarding tree preservation and regulation issues.
4. Clear Cutting – The removal of all standing trees on a lot or a portion of a lot
5. Drip Line – A limiting line established by a series of perpendicular drop points marking the maximum radius of the crown of an existing tree, but not less than ten (10) feet from the trunk, whichever is greater, and within which no construction or disturbance shall occur.
6. ISA Standards – International Society of Arboriculture.
7. Protective Barrier – A physical structure limiting access to a protected tree composed of wood or other suitable material, which ensures compliance with the intent of this ordinance.
8. Pruning – The routine removal of limbs/branches that are dead, growing into a structure or right-of-way, or the practice of thinning for health of the tree.
9. Relocate or Relocation – The digging up by a property owner of a tree from a place on the owner’s property and the planting of the same tree in another place on the same property or in a public place as directed by the Board or City Commission.
10. Remove or Removal – The actual removal of a tree by digging up or cutting down or the effective removal through damage.
11. Replacement Tree – Shall be a nursery grade quality tree and of the same species of those removed, or other as approved by the Board or City Commission.
12. Selective Cutting - The removal of larger trees on an individual basis, while leaving trees of lesser size.
13. Substantially Alter – The injury, mutilation, disfiguring or substantial trimming of a tree such as that the aesthetic, ecologic, or economic value of the tree is substantially impaired.
14. Thinning – The removal of undesirable, competitive, diseased or damaged trees so as to cultivate and improve the development of remaining trees on the lot.
15. Tree Canopy – The top layer or crown of mature trees
16. Patriarch Trees – Those protected trees in which the trunk at diameter at breast height (dbh) 4.5’ from the ground exceeds a caliper of thirty-five (35) inches. Does not apply to invasive trees.
17. Native Trees – For the purpose of this ordinance, the following trees represent native trees as identified by habitat in the Florida Natural Resource Inventory and those species that represent the predominant forestation of Apalachicola: Live Oak, Water Oak, Red Oak, White Oak, Scrub Oak (Black Jack), Turkey Oak, Magnolia, Pecan, Hickory, Sycamore, Cypress, Juniper, Sweet Gum, Maple, Dogwood, Long Leaf Pine, Short Leaf Pine, Slash Pine, Sabal Palm, Tupelo. The definition of native tree may also be extended to include trees in a wetland, (other than an invasive non-native species) and any exceptional specimen trees as identified by the City Commission.
18. Protected Trees – Those native trees that represent the predominant forestation of Apalachicola and which have been identified as regionally significant. Those

species include: Live Oak, Red Oak, White Oak, Magnolia Sabal/Cabbage Palm and Slash Pine. All Patriarch trees shall be considered protected.

19. Invasive Trees – Those trees which have been identified by the State as nuisance trees. For the purpose of this ordinance, that list includes the following: Chinese Tallow (popcorn tree), Mimosa, Tung Oil, Chinese Umbrella Tree, China Berry, Melaleuca. Invasive trees are not subject to regulation in this ordinance,

III. PROTECTED NATIVE TREES

Any of the protected tree species or any tree identified as a Patriarch Tree may not be removed or modified on private or publically owned land except under emergency conditions. Permits for removal or modification of Protected Patriarch Trees as defined in this ordinance will not be granted. The proposed removal or substantial alteration of non-protected native trees (not including Patriarch trees) shall be subject to the established permit processes as outlined in Section IV. Planning and zoning may limit the removal of any native tree in addition to the listed protective trees, where landscape requirements become part of the permit conditions.

IV. PERMITS FOR REMOVAL, RELOCATION OR SUBSTANTIAL ALTERATION

Any person wishing to remove, relocate or substantially alter a protected tree or its protective surroundings, shall make application to the City by filing a written application on forms provided by the building department. Where an application as required by this Ordinance has been submitted, no permit shall be issued until a tree site plan for the lot or parcel has been submitted by the applicant to the Planning and Zoning Board and reviewed and approved by said Board. For new construction and renovation that involves increasing the size of an existing structure, a property survey shall be required in which the location and size of the affected tree shall be identified.

The tree site plan shall show the following information at a scale sufficient to enable the determination of matters required under this Ordinance:

1. The shape and dimensions of the lot or parcel, together with the existing and/or proposed locations of structures and improvements, if any.
2. Location and dimensions of all existing trees which are subject to the protected tree provisions. Trees proposed to remain, to be re-located, or to be removed shall be so identified.
3. A statement showing how trees not proposed for removal are to be protected during land clearing and construction; i.e. a statement as to proposed protective barriers.
4. A statement as to grade changes proposed for the lot or parcel and how such changes will affect the matters regulated by this Ordinance.

The application and tree site plan shall be reviewed and either approved or denied by the Planning and Zoning Board.

A. RESIDENTIAL REQUIREMENTS

1. Existing lots with houses.

The removal, relocation or substantial alteration of a protected tree will still require an application and tree site plan, in addition to a statement outlining the reason for such request should accompany the application.

2. Undeveloped lots or parcels. As outlined above per application process

B. COMMERCIAL & MULTIFAMILY DEVELOPMENT REQUIREMENTS

1. Lots with structures
(Same as residential 1. Above)
2. Undeveloped lots or parcels
As outlined above per application process.

Multifamily Developments will also be required to submit a landscape plan. Developers shall preserve existing protected trees.

C. CITY PROPERTY

Before any tree located on City Property can be removed, relocated or substantially altered, a permit application must be submitted to the Planning and Zoning Board. In all cases concerning City Property, the Planning and Zoning Board shall make their recommendations to the City Commission, who will make the final decision as to approval or denial.

D. DURATION OF PERMITS

Permits granted for the removal of trees under the terms and conditions of this Ordinance shall run with the land and shall remain in force and effect for the following periods of time, and not thereafter. Once the permit has expired, a new application must be submitted for review and a new permit issued.

1. If granted for a lot or parcel of land for which no building permit is required, one year from the date of issuance
2. If granted for a lot or parcel of land for which a building permit is required, but for which no site plan approval is required by the Planning and Zoning Board, until expiration of the building permit granted with such tree removal permit
3. If granted for a lot or parcel of land for which site plan approval from the Planning and Zoning Board is required as a condition precedent to obtaining a building permit, until expiration of the site plan

V. EXEMPTIONS

The removal, relocation, or substantial alternations under one or more of the following circumstances shall, with the approval of the Planning and Zoning Board, NOT require a permit and replanting shall not be required.

1. Nursery trees: The removal of any tree planted and grown in the ordinary course of business of a lawful plant or tree nursery.
2. Emergency situations: The removal of any tree during or following an emergency or an act of nature, when the City Commission determines that

permitting requirements will hamper private or public work to restore order to the city:

3. Safety hazard: The removal of any tree which the city designee finds to be in such a dangerous condition or pose such an imminent hazard as to endanger the public health, welfare, or safety and therefore to require immediate removal:
4. Unprotected trees
5. Routine pruning (Note: routine pruning does not substantially alter the tree)

VI. PROTECTING OF TREES DURING BUILDING OPERATIONS

It shall be unlawful for any person, in the development, redevelopment or improvement of any parcel of land, to store, within 10 feet of the trunk of any protected tree, equipment, material, debris, fill, gasoline, oil, paint, chemicals or other materials harmful to trees.

Before development, redevelopment or improvement, redevelopment or improvement the developer or builder shall be required to erect and maintain suitable protective barriers so as to prevent damage to protected trees within the drip line of the tree. Wood, metal or other substantial material shall be utilized in the construction of protective barriers. This protection, where required, shall remain until such time as the development, redevelopment or improvement is completed.

During construction, no attachments or wires shall be attached to any protected tree.

It shall be unlawful to pace with concrete, asphalt or any other impervious material within a distance from any protected tree deemed appropriate by the Planning and Zoning Board, taking into consideration the size and type of tree.

VII. UTILITY EASEMENT TRIMMING

Appropriate tree trimming within utility easements is necessary to maintain accepted public safety standards and system reliability. Utility companies and their contractors that perform any pruning or removal of trees for the City of Apalachicola shall do so in accordance with the following:

1. All tree management will be limited to what is necessary for the proper maintenance of existing and new utility facilities in order to provide safe and reliable utility service.
2. The utility shall develop standards to minimize clearing distances for 18 month cyclical pruning. The standards shall be tiered to recognize growth patterns of different species and maintain the essential character of the trees and at no time shall the removal of more than 25% of any tree's canopy occur within an 18 month period.
3. Target clearance distance shall fall within the 4' – 6' range, trimmed according to ISA standards.
4. The Utility shall continue its program of community education to ensure that the public is made aware of the need for utility pruning, what to expect when the pruning trucks come into a neighborhood and to allow citizens to express their concerns and get answers before trimming begins.

5. On a scheduled basis, the Utility shall review areas of its system in advance of utility clearance pruning and develop a plan for pruning, replanting and implementation of alternatives to pruning, if appropriate, within such areas. The area plans developed by the Utility shall be reviewed on a timely basis by a review team consisting of the utility forester; the urban forester; or, if trimming of a canopy road is involved, the canopy roads coordinator. The review team will consider alternatives and will recommend to the Utility any changes to the plan that should be considered to further the purposes of the City's tree trimming policy.
6. The City of Apalachicola and the Utility will evaluate alternative system engineering design whenever trees twenty-four (24") inches (dbh) or larger are to be affected. If the alternative design is determined to be economically viable the Utility will perform the alternative construction.
7. Should disagreements on tree trimming management techniques arise between the Utility and the owner of property on which an affected tree is located, the City's Tree Trimming Committee shall meet with both affected parties to formulate a recommendation for resolution to be presented to the City Commission.
8. The Utility should continue to explore and propose to the commission alternatives for converting overhead lines to underground transmission.
9. The Citizen's Tree Trimming Committee shall meet periodically to review the effectiveness of this ordinance and administration in meeting the goals stated herein.

VIII. PROPOSED REPLACEMENT TREE AND FINE POLICY GUIDELINES

The replacement tree policy is established to provide a mechanism for mitigation when trees identified as "protected" must be removed during construction or as a vehicle for assessing fines for unpermitted activities. This replacement policy does not apply to Patriarchal Trees with a caliper of greater than 35 inches which are prohibited from being removed or damaged under this ordinance.

Fines for the unauthorized removal of protected trees shall be placed in a "Special Beautification Fund" maintained by the City of Apalachicola. These funds will be used to establish, maintain, and promote a beautification and reforestation program on city property, primarily along highway corridors and city parks.

The following "Tree Replacement Schedule" and "Fine Schedule" will apply to the removal of all protected trees.

Caliper of Existing Tree Removed	# of Replacement Trees Required	Fine for illegal removal of protected Trees
Less than 8"	2	\$500
Between 8" and 15"	4	\$2,000
Between 15" and 25"	6	\$5,000
Between 25" and 35"	8	\$10,000

IX. VIOLATION OF ORDINANCE; PENALTIES

Any person who violates any provision of this Ordinance may be fined up to \$5,000 per violation and a replacement plan may be required in a ratio as determined by the

Planning and Zoning Board and as described above. The violation for removing a Patriarch Tree as defined in this ordinance shall be a fine of up to \$25,000 and a requirement to replace 20 trees at a size and species to be determined by the Planning and Zoning Commission.

Any commercial tree care contractor or general contractor must be licensed by the City in order to conduct business within the City. Two or more violations of any provision of this Ordinance by any commercial tree care contractor or general contractor may result in revocation of such person's license to do business within the City.

X. APPEALS

Any person who is denied a tree removal or alteration permit by the Planning and Zoning may appeal that decision to the City Commission in a manner described in the City's land use code.

XI. SEVERABILITY

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

SECTION II:

All ordinances or parts of ordinances in conflict herewith, to the extent of such conflict, are hereby repealed.

SECTION III:

This ordinance shall become effective upon affirmative vote of the majority of the City Commission and when signed by the Mayor and attested by the City Administrator.

This Ordinance was first read in open session on the 4th day of January, 2011. This Ordinance was read for the second time and fully adopted in open session on the 8th day of February, 2011.