

Date: May 12, 2020

The following PowerPoint was provided to the City Commission by City Attorney Anthony Garganese for Public Hearings Agenda Item 400 "First Reading Of Ordinance 2020-03 Amending Chapter 5 of the City Code Regarding Tree Protection and Preservation" at the May 11, 2020 City Commission Regular Meeting.

# UPDATE TO CHAPTER 5 ARBOR ORDINANCE

City of Winter Springs

City Commission Meeting May 11, 2020



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ATTORNEYS AT LAW

# Arbor Code History

- ▶ In 2002, the Commission adopted a new comprehensive Arbor Ordinance (CH. 5) to replace the former outdated arbor code
- ▶ In response to public questions regarding the new Arbor Code, the Commission established an Ad Hoc Arbor Citizen Committee in 2003 and retained the services of technical consultants (Arborist and UCF) to review and make recommendations regarding the new 2002 Arbor Code
- ▶ In 2003, the Commission considered the Committee's Report and adopted significant technical amendments and enhancements to 2002 Arbor Code
- ▶ Since 2003, the Commission has made several minor amendments to the Arbor Code
- ▶ The current Commission directed Staff and City Attorney to conduct a comprehensive review of the Arbor Code and recommend updates
- ▶ First Reading of Ordinance 2020-03

# Applicability and Intent and Purpose

- ▶ Arbor Code applies in all zoning districts
- ▶ Arbor Code prevails over conflicts
- ▶ Uniform regulations - Trees and Land Clearing
- ▶ Additionally recognizes that trees are valuable community resource, improve air and water quality, reduce noise and glare, provide habitat for wildlife and moderate the climate
- ▶ Encourage the protection of desirable trees native to Central Florida

## Definitions

- ▶ *Canopy Trees (New)* - A species of tree that naturally develops with an elevated shade crown and which normally grows to a mature height of approximately forty (40) feet or more and/or a shade crown of approximately 30 feet in diameter or more. Such species shall be listed on the Desirable Species list in Appendix B or Appendix C for Approved Streetscape Canopy Tree Types for streetscape trees along S.R. 434 and Tuskawilla Road, and include, but are not limited to, bald cypress, Chinese elm, Florida elm, live oak, pignut hickory, red maple, sand live oak, southern magnolia, sweetbay, sweetgum, sycamore, water oak and winged elm.
- ▶ *City trees (New)* shall mean all street trees located along a public right-of-way; streetscape trees under chapter 20, article VII of the city code; park and Cross Seminole Trail trees; and trees required to be preserved for the public benefit by development agreement, conservation easement or landscape easement in favor of the city and approved by the city commission.
- ▶ *City forest. (Revised)* The aggregate of all city trees which are planted in public places authorized and required to be managed by the City
- ▶ *Destroy or Destroyed* - (New)
- ▶ *Historic trees* - (Revised) - specimen trees and includes ecological value
- ▶ *Land Clearing* - (Revised)

# Definitions

- ▶ *Protective barrier (Revised)* - authorizes other appropriate barriers which may be accepted by City
- ▶ *Specimen Tree* - (Revised) Must be a "Canopy Trees"
- ▶ *Windowing* - (New) Removing several branches symmetrically within the area of the tree to provide a fully framed view of the scenery that lies beyond the tree

# State Preemptions

- ▶ Expressly recognizes that some land clearing and tree removal activities are preempted by state or federal law
  - ▶ Residential - 163.045, Fla. Stat. (certified arborist - danger to persons or property)
  - ▶ Residential defined by Code - For purposes of this section, “residential property” shall be defined as property with a fully constructed single-family home or duplex used for residential purposes, except as provided in this section. The term “residential property” for purposes of this subsection does not include multi-family property; common areas owned by a homeowners or condominium association; vacant land zoned or designated residential or mixed use (e.g., mixed use, town center, and GID) on the City’s official zoning map or future land use map; public rights-of-way; or land subject to particular landscaping, tree planting or preservation requirements pursuant to an executed development agreement, landscape easement granted to the City, or conservation easement.
  - ▶ Power Lines - 163.3209, Fla. Stat.

# Property Rights Recognized

- ▶ Arbor Code shall not:
  1. Be interpreted to cause a taking or inordinate burden on a landowner in accordance with law
  2. Interfere with a property owner's established riparian or littoral rights or substantially interfere with and obstruct a substantial portion of a property owner's visibility to a natural water body such as a lake
  3. Apply if preempted by state or federal law
- ▶ Property owner's interests are protected on appeals of administrative interpretations of the Arbor Code affecting their land



# Permitting

- ▶ Sec. 5-4
  - ▶ (b) Trees that can be removed with permit - List updated
  - ▶ (c) Review guidance - guides decisions, but clarifies not an independent basis for City to grant a tree removal or land clearing permit
  - ▶ Clarifies Contractors responsible for obtaining City license and imposes a condition that previously unpaid penalties imposed by the City under Arbor Code must be paid in full

# Permit Applications

- ▶ Requires preservation plan for specimen trees, historic trees and city trees by an ISA certified arborist
- ▶ Submittal of recorded development agreements, conservation easements or city landscape easements against property
- ▶ Clarifies timing of application also applies to mixed use and final engineering approval
- ▶ Permits tree survey exemption (waiver) in applications unrelated to the new development of buildings, structures or infrastructure and situations limited to the removal of one or more isolated and specific trees on already developed land and have no impact on protected city trees

# Historic and Specimen Trees

- ▶ Clarifies the role of property owner, arborist and commission regarding designation of historic trees on private property and city trees
- ▶ Removal Standards - Clarifies the meaning of “extraordinary circumstances and hardships” by identifying a clear “sequence of actions” to evaluate alternative development plans and the preservation, modification and relocation of specimen and historic trees
- ▶ Authorizing waivers or variances related to the preservation of specimen trees
- ▶ Recognizes that specimen trees may be removed, but subject to replacement or tree bank contributions

# Historic Tree Incentives

- ▶ Register of historic trees; recorded instrument and emblem
- ▶ With permission of the property owner, the city arborist will conduct a periodic inspection approximately every two (2) years of each historic tree in order to evaluate the health and well-being of each historic tree. Such inspection will be at no cost to the property owner
- ▶ To the extent that a permit is required under this chapter to trim or maintain a historic tree, the fee shall be waived
- ▶ Upon request of and with the permission of the property owner, the city arborist will conduct an inspection of the historic tree after a storm or other catastrophic event in which a historic tree has suffered significant damage

# Tree Replacement Guidelines

- ▶ Canopy trees are deemed preferred replacement trees
- ▶ Tree replacement credit above 1:1 standard replacement will be allowed for canopy trees that are specifically listed as desirable
- ▶ 5 credit incentive for extraordinary efforts and commitments made to preserve specimen or historic trees
- ▶ Replacement guarantees must include regular and appropriate irrigation or water source such as water bags
- ▶ Tree Replacement Standards - Table 1
  - ▶ Revised to require desirable Plants only
  - ▶ Updates Monetary contribution to reflect more accurate tree replacement costs

# Prohibitions - Updated

- ▶ Makes unlawful to trim, prune or remove any “City Tree” without the City’s permission
- ▶ Makes Unlawful to “destroy” a tree unless authorized by Arbor Code

# City Tree - Care and Maintenance Requirements

- ▶ City Manager in consultation with City Arborist responsible for care and maintenance and protection of "City Trees"
- ▶ Property owner must submit permit application to request removal, alteration or trimming of any City Tree
  - ▶ Decisions made at City's sole discretion
  - ▶ No permit - violation of Arbor Code and liable to City for any removal or damage of City Tree in violation of Code

# Permit Expiration

► Revised ---

Permits issued under this chapter shall expire and become null and void if work authorized by such permit is not commenced within 180 days from the date of the permit, or if work is commenced and suspended or abandoned at any time for a period of 180 days. However, if the permit is issued in conjunction with and in furtherance of a development permit approved by the city commission or building permit issued by the building official, the permit will expire at such time the development permit or building permit expires.



# Enforcement; Penalties

- ▶ Recognizes that the City may also have remedies under agreements
- ▶ Allows penalties for failure to obtain a permit to also be quantified by quarter acre of land cleared if necessary
- ▶ Potentially increases fines against contractors who fail to obtain an Arbor license under the Arbor Code and engage in work after receiving a cease and desist order from the City
- ▶ Under penalty considerations, allows the Code Board to take into consideration whether the violation was “willful and intentional” or in violation of an express provision of an agreement in which applicable rights were provided to the City

# COMMISSION COMMENTS AND DIRECTION

Questions and comments

