

**ORDINANCE NO. 2895-12**

**AN ORDINANCE OF THE OF WINTER PARK, FLORIDA, CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE V, "ENVIROMENTAL PROTECTION REGULATIONS", DIVISION 6, "TREE PRESERVATION AND PROTECTION", SO AS TO AMEND TREE REMOVAL COMPENSATION REQUIREMENTS, AMEND USE OF THE TREE REPLACEMENT FUND, PROVIDE EXEMPTION FROM REQUIRING A TREE REMOVAL PERMIT, CLARIFY TREE MAINTENANCE DUTY OF CITY AND PROPERTY OWNERS, AND ESTABLISH ENFORCEMENT PROCEDURE FOR REMOVING HAZARDOUS TREES; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, in recognizing that trees benefit the City by decreasing urban noise and air pollution, conserving energy, rminimizing flooding, providing food and cover for beneficial urban wildlife and providing value and stability to business and residential neighborhoods;

**WHEREAS**, the establishment of policies, regulations and standards are necessary to ensure that the city continue to realize the benefits provided by its urban forest as recognized as "Tree City USA" by the Florida Department of Urban Forestry;

**WHEREAS**, the Tree Preservation Board has considered and approved amendments to the Tree Preservation and Protection Ordinance which will provide incentives for replacement of protected shade trees removed, simplifies the process of removing protected trees and substantially reduces the financial compensation for tree removal;

**WHEREAS**, the City's Planning and Zoning Board reviewed these amendments and found them consistent with the City's Comprehensive Plan;

**WHEREAS**, the City Commission hereby approves these amendments as in the best interests of the citizens; and

**NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK:**

**SECTION 1.** That Chapter 58 "Land Development Code," Article V "Environmental Protection Regulations" of the Code of Ordinances is hereby amended and modified by amending Sections 58-282, 58-284(a) &(b), 58-286(d), 58-287, 58-289(b), and adding a new subsection (e) to 58-300, to read as follows:

**Sec. 58-282 - Definitions**

\* \* \*

*Historic tree* definition is deleted.

\* \* \*

*Specimen tree* definition is deleted.

**Sec. 58-284. - Tree removal permits**

(a) *Exempt trees.* No permit shall be required to remove the following types of trees:

- Citrus
- Ear (*Enterolobium* species);
- Camphor (*Cinnamomum camphora*)
- Chinaberry (*Melia azedarach*);
- Mulberry (*Morus* species);
- Cajeput punk or *Melaleuca* trees (*Melaleuca quinquinervia/leucadendra*);
- Palm;
- Australian Pine (*Casuarina* species);
- Australian Silk Oak (*Grevillea robusta*);
- Chinese Tallow (*Spaium sebiferum*);
- Brazilian Pepper (*Schinus terebinthifolius*);
- Any tree with a dbh less than nine (9) inches, as long as the tree was not planted as a replacement tree.

(b) Trees requiring tree removal permits. It shall be unlawful to cut down, destroy, improperly prune, remove, top, or move any protected or replacement tree, or to authorize the cutting down, destruction of, removal of, topping of, moving of, or damage to, any protected or replacement tree within the city, without prior issuance by the city of a tree removal permit approving the act or acts, or a removal authorization by the city, as further described in this division; provided, however, that these requirements do not apply to trees specifically designated as exempt from this division in section 58-284

Exception: The removal of protected trees that fall or the removal of limbs of protected trees which have fallen due to acts of nature such as storms, fire or natural decay shall not require a tree removal permit.

For all properties, any protected tree, excluding those exempted in subsection 58-284(a) or (b), shall require a permit prior to removal.

Removal of any protected tree that is determined to be dead, beyond recovery or hazardous by the city shall require a tree removal permit except as provided herein. In case of an emergency a tree may be removed as authorized by the city. (See section 58-283)

**Sec. 58-286 Tree removal permit procedure**

\* \* \*

(d) *Appeals.*

\* \* \*

(4) If the city commission upholds the decision of the tree preservation board to deny granting a tree removal permit, then the applicant may ultimately remove the subject tree(s) after a 60-day period and after notification of the intent to remove the subject tree(s) at the end of the 60-day waiting period in writing. Replacement compensation shall be provided in accordance with the replacement compensation required in section 58-287(2). Removal of subject tree(s) prior to the end of the 60-day period shall require the same compensation as an unpermitted tree removal. (see section 58-299).

**Sec. 58-287. - Tree replacement and financial compensation requirements.**

Conditions for approval of a tree removal permit shall include tree replacement, financial compensation or a combination of tree replacement and financial compensation.

Tree replacement may be made in the form of planting replacement tree(s) on the subject property or other property within city limits or public property with city approval in accordance with the following criteria:

**(1) *Tree replacement.*** Protected trees of any dbh requested to be removed because they are deemed to be dead or beyond recovery, hazardous, or deteriorated shall be replaced with one approved replacement tree having a minimum caliper of three inches.

Protected trees requested to be removed and not deemed to be dead or beyond recovery, hazardous, or deteriorated shall be replaced with one approved replacement tree or trees as follows:

a. Replacement of protected trees shall require replacement by one or two trees with a dbh equal to or greater than three inches based on the caliper inch measurement of the tree to be removed. If the dbh of the tree to be removed is less than 19 inches, then one replacement tree is required to be replanted. If the dbh of the tree to be removed is 19 inches, then two replacement trees are required to be replanted.

b. Multiple understory trees may be approved as replacement trees with a cumulative caliper of at least six inches and shall be planted on the same property where the tree was removed

- c. No single replacement shade tree shall have a caliper of less than three (3) inches. No single replacement understory tree, if approved, shall have a caliper of less than two inches.
- d. If understory trees are approved as replacement, the caliper inches required shall be double that required when using approved shade trees.
- e. Any tree removed from a ~~non-R1 or R2~~ property not zoned for one or two family dwellings that removes the property's compliance with the Division 8, Landscape Regulations ~~needs to~~ must be replanted on the same property.
- f. Replacement trees may count toward meeting the planting requirements of Division 8, Landscape Regulations.
- g. All replacement trees shall adhere to the current guidelines established by the Florida Grades and Standards for nursery-grown trees and must be Florida grade #1 or better. Replacement trees shall be installed with their top main root one inch above the surrounding grade.
- h. Replacement tree(s) shall be maintained and warranted to survive for a period of one year from installation. Trees not deemed to have satisfactorily survived shall be replaced with new tree(s) of the same size. Replacement tree(s) shall comply with the same maintenance and replacement warranty as the original replacement tree(s) and the warranty period will restart at the date of replanting. In the event that a tree planting is approved on public property or city rights of way, maintenance fees as established by the city commission may be assessed as part of the permit process.
- i. Minor deviations regarding the required replacement trees in this section may be determined by the city based on the condition of the tree(s) being removed and other conditions that exist on the subject property. Minor deviations shall include considering any adjustments in the required tree replacement based on existing conditions on the property such as existing tree canopy coverage of the property, topography, space available for planting or similar criteria.

**(2)Financial compensation.** Caliper inches not planted as replacement trees are to be compensated by payment to the tree replacement trust fund. Compensation shall equal the rate per caliper inch set by the city commission in the schedule of fees multiplied by the caliper inches of protected trees removed.

- a. Compensation is established in the schedule of fees and shall be dispersed per section 58-289 "Tree replacement trust fund".

b. A stop work order may be issued for any development or active construction project until all applicable permit compensation conditions are satisfied.

c. The certificate of occupancy or certificate of completion shall not be issued for any development until all applicable permit conditions have been satisfied.

d. A tree removal permit shall not be issued until the required financial compensation for removal is paid.

e. When more than one tree is permitted to be removed, the total dbh of the protected trees to be removed shall provide the basis for compensation.

\* \* \*

**Sec. 58-289. - Tree replacement trust fund.**

(a) There is hereby created a tree replacement trust fund. All funds collected as tree replacement fees shall be administered by the director of parks and recreation or designee.

(b) Disbursements from the tree replacement trust fund shall be made only for the following purposes:

(1) Purchasing trees for planting and any associated costs in accordance with the city's tree planting program; or

(2) For educational purposes as provided in Section 58-283(d)((7).

(3) Protection of trees and enforcement of this ordinance.

(c) Fees for the tree replacement trust fund are established by the city commission in the schedule of fees.

(d) Fees for the tree replacement trust fund shall be reviewed annually by the city commission to reflect cost of living adjustments and/or market conditions and may be modified by approval of the city commission. In establishing fees, the city shall consider the cost of material, labor, transportation, planting, watering and mortality rate of replacement trees.

\* \* \*

**Sec. 58-299. - Penalties for tree removal without required permit or for tree damage.**

(a) Any protected tree(s) removed without a permit or destroyed or receiving major damage in violation of this division must be replaced and/or compensated at the rate of twice the requirements of section 58-287

\* \* \*

**Sec. 58-300 Enforcement and Authority to Enforce Division 6 "Tree Protection"**

(e) Failure to remove or otherwise make safe any hazardous or dead tree (protected or unprotected) shall constitute a violation of this Article and may result in giving notice to the owner or the agent of the owner an order to correct the violation by either removing the entire tree or hazardous limb(s) of the tree or the City will take the necessary action to remove the tree or hazardous limb(s) of the tree and assess all costs incurred by the City to the owner of the property plus an administrative fee as established under the City's Schedule of Fees as determined by the City Commission. Where the full amount due the city is not paid by such owner or agent of the owner within 30 days after invoicing the owner for removing the hazardous or dead tree or limb(s) such charges shall be declared a lien on the property. In addition, nothing shall prevent the city from pursuing other legal courses of action to correct the violation including referring the matter to the Code Enforcement Board. Appeals of an order to remove a tree or hazardous limb(s) of a tree will be heard by the Tree Preservation Board and must be filed with the City within 30 days of receipt of notice or within 30 days of posting the property with a notice to remove the tree or hazardous limb(s). An appeal must include payment of required fee and provision of documentation verifying the health of the tree and any other information which will justify withdrawing the order to remove the tree or hazardous limb(s). Appeals of the decision of the Tree Preservation Board on this matter shall be taken to the Code Enforcement Board.


**SECTION 2.** It is the intention of the City Commission of the City of Winter Park, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinance of the City of Winter Park, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, "Ordinance" may be changed to "Section," "Article," or other appropriate word.

**SECTION 3.** All ordinances or portions or ordinances in conflict herewith are hereby repealed, any part of this ordinance declared to be unlawful by any court shall not constitute repeal of the remainder of the ordinance.

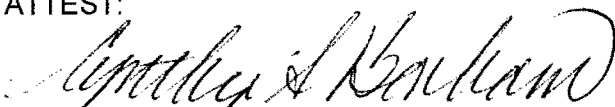
**SECTION 4.** If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

**SECTION 5.** This ordinance shall become effective immediately upon its final passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this 26th day of November, 2012.

  
\_\_\_\_\_  
Kenneth W. Bradley, Mayor

ATTEST:

  
\_\_\_\_\_  
Cynthia S. Bonham, City Clerk