



item type

Public Hearings (Public participation and comment on these matters must be in person.)

meeting date

August 6, 2024

prepared by

Allison McGillis, Director of Planning and Zoning

approved by

Allison McGillis, Director of Planning and Zoning

subject

ZTA #24-05 Request of the City of Winter Park for:

- An Ordinance to amend Article V, Divisions 6 and 8 of Chapter 58 of the Land Development Code concerning Tree Preservation and Protection and Landscape Regulations.

motion | recommendation

Staff recommendation is to approve the Ordinance as presented.

Motion to approve the Ordinance as presented.

background

At the July 2nd P&Z Board meeting, the Board voted to table this Ordinance to be able to review the changes discussed during the meeting. Attached is the version of the Ordinance with the changes made since the last meeting. These changes include clarifying the appeals process with added language drafted by the city attorney with reference to the Tree Preservation Board, and adding better definitions for residential versus multifamily/non-residential properties.

The overall summary of the attached Ordinance is below.

- **Landmark trees** – live oaks and bald cypress measuring 30" DBH and above require triple the replanting/financial compensation requirements of other protected trees.
- **58-282** – Protected tree species now require a removal permit beginning at 6-inches DBH as opposed to the previous standard of 9-inches diameter-at-breast-height (DBH).
- **58-284(a)** – Updated exempt trees list.
- **58-284(e)** – New language pertaining to Florida Statutes 163.045 which allows residential property owners to remove a tree without a permit. Written by City Attorney in consultation with staff. Clarifies requirements for compliance with both the statute

and City ordinance.

- **58-285(d)(4)** – The City Commission now has the final say on appeals to denied tree removal permit applications. Language permitting the appellant to remove the tree after a 60-day waiting period following the City Commission’s upholding of the denial is struck from the code.
- **58-286(c)(10)** – Replacement trees planted on non-residential property as mitigation for tree removal permits no longer count towards meeting minimum landscape requirements.
- **58-286(d)** – Clarification on how financial compensation works when mitigation requirements are not met by planting.
- **58-287** – Updated recommended species list.
- **58-292(b)** – Tree barricade requirements strengthened.
- **58-295/296/297** – Clarification on City’s vs residents’ authorities/responsibilities for trees on public/private property.

alternatives | other considerations

fiscal impact

attachments

1. Updated V2 Ordinance - Tree Preservation & Landscape Regs

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING ARTICLE V, DIVISIONS 6 AND 8 OF CHAPTER 58 OF THE LAND DEVELOPMENT CODE CONCERNING TREE PRESERVATION AND PROTECTION AND LANDSCAPE REGULATIONS; PROVIDING URBAN FORESTRY, TREE, AND LANDSCAPE REGULATIONS, REQUIREMENTS, PERMIT AND MITIGATION PROCEDURES, AND SETTING FORTH RELATED FEES AND PENALTIES; CLARIFYING AND AMENDING THE AUTHORITY OF THE URBAN FORESTRY DIVISION AND OTHER CITY DEPARTMENTS; PROVIDING SUPPLEMENTAL COMPLIANCE METHODS ENSURING OBSERVANCE OF TREE AND LANDSCAPE REGULATION, REPLACEMENT, MITIGATION, MAINTENANCE, AND BEST PRUNING AND PLANTING PRACTICES.

WHEREAS, the City Commission of the City of Winter Park (the “City”) recognizes the importance of preserving and growing the tree canopy within the City and that the City contains many species of native and non-native trees and vegetation of significant size and quality that contribute in a positive way to the environment and City aesthetics; and

WHEREAS, the City recognizes that properly maintained trees and landscaping increase property values, filter air pollutants, maintain the natural ecology, temper the effects of extreme temperatures and climate change, reduce stormwater runoff, mediate erosion of topsoil, and otherwise help create and maintain the distinct identity and visual character of the City; and

WHEREAS, the City finds that the current process to appeal the denial of a tree removal permit application does not allow for consideration of the professional judgement of the City’s International Society of Arboriculture (ISA) Certified Arborists, or the decision to uphold such judgement by the Tree Preservation Board and the City Commission

WHEREAS, the City has deemed it necessary to clarify existing regulations and to revise the City’s tree preservation regulations and procedures as well as the City’s landscaping regulations and procedures, relating to planting, pruning, removal, and replacement of trees as well as ensuring proper care and treatment of private and City trees comprising the City’s urban tree canopy and flora;

WHEREAS, the City deems these revisions as necessary to promote community health, safety, and welfare; and

WHEREAS, the City determines that recurring violations of landscaping and tree protection regulations and requirements necessitates that the City explore alternative and cumulative options to lawfully enforce the City’s policies set forth herein and to maintain the City’s nationally-recognized urban forest; and

WHEREAS, the City desires to strengthen, clarify, and streamline its appellate review processes and procedures regarding tree permit decisions, determinations of violations, and fines assessed relating to tree preservation within the City; and

WHEREAS, in accordance with section 163.3174, Florida Statutes, and section 58-3 of the City Code of Ordinances, the City’s local planning agency, which is the designated planning and zoning board, has reviewed and made recommendations as to the amendments set forth herein;

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

SECTION I: RECITALS. The above recitals are true and correct, are adopted and incorporated herein, and constitute the legislative findings of the City Commission of the City of Winter Park.

SECTION II: That Article V, Division 6 of Chapter 58 of the Land Development Code of the City Winter Park regarding Tree Preservation and Protection is hereby repealed and replaced as shown below:

DIVISION 6. - TREE PRESERVATION AND PROTECTION

Sec. 58-281. - Purpose and intent.

The City of Winter Park recognizes the environmental and community resiliency benefits and contributions urban trees provide to our ecosystem, air and water quality, energy conservation, temperature moderation, economic development, aesthetic value, public health and livability. It is the intent of this division to establish policies, regulations, and standards necessary to ensure that the city will continue to realize the benefits provided by its urban forest throughout the city, on public and private lands, and within rights-of-way.

The tree preservation and protection policies are intended to achieve the following objectives:

- a) Establish and nurture a sustainable urban forest through fostering biodiversity, productivity, regenerative capacity, vitality and the interconnection of our public parks, multi-use trails, and natural systems.
- b) Reverse canopy loss through the preservation of existing trees and planting of diverse tree species appropriate to the various site conditions found throughout the city.
- c) Maintain our recognition as a Tree City USA community through adherence to standards set forth by the National Arbor Day Foundation.

Sec. 58-282. - Definitions.

For the purposes of this division, certain terms or words used herein shall be interpreted as follows:

Caliper shall mean a nursery standard measurement of a tree's trunk diameter as measured at a predetermined point of measurement. Trunk caliper for trees up to four inches shall be measured six inches above the soil line. Trees greater than four inches in caliper shall be measured twelve inches above the soil line. Caliper measurements shall be used when measuring replacement trees.

Canopy coverage shall mean the coverage of a tree, by its limbs and leaves, of the ground below. This area may include trees offsite on adjacent properties or public rights-of-way where limbs and portions of a tree's canopy overhang onto the subject property.

Canopy tree shall mean a tree that typically reaches a height of over thirty feet.

Clear trunk shall mean the measurement from the top of the root ball to the lowest branch.

Dead tree shall mean a tree with no living cambium, foliage, or buds.

DBH (Diameter at breast height) shall mean a standard measurement of a tree trunk diameter as measured at a predetermined point of measurement. Trunks of existing trees shall be measured at four and one-half feet above the soil line. For multi-trunked trees the DBH shall mean the cumulative diameter of the two largest stems measured at four and one-half feet above the soil line. Measurements ranging between whole numbers shall be rounded up to from half an inch and above.

Drip-line shall mean a vertical line from the horizontal extremity of the canopy of a tree to the ground. For trees with canopies set off-center, the drip-line is projected based on the average diameter of the existing drip-line using the center of the tree trunk as its point of origin.

Improper pruning shall include but not be limited to poor pruning techniques such as flush cutting, stub cutting, topping, heading, thinning, lion's-tailing, and over-lifting.

Landmark tree shall mean any live oak or bald cypress in fair to excellent condition measuring thirty inches DBH or greater.

Major damage shall mean improper pruning, root damage, mechanical damage, poisoning, or any other irreparable harm inflicted upon a tree as determined by a City arborist will result in significantly a reduced lifespan or death.

Major root shall mean any root that is one-fifth or larger than the size of a tree's trunk measured at DBH.

Multifamily residential shall refer to multifamily development under Sec. 58-66 through Sec. 58-69.

Non-residential shall refer to development under Sec. 58-72 through Sec. 58-83.

Protected tree shall mean any tree measuring at least six inches DBH, any replacement tree or any tree of any size, on City property.

Pruning shall mean removing or reducing tree branches and/or limbs. Pruning shall be done according to current standards established by the most recent editions of the International Society of Arboriculture (ISA) Best Management Practices – Pruning, and the American National Standards Institute (ANSI) A300 Part 1 – Pruning.

Removal of a tree shall mean either actually removing a tree from the ground in which it grew, transplanting a tree, or effectively removing a tree through inflicting major damage.

Replacement tree shall mean any tree planted as a condition of approval of a tree removal permit or as may be required to meet the conditions of this division.

Residential shall refer to ~~single-family and duplex development R-1 zoned land use codes under within the Land Development Code (s~~Sec. 58-65), Sec. 58-66 and Sec. 58-69.

Root pruning shall mean the process of cutting roots prior to mechanical excavation near a tree.

Root zone shall mean the area starting from a tree's trunk to equal to a minimum distance of two and one-half times a tree's drip-line.

Size shall mean as determined by a tree's DBH or caliper as defined in this section as defined in this section.

Stop work order shall mean a written notice requiring all work to cease, stating the reasons for stoppage. Stop work orders shall be given to the property owner, their agent, the person doing the work, or posted on the property where tree work is occurring or trees are being damaged.

Top main root shall mean the uppermost major root emerging from the base of a tree's trunk, transitioning from the trunk into the root system.

Tree protection area shall mean an area surrounding a tree encompassed by a tree's drip-line or projected drip-line.

Tree protection barrier shall mean a suitable structure as installed as close as possible to the perimeter of the tree drip line prior to construction, land clearing, or demolition (sec. 58-292).

Trunk root flare shall mean the swelling at the base of a tree trunk that increases the trunk diameter.

Unacceptable risk shall mean a tree which poses a risk of moderate or higher where removal is the only means of practically mitigating its risk below moderate, as determined by tree risk assessment procedures outlined in the most recent edition of the International Society of Arboriculture's (ISA) Best Management Practices – Tree Risk Assessment.

Understory tree shall mean a tree that typically does not reach a height above thirty feet.

Sec. 58-283. - Establishing duties and authority.

(a) The Parks and Recreation Department is delegated the following authority:

- (1) To jointly work with the Building & Permitting Services Department in administering the provisions of this division including, but not limited to, technical and advisory support.
- (2) To grant or deny, in whole or in part, tree removal permits.
- (3) To oversee the implementation of the Tree Preservation Ordinance through the administration and operation of the Urban Forestry Division.
- (4) To waive or modify all or some of the requirements of this division in the case of a hurricane, tornado, severe rainstorm, or other emergency.
- (5) To regulate and supervise pruning or removal of trees in the public rights-of-ways and on City property.
- (6) To issue a stop work order at a site if unauthorized tree work is occurring or if trees are being damaged through construction or other potentially harmful activity.
- (7) To require immediate removal of any tree that poses an unacceptable risk to public property or persons on public property.
- (8) To oversee the City's Utility Vegetation Management Program in coordination with the Electric Utility Department.

(b) The Building & Permitting Services Department is delegated the following authority:

- (1) To require that a tree removal permit be obtained with building, demolition, site development, foundation work, and other construction activity permits, where removal of a protected tree is requested.
- (2) To place conditions on the issuance of construction, demolition, or other land development permits when recommended as a condition of a tree removal permit.
- (3) To grant a building setback encroachment up to a maximum distance of ten feet into a required setback area in order to preserve a protected tree. The City shall require a letter of approval from the affected abutting property owner(s) as a condition of approving the setback encroachment.

(c) The Planning & Zoning Board is delegated the following authority:

- (1) To make formal recommendations to the City Commission on any proposed changes to the Land Development Code, which includes the Tree Preservation Ordinance.
 - (2) Any protected trees approved for removal or protection by the Planning & Zoning Board or City Commission shall not subsequently need approval from the City or the Tree Preservation Board, except for the administrative processing of a permit to verify approval by the respective board or commission. Prior to granting any tree removal request on appeal or otherwise, if the Tree Preservation Board rendered any decision with regard to tree removal or protection on a property that later comes before the Planning & Zoning Board or City Commission, then that decision and related information of that decision shall be transmitted in writing to the respective board or commission.
- (d) The Tree Preservation Board shall be delegated the following authority:
- (1) To hear appeals of the denial, in whole or in part, of a tree removal permit application or any of the conditions attached to the approval of a tree removal permit as outlined in this division prior to any protected tree removal. The Tree Preservation Board may affirm, reverse, or modify the decision of the Director of Parks & Recreation or their designee to deny an application or to strike conditions of the permit.
 - (2) To hear appeals of an order by the City requiring the removal of a tree or parts of a tree on private property deemed to pose an unacceptable risk to public property or persons on public property.
 - (3) To make formal recommendations to the Planning & Zoning Board on any proposed changes to the Tree Preservation Ordinance.
 - (4) To periodically conduct educational programs and/or publish educational material as to the importance of trees to the City and the requirements of this division.

Sec. 58-284. - Tree removal permits.

- (a) Exempt trees. Unless on City property or near shorelines and waterways (referenced in sec. 114-6), no permit shall be required to remove the following types of trees:
- any tree found on the most recent edition of the [Florida Invasive Species Council's List of Invasive Plant Species](#);
 - palms;
 - fruit trees;
 - any tree with a DBH less than six inches, not including replacement trees;
 - protected trees that have fallen due to acts of nature such as storms, fire, or natural decay.
- (b) Unless preempted by Florida statutes, it shall be unlawful to authorize or undertake the removal, destruction, improper pruning, moving, or damaging of major roots of any protected tree within the city, without prior issuance by the City of a tree removal permit approving the act(s), or as otherwise authorized by the City, as further described in this division.
- (c) Each application for a tree removal permit shall be reviewed and a decision rendered on approval or denial (in whole or in part) on the basis of tree assessment standards set forth in the most recent edition of the International Society of Arboriculture Best Management Practices – Tree Risk Assessment and ANSI A300 Standards for Tree Risk Assessment, including any amendments thereto. Additional considerations may include but are not limited to:

- (1) The health of the tree(s).
 - (2) Canopy coverage and available planting space on the lot.
 - (3) Active damage to structures or hardscapes which the City determines cannot be mitigated through lesser measures such as limb or root pruning.
 - (4) Whether structures were designed to minimize the removal of trees.
 - (5) The denial of the permit would create an unreasonable hardship on the property owner by severely limiting the use of the property in a manner not typically experienced by owners of similarly zoned and situated properties. A minor reduction of the potential number of residential units or building size due to the tree location does not represent a severe limit of the economic enjoyment of the property.
 - (6) The applicant has demonstrated to the satisfaction of the City that there are no reasonable alternatives to preserving the tree(s).
- (d) Unless otherwise permitted by the relevant federal and/or state authorities, no permit shall be granted for the removal of any tree that contains active nests of migratory birds, bird species listed as species of special concern, rare, threatened, or endangered by the Florida Fish and Wildlife Commission, or which are a breeding area for a colony of birds.
- (e) If a person or entity is removing a tree on an occupied residential property without a permit on the basis that such tree poses an unacceptable risk to persons or property, the property owner and person or entity removing such tree must have in their respective possession at the time of removal supporting documentation from an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect finding that such tree poses an unacceptable risk to persons or property ("Tree Risk Assessment Documentation"). The Tree Risk Assessment Document must have the credentials, name, address, telephone number and certification signature of the professional that issued the Tree Risk Assessment Documentation and must conform to tree risk assessment procedures as outlined in the International Society of Arboriculture's (ISA) Best Management Practices – Tree Risk Assessment. A copy of the Tree Risk Assessment Documentation must be kept onsite where and when the tree is being removed and displayed in a place clearly visible from the public right-of-way. Upon request, the person or entity performing the removal of the tree must present the Tree Risk Assessment Documentation to any City officer, employee, or contractor requesting to review such documentation. Within ten days after the commencement of the removal of the tree, the property owner shall cause the delivery of the Tree Risk Assessment Documentation to the City's Urban Forestry Division. Failure to comply with this subsection or any part thereof constitutes a violation of this code, for which the property owner and any agent, contractor, consultant, or other entity causing or advocating for such removal of such tree may be held jointly and severally liable.

Sec. 58-285. - Tree removal permit procedure.

- (a) When no construction or demolition is involved. Applications for tree removal permits shall include:
- (1) Remittance of a tree removal permit fee of an amount established by the City Commission in the Fee Schedule; and
 - (2) An accurate site plan drawn (hand-drawn site plan may be acceptable) to scale depicting which protected trees are proposed for removal, with the locations, common and/or botanical names, and sizes.
 - (3) A photograph of the protected trees proposed for removal.

(4) Trees requested for removal shall be marked with flagging and noted accordingly on the site plan. Paint shall not be used for marking protected trees.

(5) Application forms may also require information regarding reasons for tree removal and other specifics as determined by the City.

(6) Trees requested for removal with trunks that originate from two or more adjacent properties shall require the written consent of all property owners.

(b) *When construction or demolition involving other permitting is involved.*

(1) In addition to the requirements of subsection 58-285(a), applications relating to or arising out of new building construction, renovation, demolition, or site work permits, or requiring construction permits shall include an accurate site plan drawn to scale indicating the square footage of the site and the square footage of the proposed building area(s). The site plan shall depict any proposed grade changes and a plan view of actual trees on site including:

a. The property lines and footprint of existing structures.

b. The existing and proposed grades.

c. Proposed additions to existing buildings, proposed new buildings, structures, and other impervious surfaces, such as but not limited to sidewalks, pool decks, patios, fences, walls, driveways, parking areas, stormwater retention areas, overhead and underground utilities, and other physical improvements.

(2) Incomplete or incorrect applications that require additional site visits by City staff shall require an additional fee equal to the original permit fee for each subsequent visit.

(c) *Removal voids appeal process.*

(1) Removal of any protected tree requested on a tree removal permit application is regarded as the applicant's acceptance of the conditions for removal as stated on the application, and voids any appeal.

(2) Except as allowed under subsections 58-283(a)(4) and 58-284(e), removal of a protected tree without a permit shall make void any appeal as provided in this division.

(d) *Appeals.*

(1) Upon denial of an application, or conditions placed on the approval of a tree removal permit, the grounds for such action shall be given to the applicant in writing. An applicant may appeal the tree removal denial decision or specific conditions placed on the tree removal approval to the Tree Preservation Board provided that such appeal is filed with the Urban Forestry Division within ten (10) days of the applicant's receipt of the decision or approval conditions being appealed. The appeal must be in writing, state the grounds of the appeal, and articulate in detail why the written decision (or a portion thereof) is incorrect. An applicant appealing a decision must pay to the city a fee prescribed by the City Commission to cover the administrative costs of an appeal taken under this subsection (d).

(2) Following the Urban Forestry Division's receipt of a written appeal of a denial of a tree removal permit or the conditions placed on the approval of a tree removal permit, the Tree Preservation Board shall consider the appeal as a de novo quasi-judicial hearing within 45 calendar days or as soon as possible thereafter and make a final decision. The Tree Preservation Board will hear such an appeal pursuant to its authority under Section 2-68. The applicant appealing the decision has the burden to prove that the tree removal denial decision or specific conditions placed on the tree removal is incorrect or exceeds the authority given under the city code. The Tree Preservation Board's decision on the appeal must be supported by competent, substantial evidence in the record at the

appeal hearing. A written rendition of the decision of the Tree Preservation Board will be sent to the applicant within ten (10) days of the appeal hearing.

(3) The applicant may appeal the decision of the Tree Preservation Board to the City Commission if a further written appeal is filed with the City Clerk within ten (10) days of the date of the written rendition of the decision by the Tree Preservation Board. Further, with approval of the City Manager, the Urban Forestry Division may appeal the decision of the Tree Preservation Board to the City Commission by filing a written appeal with the City Clerk within ten (10) days of the date of the written rendition of the decision by the Tree Preservation Board. The City Commission will conduct a quasi-judicial hearing on the appeal at a regularly scheduled meeting to be conducted within forty-five (45) days of the appeal being filed, or at such later meeting as may be agreed to by the applicant and the City Manager. The City Commission may reverse, modify or uphold the decision of the Tree Preservation Board. The City Commission's decision on the appeal constitutes a final decision by the City. If the Commission upholds the denial, the tree(s) may not be removed.

~~(1) Upon denial, in whole or in part, of a tree removal permit application, or conditions placed on the approval of a tree removal permit, the grounds for such action shall be given to the applicant in writing. Applicants may appeal the denial decision or specific conditions placed on the approval.~~

~~(2) Following the receipt of a written request to appeal a denial of a tree removal permit or a request to appeal conditions placed on the approval of a tree removal permit, the Tree Preservation Board shall consider the appeal within thirty calendar days or as soon as possible thereafter and make a final decision. The final decision of the Tree Preservation Board shall be sent to the applicant by certified and regular mail within ten days.~~

~~(3) The applicant may appeal the decision of the Tree Preservation Board to the City Commission within fifteen days of the date of the decision by the Tree Preservation Board. The City Commission may reverse, modify or uphold the decision of the Tree Preservation Board at its next available regularly scheduled meeting or at a later meeting if requested by the applicant or the City.~~

~~(4) The City Commission's final decision constitutes the end of the appeal process. If the Commission upholds the denial, the tree(s) may not be removed.~~

~~(5) Trees on City property are not eligible for the appeals process.~~

(e) Time for processing tree removal permit applications.

(1) Notice of an incomplete or inaccurate application shall be given to the applicant within seven working days of the receipt of the application.

(2) Each application shall either be approved, approved with conditions, denied, or returned to the applicant, requesting further action on the application within fourteen business days of the receipt of a complete application.

(f) Duration of tree removal permit.

(1) Unless associated with new building construction, renovation, demolition, site work, or other construction permits, each tree removal permit shall remain in effect for one year from the date of issuance. If the action approved in the permit is not completed within the permit's effective date, then the permit is void and a new tree removal permit must be obtained before any tree removal occurs.

(2) All conditions for removal, except financial compensation to the City which is required at the time a permit is approved in accordance with subsection 58-286(d)(1), shall be met within 30 days of the tree removal date unless an extension is documented on an approved permit.

Extensions of no longer than one year from date of removal may be considered on a case by case basis.

- (3) Tree removal permits associated with new building construction, renovation, demolition, site work, or other construction permits shall remain in effect through the duration of the associated building project. All conditions for removal shall be met before final building inspection.

Sec. 58-286. - Tree removal permit mitigation and financial compensation requirements.

- a) Requirements for approval of a tree removal permit shall include tree replacement and/or financial compensation.
- b) Protected trees deemed by the City to be dead by natural causes shall not require mitigation or compensation. At the City's discretion, photographic evidence may be accepted as proof that a tree is dead. A visual inspection for a tree removal permit application may be required.
- c) Tree removal mitigation may be made in the form of planting replacement trees on the subject property or other private property within city limits or public property with City approval in accordance with the following criteria:
 - 1) Mitigation for the removal of protected trees shall require replacement by approved canopy trees. Removed trees measuring from six to eighteen DBH inches shall require one replacement tree. Trees measuring nineteen DBH inches and above shall require two replacement trees.
 - 2) Landmark trees shall require replacement by six replacement trees.
 - 3) Canopy trees planted as replacement trees shall have a minimum size of three caliper inches.
 - 4) At the City's discretion, understory trees may be approved as replacement trees in appropriate locations at a rate of two understory trees per one canopy tree.
 - 5) Understory trees planted as replacement trees shall have a minimum size of two caliper inches.
 - 6) The caliper of multi-trunk trees shall be determined by the container size or root ball diameter, in accordance with the most recent edition of Florida Grades and Standards for Nursery Plants. If the root ball diameter is smaller than the container size, the root ball diameter shall be determinat.
 - 7) Any tree removal which renders a property non-compliant with the Division 8 - Landscape Regulations, must be replanted on the same property where the tree removal took place.
 - 8) Hedge shrubs, including but not limited to podocarpus, viburnum, ligustrum, and clusia, shall not count towards mitigation requirements.
 - 9) Trees improperly pruned or pruned as topiaries shall not count towards mitigation requirements.
 - 10) Replacement trees shall not count toward meeting the planting requirements of Division 8 - Section 58-336, ~~landscape regulations for non-residential properties.~~
 - 11) All replacement trees shall adhere to the current guidelines established by the most recent edition of Florida Grades and Standards for Nursery Plants and shall be Florida #1 or Florida Fancy grade. Replacement trees shall be installed with their top main root one inch above the surrounding grade.
 - 12) Replacement trees shall be maintained and warrantied to survive for a period of one year from installation. Trees not deemed to have satisfactorily survived shall be replaced with new trees of the same or larger caliper size. Replacement trees shall comply with the same maintenance and replacement warranty as the original replacement trees and the new warranty period will restart at the date of replanting.
 - 13) Minor deviations regarding the required replacement trees in this section may be determined by the City based on the condition of the trees 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.

d) Financial compensation.

- 1) Caliper inches not planted as replacement trees shall be compensated by payment into the Tree Replacement Trust Fund. Each caliper inch of assigned mitigation shall constitute an equal percentage of the total DBH inches removed (see Example 1). Compensation shall equal the rate per DBH inch set by the City Commission in the Fee Schedule.
- 2) Landmark trees shall require triple the rate of compensation established by the City Commission in the Fee Schedule.
- 3) The City may disperse funds into the Tree Replacement Trust Fund (sec. 58-288).
- 4) A stop work order may be issued for any development or active construction project until all applicable permit compensation conditions are satisfied.
- 5) The certificate of occupancy or certificate of completion shall not be issued for any development until all applicable permit conditions have been satisfied.

Example 1: Removal of a 24-inch DBH laurel oak. Requires replanting mitigation of two 3-inch caliper canopy trees or financial compensation of \$2,640 (24-inches DBH x \$110 per inch). The formula for partial planting and payment is:

Planting of one 3-inch caliper canopy tree equals half of the required financial compensation (12-inches DBH). The remaining financial compensation owed is \$1,320 (12-inches DBH x \$110 per inch).

Sec. 58-287. - Recommended shade and understory species to use as replacement trees.

Understory trees shall not be used as replacement trees except as indicated in section 58-286. Palms and trees on the most recent edition of the [Florida Invasive Species Council's List of Invasive Plant Species](#) shall not be used as replacement trees. The City may approve other species on a case-by-case basis.

CANOPY TREES

UNDERSTORY TREES

<u>BOTANICAL NAME</u>	<u>COMMON NAME</u>
<u>Acer rubrum</u>	<u>Red maple</u>
<u>Betula nigra</u>	<u>River birch (Duraheat)</u>
<u>Celtis laevigata</u>	<u>Sugarberry</u>
<u>Carya glabra</u>	<u>Pignut hickory</u>
<u>Handroanthus heptaphyllus</u>	<u>Pink trumpet tree</u>
<u>Juniperus virginiana</u>	<u>Southern red cedar</u>
<u>Liriodendron tulipifera</u>	<u>Tulip poplar</u>
<u>Magnolia grandiflora</u>	<u>Southern magnolia</u>
<u>Magnolia virginiana</u>	<u>Sweet bay magnolia</u>
<u>Nyssa sylvatica</u>	<u>Blackgum</u>
<u>Pinus elliotii</u>	<u>Slash pine</u>
<u>Pinus palustris</u>	<u>Longleaf pine</u>
<u>Platanus occidentalis</u>	<u>Sycamore</u>

<u>BOTANICAL NAME</u>	<u>COMMON NAME</u>
<u>Callistemon citrinus</u>	<u>Bottlebrush</u>
<u>Callistemon viminalis</u>	<u>Weeping bottlebrush</u>
<u>Elaeocarpus decipiens</u>	<u>Japanese blueberry</u>
<u>Eriobotrya japonica</u>	<u>Loquat</u>
<u>Handroanthus chrysotrichus</u>	<u>Golden trumpet tree</u>
<u>Ilex cassine</u>	<u>Dahoon holly</u>
<u>Ilex vomitoria</u>	<u>Yaupon holly</u>
<u>Ilex vomitoria 'Pendula'</u>	<u>Weeping yaupon holly</u>
<u>Ilex x attenuata 'Eagleston'</u>	<u>Eagleston holly</u>
<u>Lagerstroemia indica</u>	<u>Crapemyrtle</u>
<u>Magnolia grandiflora 'Little Gem'</u>	<u>Little Gem magnolia</u>
<u>Myrcianthes fragrans</u>	<u>Simpson's stopper (tree form)</u>
<u>Prunus angustifolia</u>	<u>Chickasaw plum</u>

<u>Quercus austrina</u>	<u>Bluff oak</u>
<u>Quercus germinata</u>	<u>Sand live oak</u>
<u>Quercus virginiana</u>	<u>Live oak</u>
<u>Taxodium distichum</u>	<u>Bald cypress</u>
<u>Ulmus alata</u>	<u>Winged elm</u>
<u>Ulmus parvifolia 'Allee'</u>	<u>Allee elm</u>

Sec. 58-288. - 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 their 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.
 - (2) Pruning and care of trees planted on City property.
 - (3) Educational and community outreach purposes related to trees.
 - (4) Protection of trees and enforcement of this division.

Sec. 58-289. - Responsibilities for costs, fees, or fines.

- (a) Any property owner, or their agent or representative, including without limitation any contractor, consultant, or other entity who applies for a tree removal permit on behalf of a property owner or, who on behalf of a property owner removes a tree or otherwise violates this division of the code without appropriate permits, City approval, or documentation complying with state statutes is jointly and severally liable with the property owner for resulting costs, fees, or fines. The City may pursue, in its sole discretion, one or more liable parties to recover said costs, fees, or fines.
- (b) Any person or entity who is liable for unpaid costs, fees, or fines under this division is subject to the placement of a stop work order on any project involving said person or entity until all costs, fees, or fines are paid and certified as paid by the City. No person or entity who is liable for unpaid costs, fees, or fines under this division shall be entitled to obtain or perform work under any other permits until all costs, fees, or fines are paid and certified as paid by the City. No person or entity who is liable for unpaid costs, fees, or fines under this division shall be entitled to obtain a certificate of occupancy until all the costs, fees, or fines are paid and certified as paid by the City.
- (c) The City is entitled to and shall determine the real party or parties in interest when an entity is liable for a cost, fee, or fine, and the real party or parties in interest shall be subject to the sanctions in subsection (b), by way of illustration and not limitation, an individual who does business in more than one corporate or business name shall be considered the "real party in interest" for purposes of applying subsection (b) if any of that individual's entities have unpaid costs, fines, or fees under this division and both that individual and any of the individual's entities may be subjected to the sanctions in subsection (b) until there are no longer any unpaid costs, fees, or fines.

Sec. 58-290. - Penalties for tree removal without required permit or for tree damage.

- (a) Any protected tree removed without a permit or destroyed or having received major damage in violation of this division shall be replaced and/or compensated at double the requirements of section 58-286.
- (b) If no evidence exists on site to calculate the DBH inches of the tree(s) removed, then the tree(s) shall be presumed to be a minimum of a twenty-four DBH inches. It is the property owner's responsibility and burden of proof to prove otherwise.
- (c) For repeat offenders the City has the right to double restoration requirements or fines (or both) for each subsequent infraction, and in the alternative or in addition to revoke or suspend a contractor's license to do business in the city.

Sec. 58-291. - Tree banking.

To encourage voluntary tree replacement plantings, there is hereby created a tree banking program. The Urban Forestry Division may allow the planting of three caliper inches or larger approved canopy trees to compensate for future permitted tree removals. Banked trees are to be planted on the same lot from which future tree removals are anticipated. Each banked tree shall count as one replacement tree irrespective of size at the time a permitted tree is removed. If the banked mitigation is not sufficient to meet the conditions required for tree removals, additional mitigation shall be required until all conditions are satisfied. Trees shall be Florida Grade #1 or better as defined in the most recent edition of Florida Grades and Standards for Nursery Plants. Banked trees shall be thriving and in good condition as determined by the City at the time of inspection, which shall be within fourteen days of tree removals.

Furthermore, it shall be the responsibility of the applicant to maintain and present all necessary documentation required by the City in order to receive credit for any tree replacement as a required condition for tree removals.

Sec. 58-292. - Precautions and standards required during construction and other land development permits.

- (a) Before plans are submitted for permit, the City or designee shall be consulted before any permanent structure or impervious paving is constructed within the tree protection area.
 - (1) A tree protection barrier plan shall be provided illustrating how protected trees located on, or adjacent to the subject property will be protected from any adverse effects of proposed construction or grade changes. The plan must include the tree protection barrier that will be installed. Any wall or fence on or near property lines shall be constructed so as to avoid damage to major roots of protected trees.
 - (2) If a major root of any protected tree affected by a grade change extends beyond its drip-line, then additional root protection per section 58-293 may be required.
 - (3) Prior to demolition, grade change and/or construction, tree protection barricades shall be placed and maintained as necessary to prevent damage to protected trees on or adjacent to the subject property.
 - (4) Tree protection barricades shall be placed at or beyond the tree's drip-line whenever possible. At no time shall the tree protection barricades be closer than ten feet from a trunk unless existing or proposed structures are within that range.
- (b) On all construction and demolition sites, tree protection shall be provided by a barrier as shown in Figure 1.
 - (1) Barricade posts and two rails shall be made of two-by-four lumber.

- (2) Posts shall extend into the ground a minimum of eighteen inches.
- (3) The barricade shall be a minimum of four feet high with posts spaced no more than six feet apart.
- (4) Use the DBH of the existing tree to be preserved to determine the distance of the tree barricade from the protected tree.
- (5) Each side of the barricade shall maintain a minimum distance as specified in Table 1, measured from the perimeter of the tree trunk on all sides.
- (6) Barricade layout may be adjusted as required to accommodate sidewalks, curbs, buildings, and proposed building footprints.
- (7) Barricade shall remain in place and maintained throughout the construction process.
- (8) Only hand tools shall be used within the barricade. Trenching, digging, or grading is prohibited.

Figure 1. Tree barricade specifications.

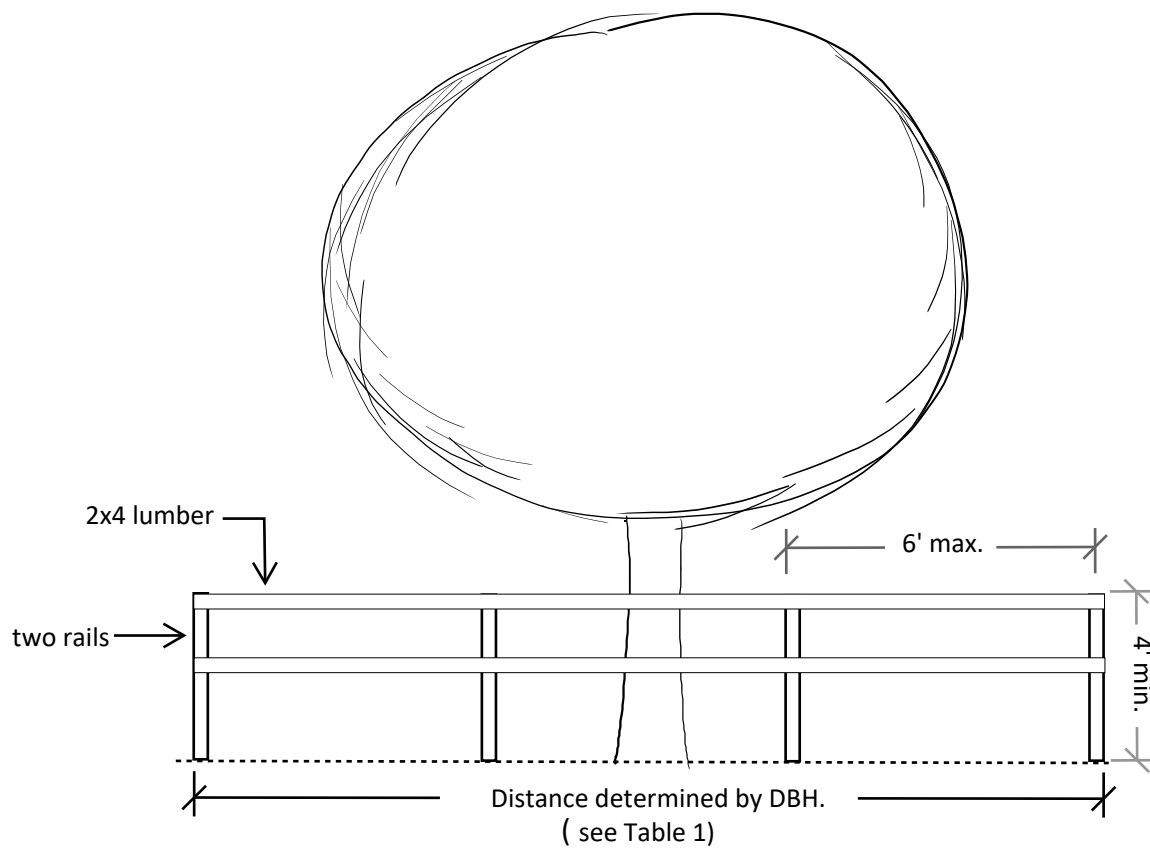


Table 1. Tree barricade distances.

Tree Barricade Distances	
DBH Range	Distance
6"-12"	10'
13"-18"	12'
19"-29"	15'
30"+	20'

- (c) Unless prior approval is granted by the City, the following activities are prohibited within the drip-line of a protected tree or within ten feet of its trunk, whichever is greater:
 - (1) Parking or use of vehicles, equipment, or machinery.
 - (2) Storing or dumping any material or liquids.
 - (3) Construction, excavation, or trenching.
- (d) Permit/inspection boxes, wires, braces, nails, screws, bolts, chains, ropes, lights, antennas, flags, banners, and other similar materials shall not be attached to a tree in a way that the City determines to be injurious to the tree.
- (e) The precautions required in this section may be modified or waived in writing by the City.

Sec. 58-293. - Precautions required for significant grade changes for protected trees.

- (a) Grade changes involving the removal or addition of more than three inches of soil within a protected tree's drip-line or projected drip-line are prohibited. The removal of any soil is prohibited within the drip-line of pine trees. Before any grade changes involving the removal or addition of up to three inches of soil, the property owner or permittee shall:
 - (1) Leave the area within the drip-line at its original grade with terraces by use of dry stacked retaining walls at the drip-line that are constructed to allow for drainage and aeration;
 - (2) Cut roots cleanly and re-trim them after excavation;
 - (3) Cover exposed root system and keep moist;
 - (4) Irrigate tree to compensate for root loss.
- (b) New or expanded stormwater detention and retention areas shall maintain distance from existing trees sufficient to protect their root systems from significant damage. Where possible, retention shall not encroach on the drip-line of protected trees. Detention and retention areas shall remain a minimum of ten feet from protected trees measuring up to eighteen inches DBH and fifteen feet from trees measuring nineteen inches DBH or greater.

Sec. 58-294. - Precautions required for excavation and paving around protected trees.

- (a) Whenever possible, water, sewer, and other underground utility lines shall be routed around the drip-lines of protected trees.
- (b) If compliance with subsection (a) is impossible, then directional boring for the utility shall be routed under the protected tree's root zone to prevent damage to major roots. Mechanical trenching is prohibited.
- (c) Suitable pervious pavement may be placed within the drip-line of a protected tree as long as the tree is not damaged by grade change, soil compaction, or any other cause. There is to be no disturbance to the trunk root flair.
- (d) All hardscapes installed near existing trees must remain a minimum of ten feet from the trunk perimeter.

Sec. 58-295. – Private trees encroaching on rights-of-way.

It shall be the duty of all property owners to keep trees which encroach on rights-of-way pruned so that the views of motorists and pedestrians are not obstructed at intersections, points of ingress and egress, and/or sidewalks. Where proper pruning is not maintained, the City may, after reasonable notice to the property owner, enter upon that property and perform the necessary work. Upon

performing such work, the City will charge the property owner for the actual cost and administrative costs as determined by the schedule of fees established by the City Commission. The City may, without notice, prune any portions of privately-owned trees encroaching on rights-of-way that do not require accessing private property.

Sec. 58-296. - Trees on city property.

- (a) The City of Winter Park shall have control of all trees now or hereafter in any park, City right-of-way, easement, or other public place within the city limits, and shall have the power to plant, care for, maintain, remove, and replace such trees.
- (b) It shall be unlawful to move, remove, or damage any tree of any size on City property except as part of official City business and operations.
- (c) Trees on City property, including exempt species, removed without a permit or destroyed or having received major damage as defined in section 58-282 shall be replaced as per applicable sections of this division.
- (d) Trees planted on rights-of-way shall be pruned by the City for clearance over roads and sidewalks, line-of-sight, around traffic signs and signals, streetlights and other public infrastructure. The City does not perform clearance pruning on portions of right-of-way trees which encroach on private property.
- (e) Property owners may request authorization from the City to perform pruning of right-of-way trees at their own cost provided that:

1. Pruning shall retain the natural form of that tree species.

- 2. All tree pruning shall be conducted according to the most current International Society of Arboriculture (ISA) standards, and the most current American National Standards Institute (ANSI) A-300 Part 1 that are hereby incorporated by this reference.

Sec. 58-297. - Trees on private property that impact public facilities.

Removal or pruning of a tree on private property that poses an unacceptable risk to public property or persons on public property is the responsibility of the property owner. If the City determines that a tree poses an unacceptable risk, the City will send a written notice outlining the work that must be performed. The required work must be performed within thirty days of receipt of the notice.

Sec. 58-298. Enforcement and authority to enforce this division.

- (a) The City shall provide interpretations, administration, and enforcement of the provisions of this division and shall be synonymous with and referred to as "the City" or "City" for references contained herein. Appeals of decisions and determinations in the enforcement of this division shall follow the procedure as set forth in subsection 58-285(d) or as specifically addressed elsewhere.
- (b) The City shall have the authority to stop work at a site if unauthorized tree work is occurring. Once a stop work order is issued, work shall not commence until the necessary permits have been issued and any applicable fine has been paid.
- (c) Failure to meet permit condition requirements for replacement within thirty days of the removal of the tree(s) shall require compensation, including administrative costs plus accrued interest at the rate of twelve percent per annum filed as a lien upon the property and the provisions of [section 102-135](#) shall apply.

- (d) Violations for this division shall be subject to the following: Code enforcement actions or citations as per Class IV level citation as listed under Article II, Code Enforcement Citation, [Section 1-23](#) "Classes of violations and penalties" and/or code enforcement board penalties of \$250.00 and/or \$500.00 per day and/or irrevocable fee of \$5,000.00 and remedial action to restore the property.
- (e) Failure to remove or prune any tree deemed by the City to pose an unacceptable risk to public property or persons on public property shall constitute a violation of this article. Such violation may result in giving notice to the owner or the agent of the owner an order to correct the violation by removing the entire tree or limb(s). Failure to correct the violation may result in the City taking the necessary action to remove the tree or limb(s) and assess all costs incurred by the City to the owner of the property, plus an administrative fee as established by the City Commission in the Fee Schedule. Where the full amount due the City is not paid by such owner or agent of the owner within thirty days after invoicing the owner for removing the 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 Compliance Board. Appeals of an order to remove a tree or limb(s) of a tree will be heard by the Tree Preservation Board and must be filed with the City within thirty days of receipt of notice or within thirty days of posting the property with a notice to remove the tree or limb(s). An appeal shall include payment of any required fees, provision of documentation verifying the health of the tree, and any other information which may justify withdrawing the order to remove the tree or limb(s). Appeals of the decision of the Tree Preservation Board on this matter shall be taken to the Code Compliance Board.

Secs. 58-299—58-320. - Reserved.

SECTION III: That Article V, Division 8 of Chapter 58 of the Land Development Code of the City Winter Park regarding Tree Preservation and Protection is hereby amended to read as follows (~~struckout text~~ indicates deletions; underlined text indicates additions; and non-referenced sections shall remain unchanged):

DIVISION 8. - LANDSCAPE REGULATIONS

Sec. 58-331. - Purpose and intent.

* * *

~~(7) Contributing to the city's reforestation plan~~

(7) Upholding the intentions of the City's Tree Preservation Ordinance and Urban Forest Management Plan.

* * *

Sec. 58-333. – General criteria for all properties.

* * *

(4) Mulch: Maintain two to three inches of mulch to help retain soil moisture, prevent erosion and suppress weeds.

(4) Mulch: Maintain two to three inches of mulch to help retain soil moisture, prevent erosion, and suppress weeds. Dyed mulch is not recommended due to concerns over source material. Cypress mulch and inorganic mulch are prohibited.

* * *

Sec. 58-336. – Non-residential and multifamily properties.

* * *

~~(g) Stormwater retention areas. Stormwater retention areas not screened from view from any public right-of-way by a building or wall shall be screened by a hedge maintained at a four-foot height installed in a landscape area a minimum of four feet in width. In addition, a cypress tree of at least four-inch diameter shall be planted within the stormwater retention area for each 50 linear feet of the stormwater retention area.~~

(g) Stormwater detention and retention areas. Stormwater detention and retention areas not screened from view from any public right-of-way by a building or wall shall be screened by a hedge maintained at a four-foot height installed in a landscape area a minimum of four feet in width. In addition, a bald cypress tree of at least four caliper inches shall be planted within the stormwater area for each fifty linear feet of the stormwater area.

* * *

Sec. 58-339. – Tree protection and tree removal.

~~The protection and/or removal of existing trees at nine-inch dbh or greater are governed by the city's tree ordinance detailed in division 6, tree removal and protection. Landscape plans prepared for compliance with these regulations shall include the protected trees indicated by type and size and the proposed preservation or removal pursuant to the city's tree ordinance.~~

The protection and/or removal of existing trees at six inches DBH or greater are governed by the City's Tree Preservation Ordinance detailed in Division 6 - Tree Removal and Protection. Landscape plans prepared for compliance with these regulations shall include the locations of the protected trees along with the species and size and the calculations for the proposed preservation or removal pursuant to the City's tree ordinance.