

**ORDINANCE NO. 2003-22**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS, FLORIDA AMENDING CHAPTER 5 OF THE CODE OF ORDINANCES ENTITLED TREE PROTECTION AND PRESERVATION; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, the Florida Constitution, Article II, Section 7 provides “It shall be the policy of the State to conserve and protect its natural resources and scenic beauty”; and

**WHEREAS**, the City Commission is committed to preserving and enhancing green areas of the City and by assuring the preservation of existing trees on public and private property and taking steps to require maintenance of existing and the installation of new trees in the City; and

**WHEREAS**, trees aid in energy conservation by cooling the atmosphere, reduce air pollution by removing particles such as dust and pollen, increase oxygen production, slow surface water run off, reduce soil erosion, provide food, nesting sites and protection for wildlife, enhance scenic beauty, and provide other environmental benefits; and

**WHEREAS**, in furtherance of the public purpose and interests stated herein, the City Commission adopted a new Tree Protection and Preservation Ordinance on April 8, 2002; and

**WHEREAS**, for purposes of reviewing, and possibly improving, the new Tree Protection and Preservation Ordinance, the City Commission appointed a tree committee made up of several City of Winter Springs’ residents (“Committee”); and

**WHEREAS**, the City Commission also appointed a technical advisory staff to assist the Committee in making a recommendation to the City Commission; and

**WHEREAS**, after careful deliberation and numerous public meetings, at which the public was afforded the opportunity to provide input and recommendations, the Committee prepared a detailed written report outlining numerous proposed modifications of the Tree Protection and Preservation Ordinance; and

**WHEREAS**, the City Commission has reviewed the written report presented by the Committee and hereby finds that the current Tree Protection and Preservation Ordinance should be revised in order to improve the manner in which the City preserves and protects the tree canopy within the City and to promote a more aesthetically and environmentally pleasing community; and

**WHEREAS**, the City Commission of the City of Winter Springs, Florida, hereby finds this Ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Winter Springs.

**NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS HEREBY ORDAINS, AS FOLLOWS:**

**Section 1.**     **Recitals.** The foregoing recitals are hereby fully incorporated herein by this reference as legislative findings of the City Commission of Winter Springs.

**Section 2.**     **Chapter 5 Amended.** Chapter 5 of the City of Winter Springs Code is hereby amended to read as follows: (Underlined type indicates additions and ~~strikeout~~ type indicates deletions from Chapter 5.)

#### **CHAPTER 5 – TREE PROTECTION AND PRESERVATION**

**Sec. 5-1.     Applicability.**

This ~~ordinance~~ Chapter shall be applicable to all land lying in the incorporated area of the City of Winter Springs, Florida.

**Sec. 5-2.     Intent and Purpose.**

- (a)     *Purpose.* The purpose of this Chapter is to establish protective regulations for Trees within the City in order to maintain and protect the City Forest, to better control problems of flooding, soil conversation, air pollution and noise, and to make the City a healthier, more attractive and safer place in which to live.
  
- (b)     *Intent.* The intent of this Chapter is to encourage the protection of the maximum number of Trees within the Primary Tree Protection Zone and of large Specimen Trees within the Secondary Tree Protection Zone. It is further the intent of this Chapter to encourage the protection of Trees native to Central Florida and to encourage proper removal of exotic, pest trees.

To this end, it shall be unlawful to cut down, damage, poison, or in any other manner destroy or cause to be destroyed any Tree or other vegetation as covered by the provisions of this ~~ordinance~~ Chapter except in accordance with the provisions set forth herein.

Notwithstanding, in case of emergencies involving natural disaster such as, but not limited to, flood, freeze or other natural disasters, the requirements of this ~~ordinance~~ Chapter may be temporarily waived by the City Commission by resolution.

**Sec. 5-3. Definitions.**

As used in this Chapter, the following terms shall have the meanings indicated unless the context clearly indicates otherwise:

- (a) *Caliper*. Measurement of Tree ~~eight (8)~~ twelve (12) inches from soil level.
- (b) *City*. The City of Winter Springs, Florida.
- (c) *City Forest*. The aggregate of all street Trees and all park Trees.
- (d) *Crown*. The mass of branches, twigs and leaves at the top of a Tree, with particular reference to its shape.
- (e) *DBH*. Diameter of trunk at breast height, (approximately four and one-half (4 ½) feet from the ground of a Tree base).
- (f) *Desirable Trees*. Trees particularly adaptive to Central Florida identified as “desirable trees” in Appendix B of this Chapter, as may be amended by the City Manager or City Commission.
- (g) *Dripline*. The vertical line running through the outermost portion of the Tree Crown extending to the ground.
- (h) *Encroachment*. The protrusion into a vehicular accessway, pedestrian-way, or required landscape area.
- (i) *Heavy Machinery*. Mechanical Land Clearing, earth-moving, or earth-working equipment with a gross weight in excess of 5,000 pounds. For purposes of this ~~ordinance~~ Chapter, all machinery which utilizes steel tracks for traction shall be considered to be Heavy Machinery, regardless of weight.
- (j) *Historic Tree*. A Tree which has been found by the City Commission to be of notable historic interest to the City based on its age, species, size, historic association or unique characteristics.
- (k) *Land Clearing (grubbing)*. The disturbance or removal of vegetation using backhoes, bulldozers, root rakes, or similar mechanical means which may kill trees or damage their

roots, branches, or trunks. Routine lawn mowing, sod replacement, planting of landscape material, shrub pruning, and shrub removal shall not be considered land clearing and grubbing provided no grade change occurs. The removal or grubbing, by any means, of any type of vegetation from land, not including, however, activities governed by a Tree Removal permit.

- (l) *Person.* Any individual, firm, corporation, partnership, joint venture association, principal, trustee, municipal corporation, political subdivision, or special district, or any agent or representative thereof.
- (m) *Preferred Plant/Tree List.* Preferred Plants shall mean the plant materials listed in appendix B: Desirable Trees and shall be of the size specified in the column labeled “Preferred Plant Size/Minimum Height.” ~~List shall mean the list of plant materials and corresponding Tree Replacement Credit shown in Appendix “C”, which may be amended from time to time by the City Manager in writing.~~
- (n) *Primary Tree Protection Zone.* This shall mean the front, side and rear yard areas as established and required by the Land Development Code of the City as the same may, from time to time, be amended.
- (o) *Protected Area.* An area surrounding a protected, Historic, or Specimen Tree within which physical intrusion is prohibited in order to prevent damage to the Tree, roots and soil around the Tree base, the dimensions of which shall be established by the City and set forth in the Tree Removal permit, in according with Section 5-14.
- (p) *Protective Barrier.* Shall be a polygon of 2" X 4" wide stakes ~~circle of one-inch to two-inch wide stakes~~ spaced a maximum of eight (8) feet from each other at the perimeter of the Tree Protection Zone and which extend out of the ground at least ~~eighteen (18) to twenty-four (24)~~ thirty-six (36) inches, with the top ~~two (2) to four (4)~~ inches marked by flourescent orange paint or tape.
- (q) *Replacement Trees.* Replacement Trees shall at a minimum comply with the provisions of Subsection 5-9.
- (r) *Secondary Tree Protection Zone.* This shall mean all areas not included in the Primary Tree Protection Zone. Subdivision street rights-of-way and easements are also defined as being within the Secondary Tree Protection Zone.
- (s) *Silviculture.* A process, following acceptable forest management principles, whereby the crops constituting forests are tended, harvested and reproduced.

- (s) *Specimen Tree*. A Tree, other than an undesirable tree, structurally unsound tree that cannot be recovered by pruning, dead tree, or diseased tree, that is has a caliper of twenty-four (20 24) inches or more in diameter. Specimen trees shall not include laurel oak (*Quercus laurifolia*), sand pine (*Pinus clausa*), or cherry laurel (*Prunus caroliniana*).
- (t) *Stem*. The main trunk of a plant; its primary axis that develops buds and shoots instead of roots.
- ~~(u) *Topping*. The severe cutting back of limbs within the Tree's crown to prevent normal growth to such a degree so as to remove the normal canopy and disfigure the Tree.~~
- (v) *Transplant*. The act of relocating an existing Tree upon the same lot.
- (w) *Tree*. Self-supporting wood, perennial plants of species which have a trunk with a diameter of at least four (4) inches measured at Caliper and normally grow to an overall Crown height of a minimum of fifteen (15) feet. Cabbage palm greater than fifteen (15) feet tall.
- (x) *Tree Protection Zone*. Shall mean that area located around the perimeter of the Tree in which no activity such as clearing, filling, excavating, storage of materials, parking of vehicles, or any other activity that in the opinion of the Forester may damage the Tree may occur. This zone is calculated according to Appendix ~~C~~ D to this ~~Ordinance~~ Chapter.
- (y) *Tree Removal*. Shall mean any act which will cause a Tree situated on real property to die within a period of two (2) years from the time of the act including, but not limited to, by cutting, girdling, relocating, interfering with the water supply, applying chemicals, regrading around the base of the Tree Trunk.
- (z) *Tree Replacement Assessment*. Tree Replacement Assessment shall mean the total amount of monetary compensation owed to the City of Winter Springs may be required by as provided in this Chapter for the replacement of trees cut, destroyed, or removed as a result of development or redevelopment.
- (aa) *Tree Replacement Credit*. The Tree Replacement Credit shall be established by the City Commission and set forth in Appendix B: Desirable Trees ~~equal to one-hundred (\$100.00) dollars and no cents in Tree replacement value.~~
- (bb) *Tree Trunk*. The main Stem of a Tree apart from limbs and roots.
- (cc) *Undesirable Trees*. All types of Trees identified as “undesirable trees” in Appendix A of this Chapter as amended from time to time by the City Manager in writing.

**Sec. 5-4. Permit Required for Tree Removal and Land Clearing; Separate Violations; Criteria; Contractor Permit Required.**

- (a) *Permit Required.* No Person shall engage in Tree Removal or engage in Land Clearing located within the City, without first obtaining a permit as provided in this Chapter. If a property owner has retained a contractor to perform the Land Clearing or Tree Removal, the contractor shall be responsible for obtaining the permit required by this Chapter prior to the Land Clearing or Tree Removal. It shall be a separate violation of this Chapter for each Tree removed and each day a person is engaged in Land Clearing without a permit.
- (b) *Criteria.* Upon receipt of a completed application and verification on-site by the City Forester, a permit may be issued for Tree Removal under any one of the following conditions:
- (1) Trees located on building and construction sites as shown on City approved plans, provided said Trees are replaced elsewhere on the property in accordance with §5-9 of this Chapter.
  - (2) Trees located within ten (10) feet of a structure or other improvement, provided said Trees are replaced elsewhere on the property in accordance with §5-9 of this Chapter.
  - (3) Trees severely diseased, severely injured or dead.
  - (4) Trees that interfere with the construction or repair of public ~~utilities~~ infrastructure and facilities.
  - (5) Undesirable Trees, per Appendix A.
  - (6) Trees removed by the City or other governmental agency and which are located within a public road, drainage rights-of-way, or permanent utilities and drainage easements.
  - (7) Trees that have been approved by the City Forester and which shall be replaced elsewhere on the property.
  - (8) All Trees and plants, within a licensed Tree nursery, planted for harvest shall be exempt from the terms and provisions of this Chapter only if Trees are planted and growing on the premises of the licensee and are for sale or intended for sale in its ordinary course of business.
- (c) *Review Standards.* When making a determination on whether a Tree meets one of the conditions set forth in Section 5-4 (b) and therefore, whether to approve or deny an

application under this Chapter, the City Forester shall apply one (1) or more of the following standards of review deemed relevant:

- (1) Necessity to remove Trees which pose a clear and obvious safety hazard to pedestrian or vehicular traffic or threaten to cause disruption to public services ~~and~~ or a significant obstacle to accessing and utilizing public easements and rights-of-way through Encroachment
- (2) Necessity to remove Trees which pose a clear and obvious safety hazard to buildings and other improvements on a lot or parcel of land. Ordinary small cracks or uplifts in pavement, sidewalks, and non-occupied structures that are typically caused by settling and small roots shall not be considered a safety hazard.
- (3) Necessity to remove diseased Trees or Trees weakened by age, storm, fire or other injury or Trees with severe structural defects that pose a clear and obvious safety hazard to people, buildings or other improvements on lot or parcel of land.
- (4) The extent to which Tree Removal is likely to result in damage to the property of other owners, public or private, including damage to lakes, ponds, streams, or rivers through runoff or erosion.
- (5) Any proposed landscaping including plans whereby the applicant has planted or will plant Trees to replace those that are proposed to be cleared.
- (6) Topography of the land and the effect of Tree Removal on erosion, soil retention and the diversion or increased flow of surface water.
- (7) Good forestry practices, such as the number of healthy Trees that a given parcel of land will reasonably support and the proven techniques that sustain healthy trees.
- (8) Necessity to remove Trees in order to construct approved and permitted improvements to allow economic enjoyment of the property, including:
  - (A) Need for access around the proposed structure for construction equipment (maximum of ten (10) feet).
  - (B) Need for access to the building site for construction equipment.
  - (C) Essential grade changes.
  - (D) Need for locating street or road rights-of-way, utilities, drainage ways, as well as the need to provide reasonable use and property access.

- (9) The extent of any damage or demonstrated hardship which would result to the applicant from a denial of the requested permit.
  - (10) The species and size of the Trees proposed for removal.
  - (11) The following factors shall also be considered:
    - (A) Trees forming the current canopy.
    - (B) Preservation of the next generation of Trees.
- (d) Silviculture exemption. All trees planted specifically for silvicultural purposes shall be exempt from the provisions of this Chapter provided the property owner can provide documentation to the City evidencing that:
- (1) The property is registered as a silvicultural site with the Division of Forestry; and
  - (2) Trees of typical harvestable size and type exist on the property which are capable of being harvested for income and that the property owner has, or intends to, generate income from the harvested trees.
- (e) Contractor License Required; Contractor Obtaining Permits. Any person or entity engaged in the business of Tree removal or pruning shall be licensed by the City on an annual basis. Licenses may be obtained from the City by completing an application prepared by the City and paying the required license fee. The license application shall contain at a minimum the name, address, and telephone number of the contractor and a copy of the contractor's occupational license and proof of liability and workers' compensation insurance. It shall be unlawful for any person or entity to engage in the business of Tree removal or pruning within the City of Winter Springs without a license required under this subsection. It shall also be unlawful for any such person or entity to fail to obtain a permit on behalf of a property owner pursuant to Section 5-4(a) of this Chapter.

**Sec. 5-5. City Forestry Office.**

- (a) *Establishment of Office.* There is hereby created within the Department of Community Development, the Office of City Forestry. The Community Development Director shall head this office and the City Manager shall appoint one (1) or more employees of the department to act in the capacity of Forester for the City.
- (b) *Scope of Authority.* The City Forester shall be charged with the responsibility and authority to review and oversee all activities within the City limits which involve Tree Removal, Land Clearing, or danger to and by any Tree. Notwithstanding, the City Forester shall have

absolutely no authority to vary any plans, permits, or agreements approved by the City Commission.

- (c) *Responsibilities.* The role of the City Forester shall include, but not necessarily be limited to:
- (1) Receiving and processing applications for Tree Removal, Land Clearing and other permits under this Chapter.
  - (2) Inspection of all property subject to an application.
  - (3) Confirming all information provided by the applicant is correct and accurate.
  - (4) To approve or deny all permit applications under this Chapter.
  - (5) To issue cease and desist work orders upon Persons in violations of this Chapter for a maximum of two working days. Upon review of the violation by the City Manager, the City Manager may extend the cease and desist work order until the violation is brought into compliance and all resulting fines incurred as a result of the violation have been paid. The City Manager's decision may be appealed to the City Commission pursuant to Section 5-16(b) of this Chapter.
  - (6) To bring violators of this Chapter before the Code Enforcement Board.
  - (7) To issue code enforcement citations for any violation of this Chapter.
  - (8) To augment the City's Forest by the planting or approval of planting of additional Trees on public property.
  - (9) To keep a permanent record of all Historic or Specimen Trees designated by the City Commission.
  - (10) To educate the public regarding this Chapter and the importance of maintaining a City Forest.
  - (11) To handle other related job duties assigned by the City Manager.
  - (12) To serve as a member of the staff Development Review Committee.
  - (13) To educate City personnel responsible for tree removal, planting, pruning and landscape maintenance.

- (14) To assist in implementing, and issue permits in furtherance of, any development agreement, plan, or permit approved by the City Commission relating to landscaping and Trees.

**Sec. 5-6 Permit Application.**

- (a) *Filing Application and Payment of Fees.* An application for Tree Removal and Land Clearing shall be filed on official forms provided by the City's Forester. The applicant ~~may~~ shall be required to pay a fee as may be established by resolution of the City Commission, except that no fee shall be required for the removal of Trees that are dead, diseased, suffer from severe structural defects, pose a clear and obvious safety hazard to structures and people or removed for a public project sponsored and paid for by the City. If the applicant is not the property owner, then the applicant shall attach the written permission of the property owner to the application. ~~All~~ Completed applications shall be returned to the Forester, along with the following:

- (1) A Tree inventory, for the portion of the site to be developed, consisting of a scaled ~~aerial photograph or drawing~~ of a scale of one (1) inch equals ~~three hundred (300)~~ fifty (50) feet or greater less for undeveloped land or for developed single family residential land, a sketch approximately one (1) inch equals fifty (50) feet or less indicating:
- (A) Property boundaries.
  - (B) The location of all individual Trees including the Tree's common or ~~botanical~~ scientific name, and Caliper of Trees.
  - (C) An indication of all Trees proposed for removal.
  - (D) Within the Primary Tree Protection Zone, a plan shall designate the Trees to be retained and those proposed to be removed, relocated or replaced. Those Trees proposed for removal, relocation or replacement shall also be identified by common or botanical name.
  - (E) Within the Secondary Tree Protection Zone, a plan shall designate the Trees to be retained, and those proposed to be removed.
  - (F) The location of existing and proposed improvements, if any, including ~~structures, paving and utility easements~~ proposed additions to existing buildings, existing and proposed buildings, structures, impervious surfaces (e.g. pool decks, drives, parking areas), stormwater retention areas, utilities, and other such improvements.

- (G) A replacement plan indicating the means of compensating for the Tree(s) to be removed including the species and size of any replacement Tree(s).
  - (H) Location of Trees preserved for replacement credit.
  - (I) If grade changes are proposed on the site, a grading plan drawn to scale shall be provided. In addition, a written statement shall be provided by a landscape architect or other competent professional indicating the probability of whether the grade change will result in the death of Tree(s) intended to be preserved. Said statement shall immediately be brought to the attention of the City Forester at the time the application is filed and prominently attached to the front of the application.
  - (J) A protection plan describing how preserved Tree(s) shall be preserved on the site and adjacent properties during construction, Tree removal, and grading.
  - (K) An aerial photograph showing the boundaries of the subject property and adjacent properties.
- (2) Valid Reasons for the removal of Trees.
  - (3) The appropriate permit fees.
- (b) *Time for Application.* Applications for a Tree Removal or Land Clearing permit shall be made prior to removal or clearing; except that in the following cases, application shall be filed when indicated:
- (1) All new subdivisions shall be required to submit an application for a Tree Removal or Land Clearing permit, at the time of initial submittal of the subdivision plan, to the City Forester so that due consideration may be given to protection of Trees during the subdivision design process. Each application for a Tree Removal permit shall be subject to review under the Staff Development Review Committee process.
  - (2) Any commercial, industrial, multi-family or other use requiring site plan approval under the City land development regulations shall be required to submit an application for a Tree Removal and Land Clearing permit at the time of site plan submittal so that due consideration may be given to the protection of Trees during the site plan design process. Each application for a Tree Removal permit shall be subject to review under the Staff Development Review Committee process.
  - (3) All new single-family and duplex dwelling units shall be required to submit an application for a Tree Removal and Land Clearing permit at the time of application

for a building permit; the Tree inventory may be shown on the building permit plot plan.

- (c) *Exempting Portion of the Tree Survey.* Upon request, the City Forester may permit an applicant to omit certain portions of the Tree inventory where compliance with the requirements set forth herein would be unnecessarily burdensome and the exempted portions are not needed for the City to evaluate the application.
- (d) *Permit Fee.* A nonreturnable permit fee to be established by resolution of the City Commission shall be paid for purposes of processing the application, enforcing the provisions of this Chapter, and inspecting the real property subject to the application.
- (e) *Posting of Permit.* The permit must be posted upon the property and visible from the street to be valid.
- (f) *City Commission Approved Plans, Permits, and Agreements.* All permits issued by the City Forester under this Chapter shall be required to be consistent, and not in conflict, with any plans, permits, or development agreements approved by the City Commission. All permits or portions thereof issued by the City Forester in conflict with any approval of the City Commission shall be deemed null and void and the approval of the City Commission shall remain in full force and effect.

**Sec. 5-7      ~~RESERVED.~~ Tree Pruning Standards.**

- (a) *Standards adopted.* Trees intended for shade purposes shall be allowed to reach mature canopy spread and shall be pruned in accordance with the ANSI A 300 Part 1 Pruning standard and ANSI Z133.1 safety standard. Pruning should be performed with defined pruning objectives and according to a specific pruning plan to accomplish the objective including the minimum and/or maximum branch size to be removed.
- (b) *Unlawful Pruning.* The pruning techniques described in Section 5-10(i) of this Chapter shall be deemed unlawful.

**Sec. 5-8.      Specimen or Historic Trees.**

- (a) *Designation.* Certain Trees, herein referred to as “Specimen” or “Historic” Trees, are of especially great concern to the public because of ecological value, of indigenous character, size, age or historic association. Determination that a Tree is a Historic Tree shall be made by resolution of the City Commission after a recommendation of the Beautification Board of Winter Springs, and the City Forester shall keep a permanent record of all Trees so designated by the City Commission. Specimen Trees are all Trees (other than “Undesirable Trees” identified in Appendix A, dead trees or diseased trees) which ~~are~~ have a caliper of

twenty-four (~~20-24~~) inches or more in diameter. Designation as an Historic Tree may occur in any one of the following ways:

- (1) An applicant may request designation of an Historic Tree as part of any master plan, preliminary subdivision plat, or site plan application. To do so, the applicant shall submit an expert evaluation by a landscape architect, horticulturalist, city forester, or other horticultural expert as part of the application.
  - (2) A property owner may request such designation at any time. To do so, the property owner shall submit an expert evaluation by a landscape architect, horticulturalist, city forester historian or other horticultural expert.
  - (3) The City's Forester may recommend such designation as part of their review of any application for development, stating in writing their reasons for such designation, or may make such designation as part of an overall Tree protection planning program for the City or portion thereof.
  - (4) Historic Tree designations shall be subject to approval by resolution of the City Commission and the City Commission may grant tree replacement credits, upon granting an Historic Tree designation.
- (b) *Removal.* Notwithstanding any other provision of this Chapter, Specimen or Historic Trees shall not be removed except for extraordinary circumstances and hardships and only by final permit approved by the City Commission.

**Sec. 5-9. Tree Replacement Guidelines.**

- (a) *Tree Replacement.* All Trees that are removed or destroyed and subject to replacement by this Chapter shall be replaced by a species of Tree cited in Appendix B, Desirable Trees ~~or Appendix C, Preferred Plant List~~ or such other Trees properly approved by the City Forester. Replacement shall occur prior to the issuance of a certificate of occupancy (if approval is pending) or Replacement shall occur within ninety (90) thirty (30) days of removal or destruction, whichever date is earlier, unless a greater replacement period is provided for good cause by permit.
- (b) Criteria for Replacement Trees is as follows:
- (1) *Characteristics of Replacement Trees.* The replacement Tree(s) shall have at least equal shade potential, screening properties, and/or other characteristics comparable to that of the Tree(s) requested to be removed.

- (2) *Size of Replacement Trees.* Replacement Tree(s) are to be made according to the Tree Replacement Standards set forth in Table 1 ~~a standard of one (1") inch DBH total replacement for each one (1") inch DBH removed, unless (1) the Trees are replaced with Trees from the Preferred Plant List; or (2) otherwise agreed upon by the City Commission and applicant. Acceptable spacing and design standards are the only criteria that shall limit the number of Trees used to meet the inch for inch requirement.~~
- (3) *Tree Species.* Relocated or Replacement Trees shall include only species and sizes defined as Desirable Trees (Appendix B) under this Chapter ordinance.
- (4) *Transplanting and Maintenance Requirements.* All Trees transplanted pursuant to this ~~ordinance~~ Chapter shall be maintained in a healthy, living condition. Any such Trees which die shall be replaced and maintained by the property owner. The City shall retain ~~perpetual~~ jurisdiction for one (1) year to ensure compliance with this Chapter.
- (5) *Waivers of Replacement Tree(s) Specifications.* The number of required Replacement Trees may be waived by the City Commission, if the City Commission determines that the remaining number of Trees to be preserved on site are of sufficient number and quality to substantially comply with the purpose and intent of this Chapter and a tree replacement fee is paid to the City's "Tree Bank," which is hereby established. Monies collected in the Tree Bank shall be used for enhancement and maintenance of trees on public lands. The contribution to the Tree Bank may be waived by the City Commission for individual homeowners, on a case-by-case basis, if the homeowner can demonstrate that the payment of the fee will cause the homeowner an undue economic hardship. Substitute Tree(s) allowed under this Waiver provision must have the approval of the City Commission. The ~~value~~ amount to be paid into the tree bank shall be set forth in Table 1 and should be based upon wholesale market value of the trees being replaced, plus installation and maintenance costs to establish the Tree.
- (6) *Replacement Guidelines Alternative.* ~~As an alternative to the one for one Tree replacement requirement set forth in this Section, an applicant may elect to comply with~~ the following Tree replacement guidelines shall apply:
- (A) All Plant material specified shall be Florida Grades and Standard One (1) or better. Applicant may deduct from the number of Trees to be replaced, Tree Replacement Credits based on the number of replacement credits as provided in the Preferred Plant Material List provided that:

- ~~(i) All plant materials are Florida Grades and Standard One (1) or better; and~~
- ~~(ii) All plant materials are properly installed; and~~
- ~~(iii) The landscape plan for the proposed development or redevelopment to which the credits are to be applied is prepared by a landscape architect licensed by the State of Florida; and~~
- ~~(iv) The Developer shall guarantee survival of retained and replacement trees for a period of one (1) year from the completion of construction, unless a greater time period is required by development agreement. If retained or replacement Trees die during that time period, the Developer shall replace the tree in accordance with a remedial action under Section 5-17 of this Chapter.~~

- (B) For each tree located within a public conservation area (excluding jurisdictional wetlands determined by the St. John's River Water Management District or the U.S. Army Corp of Engineers, or as depicted on Map V-3:Existing Wetlands in the City of Winter Springs Comprehensive Plan) dedicated to the City as part of a development project, three (3) replacement tree credits may be applied to the total number of trees required to be replaced by this Chapter. However, the minimum tree requirement set forth in Section 5-13 shall still apply. Such public conservation area must be at least one (1) acre with widths not less than 125 feet, unless otherwise approved by the City Commission. In addition, trees approved by the City Forester to reforest such conservation area shall also be applied to the replacement requirement on a one-for-one basis.
- (C) If the City Commission determines, due to site conditions or configuration, it is impossible or impracticable for the applicant/developer to meet the requirements for Tree Replacement, under this subsection, the City Commission may allow the applicant/developer to pay into the City's "Tree Bank" the amount it would have spent on Replacement Trees.
- (D) Tree replacement credit shall be allowed for the installation of preferred plants in accordance with the provisions set forth in Appendix B: Desirable Trees. In addition, for new development, tree replacement credit shall be allowed for the preservation of existing Desirable Trees on the development site, excluding wetland areas and existing conservation areas, as follows:

<u>DBH of Preserved Tree</u>	<u>Reduction in Replacement Trees</u>
<u>4" up to but not including 9"</u>	<u>1 credit</u>
<u>9" up to but not including 12"</u>	<u>2 credits</u>
<u>12" up to but not including 16"</u>	<u>3 credits</u>
<u>16" up to but not including 24"</u>	<u>4 credits</u>
<u>Specimen and Historic Trees</u>	<u>0 credits</u>

- (E) Trees planted under a powerline shall not exceed a mature height of twenty-five (25) feet.
- (F) Diversity of species shall be required for replacement Trees and not more than twenty percent (20%) of the replacement trees shall be of a single species.
- (G) All landscape plans shall be prepared by a landscape architect licensed by the State of Florida, unless the City determines the proposed landscaping or Tree Removal has a de minimus impact on the property.

(e c) Replacement Cost. The property owner shall be responsible for the cost of replacing the Trees removed from their property shall be incurred by the party that removed the Trees or property owner.

(d) Elimination of Undesirable Trees and Shrubs. The natural vegetative communities existing within the City shall be protected by the control and elimination of invasive, nonnative species. To that end, the following guidelines shall apply:

- (1) Planting of Trees and shrubs listed in Appendix A, Undesirable Trees, is prohibited.
- (2) Removal of Trees and Shrubs listed on Appendix A, Undesirable Trees, from commercial, office, industrial, or multifamily sites (excluding jurisdictional wetlands) shall be completed, whenever practicable, as a requirement for approval of any development permit issued by the City or the issuance of a certificate of occupancy if applicable.
- (3) Control and elimination procedures shall in no way promote the proliferation of the species through the dispersal of seed or other vegetatively reproducing parts.

- (4) Control and elimination procedures shall in no way harm or cause the decline of preserved or planted Trees and landscaping.
- (e) Limited Exception for Existing Single Family Lots. Notwithstanding any other Tree replacement standard set forth in this section, a Tree Removal permit for a single Tree shall be granted, as a matter of right, for each existing single family home lot, provided the City Forester determines that:
- (1) The Tree is not a Specimen or Historic Tree;
- (2) The Tree canopy covering the pervious portion of the lot after removal of the Tree will be greater than fifty percent; and
- (3) A permit under this subsection (e) had not been granted during the preceding ten (10) year period.

**Sec. 5-10. Prohibitions.**

- (a) *Placement of Materials, Machinery, or Temporary Soil Deposits.* It shall be unlawful to place material, machinery, or temporary soil deposits within the Tree Protection Zone, as calculated according to Appendix C: Calculating Tree Protection Zone, before or during construction. Before or during construction the builder shall erect and maintain suitable Protective Barriers around all Trees to be preserved. Upon written request, the City Forester, on a case by case basis, may allow material or temporary soil deposits to be stored within the Protective Barrier if no other storage is available.
- (b) *Climbing Spurs.* It shall be unlawful to use climbing spurs or other similar device to aid in the climbing of a live tree, where such device causes the puncture or tears the bark of the tree.
- (c) *Tree Spiking.* It shall be unlawful to introduce any type of poison or reactive material to a Tree for the purpose of causing it to die or become diseased.
- (d) *Structure and Pavement Location.* It shall be unlawful to place any structure or impervious paving within eight (8') foot radius of any Tree Trunk or Stem having a diameter of four (4") inches or more at Caliper.
- (e) *City Trees.* It shall be unlawful to trim, prune, or remove any tree which is within the City's rights-of-way or upon any other City property without the permission of the City evidenced by the appropriate permit.
- (f) *Attachments.* It shall be unlawful to attach anything to a Tree or Stem, including nails or spikes, having a diameter of four (4") inches or more at Caliper, other than protective wires,

braces or other similar noninjurious materials.

- (g) *Cut and Fill Guidelines.* It shall be unlawful to remove or add any material or ground within the Tree Protection Zone unless otherwise permitted by the Forester.
- (h) *Encroachment of the Dripline.* During the construction stage of development, the developer or property owner shall not cause or allow Land Clearing, the use of heavy equipment or material within the Dripline of any Tree or groups of Trees to be retained. Neither shall the developer cause or allow the disposal of waste material such as paint, oil, solvents, asphalt, concrete, mortar or any other material harmful to the life of a Tree within the Dripline of any Tree or groups of Trees, or where planting beds are to be situated.
- (i) *Shearing, Hat Racking, Topping or Poodle Trimming of Trees (Lollipop), Lions-tailing, Pollarding of Trees.* Trees intended for shade purposes shall be allowed to reach their mature canopy spread. It shall be unlawful to engage in excessive pruning techniques on Trees intended for shade purposes. Excessive shearing, pruning or shaping shall only be allowed with a permit by demonstrating necessity or without a permit in times of emergency only. The following are deemed unlawful excessive pruning techniques which are prohibited on shade Trees:
  - (1) *Lions tailing:* the improper practice of removing most secondary and tertiary branches from the interior portion of the canopy leaving most live foliage at the edge of the canopy.
  - (2) *Topping, hatracking, stag heading, de-horning, lopping, and rounding over:* the improper practice of reducing tree size by making heading cuts through a stem more than two years old; a pruning practice that destroys tree architecture and serves to initiate discoloration and perhaps decay in the cut stem.
  - (3) *Pollarding:* the pruning technique that removes sprouts back to the same location annually or biannually maintaining a tree to a specific height.
  - (4) *Shearing:* a pruning technique which is typically accomplished with cuts made through wood less than a year old at the sides of the canopy to create uniform dense canopies.
  - (5) *Poodle trimming:* combines shearing and removing lower limbs to create tree forms that look like a “lollipop.”
- (j) *Construction near Adjacent Property.* Walls, structures, and pavement shall not be constructed in any way which will result in damage to roots within the Tree Protection Zones of Trees located on adjacent properties.

**Sec. 5-11. RESERVED.**

**Sec. 5-12. Permit Contents; Expiration; Removal After Expiration of Permit.**

- (a) *Permit Contents.* The Tree Removal permit, when issued, shall specifically identify which Trees shall be permitted to be removed. The removal permits merely authorize the removal of the Trees specified therein. Nothing in this Chapter shall be construed to require the removal of such Trees by the permittee.
- (b) *Permit Expiration.* Any permit issued under this Chapter shall automatically expire six (6) months after issuance, except for permits issued in conjunction with a building permit which shall automatically expire six (6) months after issuance or at such time the building permit expires, whichever is later.
- (c) *Restrictions on Tree Removal After Permit Expiration.* Trees not removed during the life of the permit may not be removed without the issuance of a new permit based upon a new application.
- (d) *Permit Display.* The permit shall be located and maintained upon the site at all time until final inspection or until issuance of a certificate of occupancy if applicable. For new developments, the permit shall be attached to the "posting board" with other permits. For existing developments and existing single-family residences, the permit shall be displayed so as to be easily visible from the street.

**Sec. 5-13. Minimum Tree Requirement.**

No certificate of occupancy shall be issued on the types of construction indicated below unless the underlying parcel has at least the required minimum number of approved Trees:

- (a) Any new single-family or duplex dwelling unit on a lot of less than 6,000 square feet or greater: not fewer than two (2) Trees.
- (b) Any new single-family or duplex dwelling unit on a lot equal to 6,000 square feet of less than between 6,001 and 10,000 square feet: not fewer than two (2) three (3) Trees plus one (1) additional Tree for each 4,000 square feet over 6,000 square feet.
- (c) Any ~~single~~ commercial, industrial, multi-family or other structure requiring site plan approval under the City land development regulations: no fewer than six (6) five (5) Trees or approximately three (3) four (4) Trees per acre, whichever is greater.

**Sec. 5-14. Tree Protection During Development and Construction; Periodic Inspection.**

- (a) *Restrictions During Construction.* It shall be unlawful for any Person, during the construction of any structures or other improvements, to place solvents, petroleum products, paint or masonry materials, construction machinery or temporary soil deposits within the Dripline of any Tree for which a Tree Removal permit is required but has not been obtained. This provision includes soil that is placed in the Dripline permanently for the purpose of a grade change, unless the grade is changed according to the guidelines described in the *Florida Division of Forestry, Department of Agriculture and Consumer Services Publication, Tree Protection Manual for Buildings and Developers.*
- (b) *Burden of Tree Protection on Property Owner.* It shall be the responsibility of a ~~developer or applicant~~ property owner and their agents to ensure that any Tree shown on the Tree inventory for which a Tree Removal permit has not been obtained is to be protected. The property owner shall guarantee survival of retained trees and Replacement Trees for one (1) year from completion of permitted construction, unless a greater time period is required by development agreement. If a retained or replacement Tree dies during that time period, the property owner shall replace the Tree in accordance with a remedial action approved under § 5-17 of this Chapter.
- (c) *Protective Barriers and Signage Required.* ~~Posts shall be used as Protective Barriers to the roots and Trunk of every Tree on the parcel being developed. The posts shall be placed at points not closer than one-half radius of the Dripline of the protected tree, unless the structure has been permitted by the City to be erected within the Dripline of a Tree with a wide canopy. Each section of the barrier shall be clearly visible (flagged with brightly colored plastic tape or other markers). No attachments or wires other than those with a protective or non-damaging nature shall be attached to any Tree. Protective Barriers shall be installed prior to construction (as determined using Appendix C: Calculating Tree Protection Zone) around every Tree or group of Trees to be preserved. Waterproof, rigid “Protection Zone Area” signs, as shown on Appendix D: Tree Protection Area Signage and not smaller than two feet (2') by three feet (3') shall be posted at one hundred foot (100') increments along the Protective Barriers.~~
- (d) *Site Inspections.* The City Forester may conduct periodic inspections of the site. It is the responsibility of the property owner and their agents ~~applicant~~ to ensure that all provisions of this Chapter are met.
- (e) *Adjacent Properties.* The property owner and their agents shall ensure that the Tree Protection Zones of Trees located on adjacent properties are protected as required by this Chapter for Trees located on the site being developed.

#### **Sec. 5-15. Voluntary Tree Planting.**

This Chapter shall not be interpreted to restrict, regulate or limit the voluntary planting of any Tree within the City. The provisions of this Chapter govern only the planting of Trees which are

required to be planted or retained under this Chapter. Trees or plants planted in the City's rights-of-way are subject to removal or trimming by the City at any time. No tree or plant shall be planted within a City rights-of-way or easement without express permission from the City Forester.

**Sec. 5-16. Waivers; Incentive Program; and Appeals.**

- (a) *Waivers.* The City Commission may grant a waiver to provisions of this Chapter where the applicant demonstrates that the literal interpretation of the ~~ordinance~~ Chapter will deny the applicant reasonable use of the property or where such waiver can be demonstrated to be consistent with the purpose and intent of the ~~ordinance~~ Chapter. The preservation of any approved Tree over four (4) inches in caliper may be considered as the basis for the granting of a waiver from the literal application of the provisions of the City's land development regulations. If, in the determination of the City Commission, the sole basis for the request for waiver is to preserve such Tree which would otherwise have to be removed, it may direct any required waiver fee to be waived.
- (b) *Appeals.* Any Person adversely affected by an administrative interpretation of this Chapter by the City Forester may first appeal that interpretation to the City Manager by filing a written notice of appeal of said interpretation within ten (10) calendar days of said interpretation. The City Manager shall decide said appeal within five (5) business days. Any Person adversely affected by an administrative decision of the City Manager under this Chapter may appeal that interpretation to the City Commission by filing a written notice of appeal of said interpretation within thirty (30) calendar days of said interpretation. Failure to file an appeal within said the time periods required by this subsection shall result in the administrative interpretation to be declared final and shall be deemed a waiver of the person's right to further appellate review and proceedings. The City Commission shall decide said appeal within thirty (30) days of the City's receipt of said notice of appeal and the City Commission's decision shall be final. Except for the mandatory time periods required for the notice of appeal, the time periods required for a decision may be extended by mutual agreement between the City and the Person filing the notice of appeal.
- (c) *Incentive Program.* The City Commission reserves the right to offer and approve incentives for purposes of protecting and preserving mature Trees and planting enhanced landscaping. Such incentives shall have a public benefit and may include, but are not limited to, varying provisions of the City's land development regulations (e.g. reduced parking; modified setbacks) and providing credits to City development fees. Any incentives granted under this subsection shall be consistent with the Comprehensive Plan and shall be by development agreement or other formal approval.

**Sec. 5-17. Remedial Action.**

- (a) *Violations Require Remedial Action.* Where violations of this Chapter have occurred, remedial action shall be taken to restore the property consistent with a restoration plan

approved by the City Forester or the City Commission if the violation is inconsistent with plans, permits, or agreements approved by the City Commission. The restoration plan may require Tree replacement at not more than a ratio of four to one (4:1) and require mitigation of any other damage to the property, as well as Tree replacements.

- (b) *Replacement Formula Tree Replacement Remediation Requirements.* Each Tree destroyed or receiving major damage during construction must be replaced by either a comparable size and desirable type of Tree as listed within Appendix B or providing a contribution to the Tree Bank equal to four times the contribution listed on Table 1: Tree Replacement Standards or planting four (4) Preferred Plants listed within Appendix B ~~four (4) Replacement Trees~~ before issuance of a certificate of occupancy or certificate of completion. ~~Undesirable Trees must be replaced with a desirable species.~~
- (c) *Property Owner to Guarantee Survival of Replaced Trees.* The property owner shall guarantee the survival of the Trees required to be placed under Subsection (b) above for a period of two (2) years from the date the certificate of occupancy or certificate of completion is issued, unless a greater time period is required by development agreement. If the replacement Tree dies, the Tree shall be replaced in accordance with this section.

#### **Sec. 5-18. Enforcement; Penalties.**

- (a) *Enforcement.* The City may enforce the provisions of this Chapter by any lawful means including, but not limited to, issuing a civil citation, bringing charges before the City's Code Enforcement Board or special master, and seeking injunctive and equitable relief. For purposes of determining the penalties provided under this Chapter, the removal or death of a Tree in violation of this Chapter shall be deemed irreparable or irreversible.
- (b) *Penalties.* In addition to all other remedies set forth in this Chapter, one or more of the following civil fines shall apply to violations of this Chapter:
- (1) Failure to obtain a permit under Section 5-4(a): Fine of \$250.00 per Tree or \$500.00 per Specimen or Historic Tree removed, not to exceed \$5,000.00.
  - (2) Removal of a Tree without a permit: Fine of \$50.00 per Caliper inch, not to exceed \$5,000.00 per Tree.
  - (3) Removal of a Specimen or Historic Tree without a permit: Fine of \$100.00 per Caliper inch, not to exceed \$5,000.00 per Tree.
  - (4) Failure to abide by a cease and desist order issued under this Chapter: Fine of \$500.00 per day.

- (5) Failure to obtain a contractor's license under Section 5-4(e): Fine of \$250.00 (1<sup>st</sup> offense); \$500.00 (2<sup>nd</sup> and each subsequent offense).
  - (6) Failure to abide by the requirements of Section 5-10 of this Chapter: Fine of \$250.00 per occurrence.
  - (3 7) Any other violation of this Chapter: Fine as provided by law and this Chapter.
- (c) *Civil Fine Determination.* In determining the amount of the civil fine under subsection (6) above, the following factors shall be considered:
- (1) The gravity of the violation.
  - (2) Any actions taken by the violator to correct the violation.
  - (3) Any previous violations of this Chapter committed by the violator.
  - (4) The number and size of the Trees removed, if any.
  - (5) The historical significance of ~~the~~ any Tree removed if the Tree was deemed Historic.
  - (6) Whether the violation is irreparable or irreversible in nature.
  - (7) The remedial actions offered by the violator to restore the property consistent with this Chapter.

**Sec. 5-19. Authorization to Adopt Rules and Regulations and Fees for Implementation.**

The City Commission is hereby authorized to adopt, by resolution, such rules and regulations and fees as are necessary or proper to implement this Chapter.

**Section 3. Repeal of Prior Inconsistent Ordinances and Resolutions.** All prior inconsistent ordinances and resolutions adopted by the City Commission, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

**Section 4. Incorporation Into Code.** This Ordinance including all attached Appendixes and Tables shall be incorporated into the Winter Springs City Code and any section or paragraph number or letter and any heading may be changed or modified as necessary to effectuate the foregoing.

**Section 5. Severability.** If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall

be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

**Section 6. Effective Date.** This Ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Springs, Florida, and pursuant to the City Charter.

**ADOPTED** by the City Commission of the City of Winter Springs, Florida, in a regular meeting assembled on the \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
**JOHN F. BUSH**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**ANDREA LORENZO-LUACES**  
City Clerk

**Approved as to legal form and sufficiency for  
the City of Winter Springs only:**

\_\_\_\_\_  
**Anthony A. Garganese, City Attorney**

First Reading: \_\_\_\_\_

Second Reading and Adoption: \_\_\_\_\_

Effective Date: \_\_\_\_\_