

AGENDA ITEM SUMMARY**REQUESTED MOTION:**

First reading and public hearing of the following Ordinance:

AN ORDINANCE RELATED TO THE TREE PROTECTION ORDINANCE; AMENDING SECTIONS 7-226, INTENT, PURPOSE AND SCOPE; 7-228, DEFINITIONS; AND 7-235, ISSUANCE OF PERMITS; CRITERIA, SITE PLANS, AND FEES; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN THE CODE, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE

The Ordinance will be scheduled on December 16, 2015 for the final Council public hearing, with LPA reviewing the ordinance at its December 10, 2015 meeting for consistency with the comprehensive plan.

MEETING DATE: December 2, 2015

AGENDA:**REQUIREMENT/PURPOSE: (Specify)****REQUESTOR OF INFORMATION:**

PRESENTATIONS

STATUTE

CONSENT

X ORDINANCE

X PUBLIC HEARING

ADMIN. CODE

APPEALS

OTHER

MAYOR AND COUNCIL
MEMBER'S REPORTS

CITY ATTORNEY

CITY MANAGER

Jennifer Hagen, Planner – LEED-AP
Sean Gibbons
Community Development
And
Audrey E. Vance,
City Attorney

BACKGROUND:

On March 26, 2014 City Council directed staff to prepare an application for the City's participation in the Florida Green Building Coalition's "Green Local Government Standards" program. To maximize the total credits achievable to meet the standards outlined in the program, on August 5, 2015 City Council authorized staff to prepare certain ordinances.

This ordinance amends the Tree Protection Ordinance to clarify a permit is not necessary for exotic removal (but still needed with lot clearing), redefined Tree Protection map to broaden the definition, and updating submittal requirements. Since this is a land development regulation, the Local Planning Agency will review the ordinance at its December 10, 2015 meeting for consistency with the comprehensive plan. On November 18, 2015, following review, City Council gave permission to advertise and schedule the ordinance for public hearings.

Attachment: Proposed Ordinance

IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? X YES NO

IF YES, WHICH STRATEGIC OBJECTIVE? Priority #1 Maintain and Enhance the Quality of Life

STAFF RECOMMENDATIONS:

Hold the first public hearing and move to a second and final public hearing.

REVIEWED BY:

City Manager:

City Attorney:

City Clerk:

Department Director:

COUNCIL ACTION:

___ APPROVED

___ DENIED

___ DEFERRED

___ OTHER

**CITY OF BONITA SPRINGS, FLORIDA
ORDINANCE NO. 15-__**

**AN ORDINANCE RELATED TO THE TREE PROTECTION ORDINANCE;
AMENDING SECTIONS 7-226, INTENT, PURPOSE AND SCOPE; 7-228,
DEFINITIONS; AND 7-235, ISSUANCE OF PERMITS; CRITERIA, SITE
PLANS, AND FEES; PROVIDING FOR CONFLICTS OF LAW,
SEVERABILITY, CODIFICATION, INCLUSION IN THE CODE,
SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE**

WHEREAS, the City Council is the governing body in and for the City of Bonita Springs, a municipal corporation of the State of Florida; and

WHEREAS, Florida Statutes §166.021 authorizes the City of Bonita Springs to establish, coordinate, and enforce laws that are necessary for the protection of the public; and

WHEREAS, the City of Bonita Springs is pursuing steps toward becoming a Florida Green Local Government using the Green Local Government Standard developed by the Florida Green Building Coalition; and

WHEREAS, certain terms in the Tree Protection Ordinance need to be updated to maintain and enhance the protection of certain trees within the City of Bonita Springs; and

WHEREAS, the City of Bonita Springs City Council finds it is in the best interest of the public to update the City of Bonita Springs Tree Protection Ordinance.

NOW, THEREFORE, THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

SECTION ONE: AMENDMENTS TO THE TREE PROTECTION ORDINANCE

Sections 7-226, 7-228 and 7-235 of the City of Bonita Springs Tree Protection Ordinance, within the City of Bonita Springs Land Development Code, are hereby amended to read as follows, with underline identifying additional language:

Sec. 7-226. - Intent, purpose and scope.

- (a) The intent of this article is to provide protection of trees through the preservation, protection, and planting of trees in order to aid in the stabilization of soil by the prevention of erosion and sedimentation; reduce stormwater runoff and the costs associated therewith and maintaining permeable land areas for aquifer recharge and surface water filtration; aid in the removal of carbon dioxide and generation of oxygen in the atmosphere; provide a buffer and screen against noise pollution; promote energy conservation through the creation of shade; reduce heat gain in or on buildings or paved areas; and reduce the temperature of the microclimate through evapotranspiration; provide protection against severe weather; aid in the control of drainage and restoration of denuded soil subsequent to construction of grading; provide a haven for birds, which, in turn, assists in the control of insects; protect and increase property values; conserve and enhance the city's physical and aesthetic environment; and generally protect and enhance the quality of life and the general welfare of the city.

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- (b) The purpose of this article is to provide protection of trees from abuse and/or mutilation, and to regulate the removal and planting of trees in the city in order to enhance and protect the environmental quality of the city.
- (c) It is not the intent of this ordinance to require additional permitting for the removal of exotic vegetation as listed in Chapter 3. Removal of exotic vegetation is specifically addressed in LDC 3-415 et seq. the Landscape Code.

(County Ord. No. 94-14, § 3, 5-18-1994)

Sec. 7-228. - Definitions.

- (a) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bona fide agricultural purpose means a good faith commercial or domestic agricultural use of the land. In determining whether the proposed agricultural use of land is bona fide, the following factors shall be taken into consideration by the administrator:

- (1) Whether the property could qualify as a bona fide agricultural purpose within the meaning of F.S. § 193.461(3)(b);
- (2) The relationship of the property to the Bonita Plan; and
- (3) Whether the current zoning of the property shall be agricultural.

City manager, means the city manager or his designee, who is the person responsible for administering the provisions of this article.

Critical areas for surface water management means the areas classified as the Density Reduction/Groundwater Resource, Resource Protection and Conservation, as defined in the Bonita Plan.

Diameter breast height (DBH) means the diameter, in inches, of a tree measured 54 inches above natural grade.

Drip line means an imaginary vertical line running from the outermost branches or portion of the tree crown to the ground.

Indigenous vegetation means those plants which are characteristic of the major plant communities of the city.

Massing of trees means to cluster trees in a random fashion.

Notice of clearing means the permit issued by the city manager after it has been recorded by the city clerk's office.

Person is any public or private individual, group, company, partnership, association, society, or other combination of human beings, whether legal or natural.

Protective barrier means a physical structure not less than three feet in height composed of lumber no less than one inch by one inch for shielding of protected trees from the movement of equipment or the storage of equipment, material, debris, or fill. Equivalent materials may be used to provide a protective barrier, if first approved by the administrator.

Removal is the deliberate removal of a tree, or causing the effective removal of a tree, through damaging, poisoning, or other direct or indirect actions resulting in the death of the tree.

Resource protection area means a land use category as defined by the Bonita Plan.

Transition zone means a land use category as defined by the Bonita Plan which is characterized by lands that may be seasonally inundated from one to three months, as indicated by water marks, do not have depressional soils, and are characterized by a mixture of plant species typical of uplands and wetlands.

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Tree means a living, woody, self-supporting plant, ten feet or more in height having one or more well-defined main stems or trunks, and any one stem or trunk four inches DBH and as listed in section 7-232. For the purpose of this article, those palms listed in section 7-232 are declared to be a tree and are protected by the provisions of this article.

Tree protection map, survey or inventory means a drawing or aerial photograph prepared by a Florida licensed land surveyor, certified arborist or botanist which provides the following information: Location of all trees protected under the provisions of this article, plotted by ground truthing or any other accurate scientific techniques; common or scientific name of all trees; and diameter at breast height. Groups of trees (located by drip-edge) in close proximity (five feet spacing or closer) may be designated as a clump of trees, with the predominate species, estimated number, and average size listed.

Tree worthy of preservation is any tree listed in the Florida Champion Tree records as compiled by the state.

Upland means land other than wetlands.

- (b) Unless specifically defined in this article, the other words or phrases used in this article and not defined in this section shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

(County Ord. No. 94-14, § 5, 5-18-1994; County Ord. No. 96-17, § 3(14-374), 9-18-1996)

Sec. 7-235. - Issuance of permits; criteria, site plans, and fees.

- (a) Prior to initiating any development or alteration requiring removal of any protected tree species, the property owner shall submit an A application for a permit to remove any protected tree defined herein shall be submitted to the city manager in writing on a form provided by Community Development the administrator, accompanied by a written statement indicating the reasons for removal.
- (b) The city manager shall have the authority to issue said permit and to inspect all work performed under any permit issued under this article.
- (c) All applications to remove any protected tree defined herein shall be on forms provided by ~~the~~ Community Development the administrator. Where an application has been submitted to the administrator for the removal of more than five trees, no tree removal permit shall be issued by the city manager until a site plan for the lot or parcel has been reviewed and approved by the city manager, and shall include the following minimum information:
- (1) The shape and dimensions of the lot or parcel, together with the existing and proposed locations of the structures and improvements, if any.
 - (2) A tree location map for the lot or parcel, in a form acceptable to the city manager. For the removal of five trees or less, an on-site examination by the city manager's designee shall be made in lieu of the tree location map requirement. At a minimum, the map must contain the following information:
 - i. All trees four (4) inches DBH and greater
 - ii. All trees located within 25 feet of the property line including adjacent properties the inventory shall list size, type and location.
 1. Common name
 2. Botanical name
 3. Tree diameter
 4. Field Location
 5. Overall rating of health, structure and form
 6. Location of exotics (may be shown as a group for removal)
 - (3) Any proposed grade changes that might adversely affect or endanger any trees on the lot or parcel, together with specifications reflecting how the trees can be safely maintained.
 - (4) Any proposed tree replacement plan.

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- (d) Criteria for granting tree removal permits. The city manager shall approve a permit for issuance for the removal of any protected tree if the city manager finds one or more of the following conditions is present:
- (1) Trees which pose a safety hazard to pedestrian or vehicular traffic or threaten to cause disruption to public utility services.
 - (2) Trees which pose a safety hazard to existing buildings or structures.
 - (3) Trees which prevent reasonable access to a lot or parcel so long as the proposed access point complies with all other city regulations.
 - (4) Diseased trees which are a hazard to people, buildings, or other improvements on a lot or parcel or to other trees.
 - (5) Trees so weakened by age, storm, fire, or other injury so as to, in the opinion of the city manager, jeopardize the life and limb of persons or cause a hazard to property.
 - (6) The city manager may require that a tree protected by this article be relocated on the same lot or parcel in lieu of approval.
 - (7) Trees which prevent the lawful development of a lot or parcel or the physical use thereof.
- (e) Where a building permit issuance is not required because no structures are to be constructed and no other development of the lot is to occur, any person seeking to remove a tree protected under this article shall first file a site plan with the administrator meeting the requirements of subsection (c) of this section, prior to receiving a tree removal permit from the city manager.
- (f) On-site inspection. The city manager may conduct an on-site inspection to determine if any proposed tree removal conforms to the requirements of this article and what effect, if any, removal of said tree or trees will have upon the natural resources, as identified in the Bonita Plan, of the affected area prior to the granting or denying of said application. A permit fee will be required for the removal or relocation of any tree protected under the provisions of this article and shall be paid at the time of issuance of the permit. The fees established will be set in accordance with the fee schedule on file in the city clerk's office and paid to the city manager. Such fees are hereby declared to be necessary for the purpose of processing the application and making the necessary inspection for the administration and enforcement of this article.
- (g) Issuance of permit. Based upon the information contained in the application and after investigation of the same, the city manager shall approve or deny the application, and if approved, the city manager is the party so designated by the city council to issue said permit for a period not to exceed one year and to collect said permit fee.
- (h) Conditions of the permit. The city manager may attach conditions to the permit relating to the method of identifying, designating, and protecting those trees which are not to be removed in accordance with subsection (g) of this section. A violation of these conditions shall automatically invalidate the permit. Special conditions which may be attached to the permit may include a requirement for successful replacement of trees of the same size, compatible species, and same number of any trees permitted to be removed.

(County Ord. No. 94-14, § 11, 5-18-1994)

SECTION TWO: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted City of Bonita Springs Ordinance or Florida Statutes, the more restrictive shall apply.

SECTION THREE: SEVERABILITY

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If any part, section, subsection, or other portion of this ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reasons, such part, section, subsection, or other portion or the prescribed application thereof, shall be severable, and the remaining provisions of this ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City declares that no invalid or prescribed provision or application was an inducement to the enactment of this ordinance, and that it would have enacted this ordinance regardless of the invalid or prescribed provision or application.

SECTION FOUR: CODIFICATION, INCLUSION IN CODE, AND SCRIVENER'S ERRORS

It is the intention of the City Council for the City of Bonita Springs that the provisions of this Ordinance shall become and be made a part of the Bonita Springs Land Development Code; and that sections of this Ordinance may be renumbered or re-lettered and that the word "Ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this Ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the City Manager, or the City Manager's designee, without need of public hearing, by filing a corrected or re-codified copy of same with the City Clerk.

SECTION FIVE: EFFECTIVE DATE

The effective date of this Ordinance shall be thirty (30) days from its adoption date.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this ____ day of ____, 2015.

AUTHENTICATION:

Mayor

City Clerk

APPROVED AS TO FORM: _____
City Attorney

Vote:

Nelson	_____	Simmons	_____
McIntosh	_____	Gibson	_____
Martin	_____	Lonkart	_____
Slachta	_____		

Date filed with City Clerk: _____

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