

CITY OF DESTIN



AGENDA ITEM

CITY COUNCIL DATE: May 01, 2017

TYPE OF AGENDA ITEM: Staff Report and Recommendation

TO: Mayor and City Council

THROUGH: City Manager, Carisse LeJeune *CLJ*
 City Land Use Attorney, Kimberly Kopp *KK by KAH*
 Community Development Director, Karen Haynes *(Ornall+K)*

FROM: Parks & Recreation Director, Lance Johnson *LJ BY KAH*

DATE: April 26, 2017

SUBJECT: Ordinance 17-11-CN – 1st Reading

- I. BACKGROUND:** During its April 17, 2017 City Council Meeting, the City Council discussed the need to improve our existing tree protection regulations and directed Staff to bring back a moratorium on tree cutting.
- II. DISCUSSION:**
- A. Link to Strategic Goals / Objectives:** Preservation of Heritage and Environment
 - B. Effect on Budget (EOB):** No funds are currently budgeted for enforcement of this ordinance.
 - C. Level of Service (LOS):** None
- III. CONCLUSION:** The Environmental, Parks & Recreation Committee/Tree Board has recommended the City Council adopt a tree cutting moratorium while a proposed ordinance is in Staff's review.
- IV. RECOMMENDED MOTION:** "I move that City Council approve proposed Ordinance 17-11-CN on 1st Reading and direct staff to schedule proposed Ordinance 17-11-CN for public hearing and final adoption on 2nd Reading."

Exhibit:

- A. Ordinance No. 17-11-CN

AN ORDINANCE ENACTING A TEMPORARY MORATORIUM ON THE REMOVAL OF PROTECTED TREES WITHIN THE DESTIN CITY LIMITS, PENDING CONSIDERATION OF CHANGES TO CITY ORDINANCES; PROVIDING DEFINITIONS; PROVIDING FOR A TEMPORARY MORATORIUM ON PERMITS ALLOWING REMOVAL OF CERTAIN TREES; PROVIDING FOR EXCEPTIONS; PROVIDING FOR APPEALS; PROVIDING FOR PENALTIES, AND PROVIDING FOR AN EFFECTIVE DATE AND TERM.

WHEREAS, the City of Destin regulates the use of land through its land development code, its comprehensive planning process, and its building and development regulations, all of which serve to promote the public health, safety, and welfare; and

WHEREAS, the City Council has recently commenced work on a Comprehensive Tree Protection Program ("TPP") in order to address land development and zoning regulations in a way that supports a sustainable tree canopy and is easily understood by administrators, the public, and the development community; and

WHEREAS, the TPP will include information that will, among other things, outline specific changes that should be made to existing City codes; and

WHEREAS, the TPP will include extensive community input on desired code changes; and

WHEREAS, a number of issues have been raised recently by community members relating to the impact of development on the tree canopy; and

WHEREAS, the unnecessary removal of healthy trees within the City limits has a negative impact on the public welfare and is currently under study by the Environmental, Parks & Recreation Committee/Tree Board and City staff; and

WHEREAS, efforts to strengthen tree protection regulations is the intent of the TPP; and

WHEREAS, in conjunction with the TPP, the City Manager will be reviewing whether changes or modifications are needed with respect to staffing the permit review and enforcement processes; and

WHEREAS, there is an urgent need to impose a temporary moratorium on the removal of certain size tree species within the City limits in order to preserve the status quo during this period of study, research and deliberation, and to prevent the circumvention of the intent of new regulations while such regulations are under consideration.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Destin, and it is hereby ordained by authority of same, as follows:

Section 1: Definitions.

For purposes of this Ordinance, "*complete permit application*" shall mean a bona fide, complete submittal of all documents, drawings, plans and other information deemed to be a complete submittal package by the Community Development Department or the Public Services Department.

For purposes of this Ordinance, "*protected trees*" shall mean tree species listed below that have a 12 inch or greater diameter-at breast-height (DBH) [measured at 4 ½ feet above the ground].

Protected tree species include:

- *Live Oak (Quercus virginiana)*
- *Laurel Oak (Quercus laurifolia)*
- *Sweet Gum (Liquidambar Styraciflua)*
- *Sycamore (Platanus occidentalis)*
- *Pecan (Carya illinoensis)*
- *Water Oak (Quercus nigra)*
- *Red maple (Acer rubrum)*
- *Majesty Palm (Ravenea rivularis)**
- *Canary Island Date Palm (Phoenix canariensis)**
- *Wild Date Palm (Phoenix sylvestris)**
- *Pine (Pinus elliotii)***
- *Oak (Quercus spp.)***
- *Bald Cypress (Taxodium discithum)***
- *Bay Magnolia (Magnolia virginiana)***
- *Walnut (Juglans Nigra)***
- *Sycamore (Platanus acerfolia)***
- *Elm (Ulmus spp.)***
- *Hickory (Carya spp.)***

* Reference Land Development Code table 12-1

**Reference Land Development Code table 12-2

Section 2: Exceptions to Temporary Moratorium on Permits Allowing Removal of Certain Trees;

No building permit, development permit, demolition permit, land disturbance permit, or other permit allowing removal of a protected tree within the City limits shall be issued during the period set forth in this Ordinance. Notwithstanding, the foregoing temporary moratorium shall not apply to the following:

1. Any complete permit application submitted and accepted for review by the Community Development Department or the Public Services Department prior to the adoption of this Ordinance, so long as all other applicable zoning and development regulations are met;
2. Any removal requested for a qualifying tree that has been determined by a certified arborist or forester registered to practice in the State of Florida, to have a moderate or higher risk rating, which risk cannot be mitigated by industry best management practices, as determined pursuant to *ANSI A300 Part 9 Tree, Shrub and other Woody Plant Management- Standard Practices - Tree Risk Assessment*;
3. Any removal of a qualifying tree that is being required by insurance carriers to maintain the policy.
4. Any removal of a qualifying tree that is necessary in order to accommodate the construction of a single family residential home, as long as the following are satisfied:
 - a. The removal is approved as part of issuance of a building construction permit for the residence;
 - b. The removal does not occur until after the building construction permit is posted and a notice of commencement is recorded;
 - c. Only those qualifying tree(s) may be removed as are necessary to reasonably accommodate the approved building site plan including only building footprint, utilities, access and drainage.
5. Removal of any tree from a homesteaded single-family property occupied by the owner.
6. Utility Companies, Electric Suppliers and Governmental Agencies. Utility companies, electric suppliers and governmental agencies constructing or maintaining easements for water, sewer, electricity, gas, drainage, telephone or television transmission or rights of way shall be exempt from the provisions of this Ordinance if the applicable company, supplier or agency has executed an agreement with the City
7. The removal or pruning of protected trees for the development and maintenance of golf courses/event venues, excluding sites for clubhouses, sheds and other amenities; road rights of way except those relating to subdivisions; easements for utilities and drainage; wells; lift stations and water storage tanks, shall be exempt from this Ordinance. If the golf course/event venue is sold and redeveloped, the development will fall under the requirements of this Ordinance, subject to applicable penalties.
8. Any tree, other than a protected tree, located on an individual lot on which either a single-family dwelling or mobile home is located.
9. Any tree of the pine family, other than the Longleaf Pine (*Pinus palustris*) located on that portion of a lot which is more than twenty (20) feet from a street right of way (including an approved private street or other access easement), or more than ten (10) feet from any other property line.
10. Any tree located in botanical gardens or in state-approved or government nurseries and groves which are grown for sale or public purpose.
11. Any tree that poses imminent danger to the public health, welfare or safety, and requires immediate removal without delay. In such instances, verbal authorization to remove a protected tree may be given by the city manager, city engineer, or city building official.

12. Any tree in a land area located within a City drainage easement, a City drainage right-of-way, and/or a City access way right of way (excluding road rights of way, or road easements requiring drainage) where trees must be removed, as reasonably necessary, to provide access to, or maintenance and/or construction of, the City's drainage ditches and drainage-related facilities.

13. Any tree located within an existing or proposed street right-of-way and/or easement shown on a set of approved final construction plans for required improvements within an approved single-family or mobile home subdivision which has been platted or is in the process of being platted and has received preliminary sketch plan approval, may be removed during construction of such improvements.

14. Any nuisance or invasive species of tree as defined by the current *Florida Exotic Pest Plant Council List of Invasive Plant Species*.

15. Any tree determined to be a danger to traffic flow or traffic site visibility by the City Traffic Engineer.

16. Any tree determined to be in a required fire break by any local or state fire official.

17. During the period of an emergency such as a hurricane, flood or any other natural disaster, the requirements of this Section may be temporarily waived by the Mayor or his/her designee, so that private or public work to restore order in the City will in no way be hampered.

Note: Nothing in this Ordinance shall be construed to prevent the ordinary pruning and maintenance of a tree; nor shall anything in this Ordinance be construed to prevent the cutting or removal of any tree which the authorized municipal officers shall certify as required for public safety.

Section 3: Appeal.

Appeal of any decision to deny a permit pursuant to one of the above stated exceptions, or to otherwise disallow or preclude removal of a qualifying tree pursuant to one of the above stated exceptions, shall be to the City Board of Adjustment as provided for in LDC Section 2.22.00, Appeals.

Section 4. Penalties.

This moratorium may be enforced by the following methods of enforcement:

- (A) Revocation or temporary suspension of necessary development permits, development orders and/or certificates of occupancy and/or licenses; or
- (B) By an action for injunctive relief, civil penalties or both, through a court of competent jurisdiction; or
- (C) By any other process permitted by law or equity.

Section 5. Effective Date and Term.

This Ordinance shall become effective immediately upon its adoption by the City Council and signature by the mayor and shall remain in force and effect for a period through and including October 1st, 2017 or until the final Tree Protection Program is adopted, whichever comes first.

ADOPTED THIS _____ DAY OF _____ 2017.

BY: _____
Scott Fischer, Mayor

ATTEST:

The form and legal sufficiency of the foregoing has
been reviewed and approved by the City Land Use Attorney.

Rey Bailey, City Clerk

Kimberly Kopp, City Land Use Attorney

First Reading: _____

Second Reading: _____