

THE CITY OF NEW SMYRNA BEACH – PLANNING AND ZONING

**ORDINANCE NO. 09-19: CONDUCT THE
SECOND READING AND PUBLIC
HEARING OF AN ORDINANCE, WHICH IF
ADOPTED, WOULD IMPLEMENT
AMENDMENTS TO THE CITY'S LAND
DEVELOPMENT REGULATIONS TO
STRENGTHEN AND CLARIFY THE
CRITERIA FOR REMOVAL OF HISTORIC
AND SPECIMEN TREES.**

MARCH 26, 2019

I. Background

Applicant: City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach

Request: Conduct the Second Reading of Ordinance No. 09-19 to implement amendments to the City's *Land Development Regulations* to strengthen and clarify the criteria for removal of historic and specimen trees.

II. Findings

A. The City is proposing text amendments to the City's *Land Development Regulations (LDR)* to expand preservation of historic and specimen trees within the City of New Smyrna Beach.

B. Staff has expanded the definition of Historic Trees in Section 204.00 of the LDR, beyond the limits of live oak and bald cypress trees, to now include *any* tree 36" DBH or greater that is not listed on the Florida Exotic Pest Plant Council's list of invasive species.

C. The definition for Specimen Tree has also been expanded to note that all specimen trees, once reaching historic size (36" DBH), shall be evaluated for removal by City Commission using the new removal criteria. This is to reinforce that specimen trees will continue to be evaluated by staff until they reach historic size.

D. Four removal criteria have been added to section 604.51.F *Tree Preservation*, applying to historic trees 36" or over and specimen trees 24" or over. Applicants must meet one of the four criteria to have the application for tree removal considered by staff for specimen trees and by the City Commission for historic trees.

E. Applications for historic tree removals must be accompanied by a written tree evaluation prepared by an ISA certified arborist.

E. The current exemption for tree removal on single-family properties in Section 604.052 has been removed to avoid potential conflicts with the new criteria.

F. At the Planning and Zoning Board meeting on February 4, 2019, the Board voted 5-0 to forward a recommendation of approval to the City Commission.

The City Commission conducted the first reading of the proposed ordinance at its regular meeting held February 26, 2019.

Recommendation

Staff recommends the City Commission conduct the second reading and public hearing of Ordinance No. 09-19.

ORDINANCE NO. 09-19

AN ORDINANCE AMENDING THE LAND DEVELOPMENT REGULATIONS; AMENDING ARTICLE II, SECTION 204.00, NEW SMYRNA BEACH TREE PROTECTION REGULATIONS DEFINITIONS; AMENDING ARTICLE VI, SECTION 604.051, TREE PRESERVATION; AMENDING SECTION 604.052, TREES ON SINGLE-FAMILY PROPERTIES; PROVIDING FOR PUBLIC HEARING; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida requests supplemental administrative text amendments to expand preservation of historic and specimen trees within the City of New Smyrna Beach; and

WHEREAS, the Planning and Zoning Board at a regular meeting held on February 4, 2019, voted 5-0, to recommend the City Commission approve the requested text amendments; and

WHEREAS, the City Commission deems it is in the best interests of the citizens of the City of New Smyrna Beach to amend the Land Development Regulations as more particularly set forth hereinafter.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF NEW SMYRNA BEACH, FLORIDA:

SECTION 1: That Article II., Section 204.00 of the New Smyrna Beach Land Development Regulations is hereby amended as follows: (Note: Omissions from text are indicated by [...], deletions from text are indicated by ~~strikeout~~, and additions to text are indicated by underline.)

ARTICLE II. - DEFINITIONS

204.00. - New Smyrna Beach tree protection regulations definitions.

For the purposes of [sub]section 604.05A. of this LDR, the following definitions shall apply:

City horticulturist. The person responsible for administering and enforcing the provisions contained herein or a person designated by the city horticulturist.

Attachment: Ord 09-19 LDR Text Amend - HTR 3.15.19 [Revision 3] (Ordinance No. 09-19: Historic Tree Removal Criteria)

44 *Drip line.* A vertical line running through the outermost portion of the tree crown extending to the
 45 ground.

46 *Historic tree.* Any live oak (~~quercus virginiana~~) or bald cypress (~~taxodium distichum~~) tree, exclusive of
 47 those found on the Florida Exotic Pest Plan Council list, 36 inches DBH or greater or tree in the city selected
 48 and duly designated a Florida State Champion, United States Champion or a World Champion by the
 49 American Forestry Association shall likewise be considered an historic tree.

50 *Lot, developed.* A parcel of land occupied by one main building and its accessory buildings with such
 51 open and parking space as required and having its principal frontage upon a street.

52 *Lot, unimproved.* An undeveloped parcel of land.

53 *Person, applicant, subdivider/developer.* Shall include an individual, partnership, corporation,
 54 association, group, company, firm, society or other legal entity of human beings, whether natural or artificial,
 55 including the city, and all other municipal state and federal governments, and shall include the plural as well
 56 as the singular.

57 *Remove or removal.* Remove or removal shall include actual removal and effective removal through
 58 killing, damaging or destroying.

59 *Specimen tree.* The following species of trees with the minimum specified diameter at breast height
 60 (DBH) are determined to be specimen trees. When a Specimen tree reaches 36 inches DBH, it shall be
 61 considered a Historic tree for purposes of removal under Section 604.051(f) of these LDRs.

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Common Name	Botanical Name	DBH
Turkey Oak	Quercus leavis	12 inches and larger
Other Oak Species	Quercus spp.	18 inches and larger
Maple	Acer spp.	18 inches and larger
Sweet Gum	Liquidambar styraciflua	18 inches and larger
Hickory	Carya spp.	18 inches and larger
Elm	Ulmus spp.	18 inches and larger
Lobloly Bay	Gordonia lasianthus	12 inches and larger
Sweet Bay	Magnolia virginiana	12 inches and larger
Real Bay	Persea borbonia	12 inches and larger
Swamp Bay	Persea borbonia	12 inches and larger

Sycamore	Platanus occidentalis	18 inches and larger
Magnolia	Magnolia grandiflora	12 inches and larger
Bald Cypress	Taxodium distichum	18 inches and larger
Red Cedar	Juniperup silicicola	12 inches and larger

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Tree. Any self-supporting woody plant which normally grows to an overall height of a minimum of 15 feet, with one main trunk, and which at the time of application, measures no less than six inches in diameter measured four feet above ground level.

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SECTION 2: That Article VI., Section 604.051(F) of the New Smyrna Beach Land Development Regulations is hereby amended as follows: (Note: Omissions from text are indicated by [...], deletions from text are indicated by ~~strikeout~~, and additions to text are indicated by underline.)

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ARTICLE VI. - DEVELOPMENT DESIGN AND IMPROVEMENT STANDARDS

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604.051. *Tree preservation.*

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F. *Permitting.* The tree removal application shall be made in the following manner:

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- (1) Sites requiring plan review committee (class II or class III site plans) approval shall be required to provide a survey of the property prepared by a surveyor registered with the State of Florida showing existing features of the property including elevations, buildings, structures, trees over six inches in trunk diameter at four feet above ground level, all specimen and historic trees, streets, utility easement rights-of-way, and land use. For properties east of the Indian River the survey must show trees over four inches in diameter at four feet above ground level. In lieu of a tree survey an applicant may submit any generally accepted method of calculating the number of trees.

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Class I site plans may submit a sketch in place of a tree survey.

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No permit to clear or grade shall be issued until either the required survey or sketch is filed.

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- (2) The location of all trees on the site, designating the trees to be retained, removed, relocated or replaced. Groups of trees in close proximity may be designated as "clumps" of trees with

94 the estimated number shown. Historic trees, specimen trees, and those trees to be removed,
95 relocated or replanted must be named (botanical) on the site plan.

96 (3) In the case of partial development, show only those areas and items affected.

97 (4) Upon receipt of the application and fee for tree removal permit, the city manager or his
98 designee shall review the plans and may inspect the site.

99 (5) If the work described is not begun within six months from the date of issuance of the permit
100 for tree removal, said permit shall be void. The city manager or his designee reserves the
101 right to extend or rescind the tree removal permit if conditions warrant.

102 (6) Historic trees shall be removed only upon a tree removal permit granted by the city
103 commission at a quasi-judicial public hearing, after a finding that the evidence presented is
104 more compelling for the removal of the historic tree than for it to remain.

105 a. Petitioners wishing to obtain a permit must show:

107 i. The tree is currently damaging or is posing an imminent danger
108 to an existing structure; or

109 ii. The tree is damaging and/or interfering with the installation,
110 operation, and/or maintenance of existing or proposed public
111 infrastructure; or

112 iii. The tree is dead, diseased, structurally unsound, or severely
113 injured such that the tree is likely to die within two years; or

114 iv. Other extraordinary circumstance or hardship where the
115 applicant has demonstrated that no other feasible option
116 exists to preserve the tree.

117 b. Applications for historic tree removals shall be accompanied by a written tree
118 evaluation report prepared by an ISA certified arborist which identifies the tree's location,
119 size, species, condition, and basis for meeting one or more of the listed removal conditions.
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121 (7) Specimen trees 24-inches DBH or greater shall be removed only upon a tree removal permit
122 approved by the Development Services Director, based on the proposed tree removal
123 meeting one of the four conditions listed in Section 604.051(F)(6)(a). Appeals of the
124 Director's decision may be made to the City Commission as a quasi-judicial matter.
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128 **SECTION 3:** That Article VI., Section 604.052 of the New Smyrna
129 Beach Land Development Regulations Article II. is hereby amended
130 as follows: (Note: Omissions from text are indicated by [...],
131 deletions from text are indicated by ~~strikeout~~, and additions to
132 text are indicated by underline.)
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135 ~~604.052. Trees on single-family properties.~~

136 ~~Any tree that could fall on a residential structure is exempt from all city tree preservation~~
137 ~~requirements and may be removed at any time with the permission of the owner. To qualify for this~~
138 ~~exemption, the residential structure subject to being hit by the tree must be located on a lot zoned and used~~

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139 for single-family dwellings. The removal of a tree under this provision requires the tree owner's written
140 authorization and a tree removal permit issued by the city. Trees removed under this provision are exempt
141 from all tree replacement requirements.

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144 **SECTION 4: Public Hearing.** That a public hearing considering the
145 adoption of this ordinance was held March 12, 2019, in the City
146 Commission Chambers at City Hall, 210 Sams Avenue (south entrance
147 on Julia Street), New Smyrna Beach, Florida, after notice is found
148 to comply with §166.041(3)(c), F.S.

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150 **SECTION 5: Conflicting Ordinances.** That all ordinances or parts
151 thereof that are in conflict with this ordinance shall be and the
152 same are hereby rescinded and repealed.

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154 **SECTION 6: Severability.** That if any section, sentence, clause or
155 phrase of this ordinance is held invalid or unconstitutional by
156 any court of competent jurisdiction, then said holding shall in no
157 way affect the validity of the remaining portions of this
158 ordinance.

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160 **SECTION 7: Effective Date.** That this ordinance shall take effect
161 immediately upon its final adoption.

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164 **APPROVED AS TO FORM AND CORRECTNESS:**

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166 Carrie Avallone

167 **CARRIE AVALLONE**

168 **City Attorney**

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171 **DATE:** 2/26/19

Attachment: Ord 09-19 LDR Text Amend - HTR 3.15.19 [Revision 3] (Ordinance No. 09-19: Historic Tree Removal Criteria)