

ORDINANCE NO. 2020-003

AN ORDINANCE OF THE TOWN OF MONTVERDE, FLORIDA, AMENDING REGULATIONS IN CHAPTER 12 OF THE TOWN OF MONTVERDE LAND DEVELOPMENT CODE TO CLARIFY THE POINT OF MEASUREMENT OF TREES, TO PROVIDE AN EXEMPTION FROM THE TREE REMOVAL PROCESS TO COMPLY WITH 2019 LEGISLATION, AND PROVIDE AN ADDITIONAL EXEMPTION UNDER CERTAIN CIRCUMSTANCES FOR SLASH PINE TREES WITHIN THE TOWN OF MONTVERDE; PROVIDING FOR CODIFICATION AND SEVERABILITY; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Land Development Code requires replacement trees be planted when preferred trees are removed when the tree diameter is of certain size when measured 4.5' above existing grade and the Town would like to further clarify the measurement is at DBH; and

WHEREAS, 2019 legislature prohibits local governments from enforcing tree requirements against residential property owners for the trimming or removal of a tree if the owner obtains documentation from a certified arborist or a licensed landscape architect that the tree presents a danger to persons or property, and further prohibits a local government from requiring a property owner to replant a tree that was removed under such circumstances; and

WHEREAS, the Town recognizes, based on historical events in the Town, that slash pine trees planted within close proximity may require thinning in order to preserve and protect healthy slash pine trees, and therefore desires to include an exemption from the Town's tree removal process in such instances as detailed herein; and

WHEREAS, the Town of Montverde has determined that it is necessary to amend the Town's Land Development Code to protect the health, safety, and welfare of its citizens and comply with existing law;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Montverde, Florida, as follows:

SECTION 1. Legislative Findings and Intent. The findings set forth in the recitals above are hereby adopted as legislative findings pertaining to this Ordinance.

SECTION 2. That Section 12-4 of Article I in Chapter 12, Part III (Land Development Code) of the Montverde Code of Ordinances shall be amended to read as follows:

Sec. 12-4. - Tree replacement requirements.

Preferred trees which have been approved for removal shall be replaced in accordance with the following:

- (1) Trees removed pursuant to criteria specified in this article of the land development code shall be replaced at the expense of the permit.

- (2) Replacement shall only be required for removed trees that are equal to or greater than four inches in diameter, with the diameter being measured at a point that is four and one-half feet above existing grade (DBH).
- (3) Replacement trees shall have a minimum caliper, at planting, of two and one-half inches.
- (4) Replacement in residential districts:
 - a. In all cases, the removal and replacement of trees shall meet the minimum tree requirements for the subject parcel, as follows:
 - 1. Any single-family or duplex dwelling unit on a single lot shall have not less than four trees.
 - 2. Any multifamily development shall have not less than two trees per unit.
 - b. No replacement, other than to meet the minimum tree requirements for the subject parcel, shall be required if the tree to be removed is dying or dead so that its restoration to sound condition is not practical, or it has a disease which can be expected to be transmitted to other trees and to endanger their health, unless the cause of the tree's condition (dying, death or disease) is excessive pruning, hat racking, topping, lion's tailing, etc. If the cause of the tree's condition is excessive pruning, hat racking, topping, lion's tailing, etc. then replacement shall be required without exception.
 - c. No replacement, other than to meet the minimum tree requirements for the subject parcel, shall be required for the removal of exotic trees (as provided on the most current Florida exotic pest plant council list).
 - d. No replacement, other than to meet the minimum tree requirements for the subject parcel, shall be required if the tree is removed as part of a the selective removal of up to 25 percent of existing trees in order to increase light and air circulation on heavily wooded parcels. Heavily wooded parcels shall be considered those parcels with a significantly overlapping canopy as determined by the town clerk or his/her designated representative.
 - e. If it can be determined by the town clerk or his/her designated representative that the tree or trees removed were originally planted as part of a silvicultural operation, with the intent that the tree or trees would be harvested, the sum of the diameters of the replacement trees shall be at least one-tenth of the sum of the diameters the removed trees, with the diameter being measured at a point that is four and one-half feet above existing grade (ten percent replacement by diameter).
 - f. If the tree or tree removed does not meet the requirements of any of the above, the sum of the diameters of the replacement trees shall be at least one-half of the sum of the diameters the removed trees, with the diameter being measured at a point that is four and one-half feet above existing grade (50 percent replacement by diameter).
- (5) Replacement in non-residential districts:
 - a. In all cases, the removal and replacement of trees shall meet the minimum tree requirements for the subject parcel, as follows:
 - 1. Any single commercial, industrial or other structure shall have not less than four trees per acre, with a minimum of four trees.
 - b. No replacement, other than to meet the minimum tree requirements for the subject parcel, shall be required if the tree to be removed is dying or dead so that its restoration to sound condition is not practical, or it has a disease which can be expected to be transmitted to other trees and to endanger their health.
 - c. No replacement, other than to meet the minimum tree requirements for the subject parcel, shall be required for the removal of exotic trees (as provided on the most current Florida exotic pest plant council list).

- d. If it can be determined by the town clerk or his/her designated representative that the tree or trees removed were originally planted as part of a silvicultural operation, with the intent that the tree or trees would be harvested, the sum of the diameters of the replacement trees shall be at least one-tenth of the sum of the diameters the removed trees, with the diameter being measured at a point that is four and one-half feet above existing grade (ten percent replacement by diameter).
 - e. If the tree or tree removed does not meet the requirements of any of the above, the sum of the diameters of the replacement trees shall be at least one-half of the sum of the diameters the removed trees, with the diameter being measured at a point that is four and one-half feet above existing grade (50 percent replacement by diameter).
- (6) A replacement tree may be moved from one location to another on the site, or moved off the site pursuant to an approved site plan.
 - (7) Replacement trees shall, if practicable, be planted on the development site. If not practicable as determined by town clerk, replacement trees may be donated, or a fee in lieu of replacement may be paid to the town for purposes of planting trees on public property with permission from the town council. The fee in lieu of replacement shall be based on the average retail cost of purchasing the requisite size and number of replacement trees. Payment shall be made prior to issuance of a tree removal permit.

SECTION 3. That Section 12-7 of Article I in Chapter 12, Part III (Land Development Code) of the Montverde Code of Ordinances shall be amended to read as follows:

Sec. 12-7. - Exemptions and penalties.

- (a) *Exemptions.* Notwithstanding anything to the contrary within the land development code, the following activities shall be lawful without application, notice, payment of fee, mitigation required, or issuance of a tree removal or land clearing permit or other development approval. None of these exemptions shall apply to any wetland conservation area. The burden of proving entitlement to any particular exemption shall lie with the person claiming use of the exemption, in the event the exempted activity ever becomes subject to an enforcement action.
 - (1) Property zoned residential where a Property Owner has obtained, prior to removal of tree, signed documentation from an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect that the tree presents a danger to persons or property.
 - ~~(4)~~(2) Routine landscape maintenance such as trimming or pruning of any tree or vegetation which is not intended to result in the eventual death of the tree or plants, mowing of yards or lawns, or any other landscaping or gardening activity which is commonly recognized as routine maintenance or replacement. Vegetation and trees shall only be pruned to maintain health and vigor. Pruning shall be in accordance with ANSI A300 Standards and ANSI Z1333, 1-2000 (Pruning, Repairing, Maintaining, and Removing Trees, and Cutting Brush Safety Requirements) developed by Tree Care Industry Association, Inc. Trees shall not be severely pruned in order to permanently maintain growth at a reduced height or spread. Excessive pruning, hat racking, topping, lion's tailing, etc. shall be considered tree abuse and a violation of this Code.
 - ~~(2)~~(3) The removal, trimming, or pruning of any tree or vegetation in an existing utility easement or right-of-way provided such work is done by or under the control of the operating utility company and said company has received all necessary licenses or permits to provide utility service within the easement.
 - ~~(3)~~(4) The removal, trimming, or pruning of any tree or vegetation for the purpose of maintaining existing access to a property.
 - ~~(4)~~(5) Any activity conducted by a lawfully operating and bona fide commercial nursery, tree farm, agricultural operation, silvicultural operation, ranch, or similar operation, when the activity occurs on property owned or lawfully occupied by the person conducting said activity and is

done in pursuit of said activity. This exemption shall include the purposeful removal of a tree or trees for their permanent relocation at another site undergoing development. The exemption shall not include the removal of trees prior to submittal of an application for development approval such as any residential site plan, subdivision plat, or commercial and/or industrial site plan. Activities included in this exemption are subject to review and verification by the town clerk. When land-clearing or tree removal has been performed under this exemption based upon the use of property for an agricultural or silvicultural operation, the following shall apply:

- a. Pertaining to silviculture, operations are encouraged to implement a State Division of Forestry approved management plan.
- b. Pertaining to silviculture and agriculture, operations within wetlands will need to secure a notice of intent from the St. Johns River Water Management District before any clearing or harvesting is initiated.
- c. Pertaining to agriculture, operations are encouraged to implement a Soil and Water Conservation District approved conservation plan as applicable to the specific area being cleared.

(6) Where slash pine trees (*Pinus elliottii*) are planted closer than 15-ft apart on residentially zoned property, the property owner may "thin" or remove selected pines to protect the health of remaining pine trees and not present a hazard to residential structures. This exemption shall not be construed to permit removal of all pine trees from a property. The minimum required trees per residential lot is still required. Thin for purposes of this subsection means the selective removal of trees, primarily undertaken to improve the growth rate or health of the remaining trees.

- (b) *Penalties and enforcement.* Any violation of this article shall be considered a violation of the land development code. Enforcement shall be in accordance with the code enforcement chapter of this Code. Penalties for removal of a historic or heritage tree without permission shall be \$5,000.00 per tree and shall be assessed against the owner of the real property. Penalties for removal of all other trees protected by this section or for excessive pruning, hat racking, topping of trees and lion's tailing are \$500.00 per tree and shall be assessed against the owner.

SECTION 4. Codification. It is the intent of the Town Council of the Town of Montverde that the provisions of this Ordinance shall be codified. The codifier is granted broad and liberal authority in renumbering and codifying the provision of this Ordinance.

SECTION 5. Severability. If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

SECTION 6. Conflicts. In any case where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance of this Town, the provision of this Ordinance shall govern.

SECTION 7. Effective Date. This Ordinance shall become effective immediately upon adoption.

PASSED AND DULY ADOPTED by the Town of Montverde, Lake County, Florida this 9th day of June, 2020.

Joe Wynkoop, Mayor

Allan Hartle, Council President

Attest:

Brenda Brasher, Town Clerk

Approved as to form and legality:

Anita Geraci-Carver, Town Attorney

First Reading held May 12, 2020
Second Reading June 9, 2020

Council Member _____ moved the passage and adoption of the above and foregoing Ordinance. Motion was seconded by Council Member _____ and upon roll call on the motion the vote was as follows:

| | YEA | NAY |
|--------------|-----|-----|
| Bill Bates | | |
| Allan Hartle | | |
| Jim Ley | | |
| Jim Peacock | | |
| Judy Smith | | |