

ORDINANCE NO. 12-2018

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA; AMENDING APPENDIX A, ARTICLE XIII, SECTION 22 OF THE CODE OF THE CITY OF COCOA TO MODIFY THE LANDSCAPE REQUIREMENTS RELATED TO 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 § 2(b), Art. VIII of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the City Council desires to update Appendix A, Article XIII, Section 22 of the Code of the City of Cocoa relating to tree protection and preservation standards, including the following: the definition of a "tree"; the circumstances in which tree removal permits are required; the criteria to obtain such permits; the exemptions for tree removal permits; the tree replacement standards for specimen trees removed by the city on public property or within the right-of-way; and the authority of the tree board; and

WHEREAS, additional housekeeping amendments shall be made to ensure consistency with the City Code; and

WHEREAS, the City Council of the City of Cocoa, Florida, hereby finds this ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Cocoa.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COCOA HEREBY ORDAINS, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are hereby fully incorporated herein by reference as legislative findings of the City Council of Council.

Section 2. Code Amendment. The City of Cocoa Code of Ordinances, Appendix A, Article XIII, Section 22, is hereby amended as follows (underlined type indicates additions and ~~strikeout~~ type indicates deletions, while asterisks (* * *) indicate a deletion from the Ordinance of text existing in Appendix A, Article XIII, Section 22. It is intended that the text in Appendix A, Article XIII, Section 22 denoted by the asterisks and set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this ordinance):

APPENDIX A - ZONING

* * *

ARTICLE XIII. – SUPPLEMENTARY DISTRICT REGULATIONS

* * *

Sec. 22. – Landscape Requirements.

(A) OBJECTIVES.

- (1) To improve, protect and preserve the appearance, character, and value of the surrounding neighborhoods and thereby promote the general welfare and aesthetic qualities of the city.
- (2) To create buffer areas between properties of different zoning classifications so as to reduce nuisances of incompatibilities between abutting land uses.
- (3) To ensure the regeneration of oxygen.
- (4) To provide for unpaved areas in order to retain storm water lost in run-off.
- (5) To channelize vehicular and pedestrian movement within off-street paved areas into safer and more logical patterns.
- (6) To preserve and protect the existing tree stock while encouraging replacement of deteriorating vegetation.

(B) DEFINITIONS. [For the purpose of this section, certain words or terms used herein shall be interpreted as follows:]

- (1) *Accessway*: A paved area intended to provide ingress and egress of vehicular traffic from a public right-of-way to an off-street parking or loading area.
- (2) *Bona fide agricultural purposes*: Bona fide agricultural purposes means good faith commercial or domestic agricultural use of the land. In determining whether the proposed agricultural uses of the land is bona fide, the following factors, though nonexclusive, shall be taken into consideration:
 - (a) The length of time the land will be utilized.
 - (b) Size of land, as it relates to specific agricultural use.
 - (c) Whether such land is under lease and if so, the effective length, terms and conditions of the lease.
 - (d) The manifested intent of the landowner to sell or convert the land for or to nonagricultural purposes.
 - (e) The proximity of the property to existing urban or metropolitan development.
 - (f) The productivity of land in its present use.

- (g) Whether the property has qualified as a bond fide agricultural purpose within the meaning of Florida Statutes.
- (3) *Development*: The word "development" shall mean and refer to any proposed material change in the use of the character of the land, including, but not limited to, the placement of any structure or site improvement on the land. When appropriate to the context, development may refer to the act of issuing any building permit. A property shall be considered "developed" at that point in time when the building and site have received all required final inspection approvals.
- (4) *Encroachment*: The protrusion of a vehicle outside of a parking space, display area or accessway into landscaped area. (See Figure No. 1)

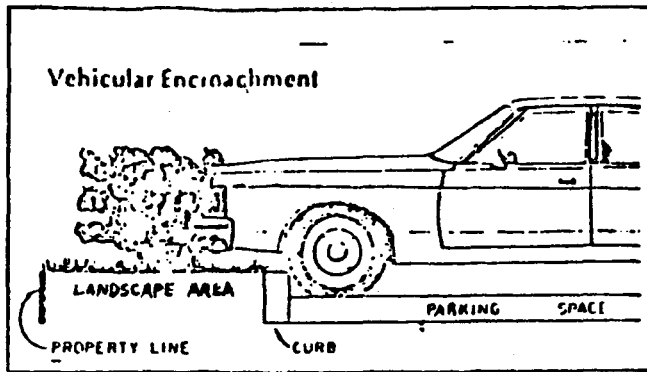


Figure No. 1

- (5) *Enforcement official*: The community services director, or his or her assigned designee.
- Hazardous*: Means a tree existing on a developed parcel of land or within the right-of-way, that due to its shape, location or growth pattern, which cannot be corrected by pruning or other reasonable preservation and/or preventative procedures, may cause or reasonably be expected to cause damage to persons or property and/or presents a potential threat to the health, safety, and welfare of the general public, as determined by the city arborist or an arborist certified by the International Society of Arboriculture.
- (6) *Landscaping*: Landscaping shall consist of, but not limited to, the following or combination thereof: Material such as, but not limited to, grass, ground cover, shrubs, vines, hedges, trees, or palms; and nonliving durable material commonly used in landscaping, such as, but not limited to, rocks, pebbles, sand, walls or fences, but excluding paved surfaces.
- (7) *Landscape dividing strips*: Landscape areas containing ground cover, shrubs, and trees or other landscaping used to partition parking areas into individual bays. (See Figure No. 2)

Landscaped Parking Area

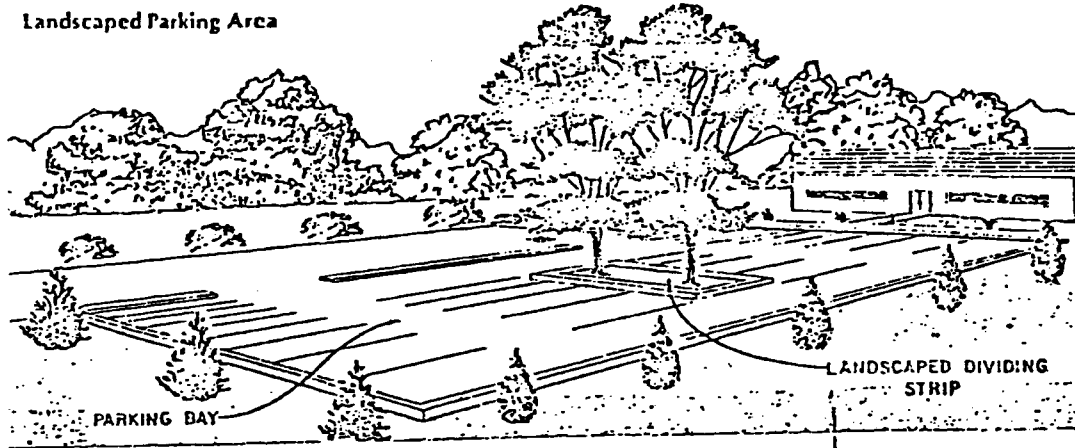


Figure No. 2

- (8) *Lot*: A parcel of land shown on a recorded plat with Brevard County Clerk of the Circuit Court or any piece of land described by deed in the Official Record Book of Brevard County.
- (9) *Parking area*: Any vehicular use area in which five (5) or more parking spaces are required.
- (10) *Person*: This shall include any individual, partnership, corporation, association or other legal entity, and shall include the plural, as well as the singular.
- (11) *Removal*: The term "removal" shall include remove, removing, actual displacement, effective displacement through damaging, or significant pruning.
- (12) *Right-of-way*: Land dedicated, deeded, used, or to be used for a street, alley, walkway, boulevard, public utilities, drainage facility, access for ingress/egress, or other purpose by the public, certain designated individuals, or governing bodies.
Specimen Tree: Any hardwood tree not included on the list of exempt trees in subsection (E)(7) herein having a trunk diameter twenty-four (24) inches or greater as measured diameter at breast height (d.b.h) or four and one-half (4 ½) feet above actual grade. Specimen trees shall not include dead, hazardous or diseased trees.
- (13) *Single-family or duplex lot*: A lot zoned for a single-family or two-family unit structure, or a nonconforming use of such nature.
- (14) *Site*: That parcel of land, lot, or lots for which a tree removal permit is sought.
- (15) *Tree*: A woody or fibrous perennial plant with an upright trunk which normally grows, or is capable of growing, to an overall height of a minimum height of fifteen (15) feet in the central coastal area of Florida, and having a trunk diameter of ~~not less than eight~~ (8)

inches four (4) inches or greater as measured diameter at breast height (d.b.h.) or four and one-half (4½) feet above actual grade.

* * *

(E) TREE PROTECTION AND PRESERVATION.

(1) *Limits of application.* The provisions of this subsection (E) shall apply to the following:

- (a) All vacant and undeveloped property.
- (b) The open space areas of all developed property, except single-family or duplex lots ~~with existing structures prior to the adoption of this ordinance.~~
- (c) All public or private rights-of-way.
- (d) ~~All property where there is an addition, alteration, or intensification of land use affecting fifty percent (50%) or more of the development area, except developed single family or duplex lots.~~
- (e) ~~The provisions and requirements of this ordinance shall not apply retroactively; however, all future development or applications shall be in compliance with this ordinance for the modified portion(s).~~

(2) *General requirements.*

- (a) Except as provided in subsection (E)(3)(b) below, no ~~No~~ tree shall be removed or significantly pruned without first obtaining a tree removal permit. ~~that is a woody or fibrous perennial plant with an upright trunk which normally grows or is capable of growing to an overall height of fifteen (15) feet in the central coastal area of Florida; and having a trunk diameter of not less than eight (8) inches as measured diameter at breast height (d.b.h.), or four and one half (4½) feet above actual grade. However, all oak trees (Quercus Spp.) with a d.b.h. of four (4) inches shall not be removed or pruned significantly.~~
- (b) All subdivision plats and site plans shall be accompanied by a tree survey locating all trees outside the building envelope (structure and seven and one-half (7½) feet around perimeter). Trees on the survey shall be depicted as defined in this ordinance. Where applicable, trees can be indicated by general groups or clusters, with predominant species identified.

(3) *Permit requirements.*

- (a) A letter requesting removal, ~~alteration,~~ or destruction of any tree meeting the requirements of this ordinance shall be forwarded to the enforcement official of the City of Cocoa. The enforcement official may grant permission for removal, ~~alteration,~~ or destruction if it meets any or all of the following guidelines:
 - 1. Is determined to be hazardous or dangerous condition as to endanger the public health, safety, or welfare.

- ~~2. In an emergency situation (hurricane, fire, tornadoes, etc.).~~
 - ~~3. Is in the best interest of the citizens of the City of Cocoa.~~
 - ~~4. Is a bona fide agricultural activity or commercial plant nursery site.~~
 2. Is severely diseased or severely injured.
 3. The trunk of the tree is located closer than seven and one-half (7 ½) feet to the foundation of an existing or proposed structure, and it is not feasible to relocate the structure.
 4. The trunk of the tree is located closer than ten (10) feet from the foundation of an existing or proposed structure and the tree is considered having an aggressive root system or the natural mature height is greater than 30 feet and it is not feasible to relocate the structure.
 5. Trees that shall be replaced elsewhere on the property or on another property in accordance with the standards established below in subsection (E)(4).
- ~~(b) No tree meeting the provisions of this ordinance is to be removed, altered, or destroyed pursuant to this ordinance unless a permit is obtained through the enforcement official of the City of Cocoa. A permit processing fee of ten dollars (\$10.00) for the total property in question will be required from the applicant.~~
- (b) The following tree removal activities are exempt from the permit requirements of this section:
1. Removal by the city or other governmental agency on public property or within the right-of-way.
 2. Removal of dead trees.
 3. Removal of species listed below in subsection (E)(7)(a) – (j).
 4. Emergency removal of a hazardous or seriously damaged tree, to mitigate an imminent threat to the health, safety, and welfare of the property owner or the general public. Prior to emergency removal, the imminent threat should be documented to include but not be limited to (1) photographs of the tree(s) including any areas that may be damaged, diseased, or infested (2) approximate measurements including tree height, spread, d.b.h., and (3) distance to structure(s) or other immovable target(s) if felled.
 5. Tree removal activities authorized and preempted by state or federal law.
 6. Bona fide agricultural activity or commercial plant nursery site.
 7. Trees planted specifically for silvicultural purposes provided the property owner can provide documentation to the city evidencing that: (i) the property is a silvicultural site recognized or inspected by the Florida Forest Service; and (ii) trees of typical harvestable size and type exist on the property which are capable of being harvested for income and that the property has, or intends to, generate income from the harvested trees.
 8. Tree removal authorized by a city-approved site plan, subdivision, building permit, site development permit, or landscape plan or a city council-

approved construction project.

(4) *Tree replacement.*

- (a) As a condition of granting a tree removal permit, the applicant shall be required to relocate or replace trees being removed with the appropriate number of trees, having the d.b.h. of tree(s) to be removed/replaced with an equal diameter of tree(s). This shall not apply to any trees removed within the building envelope. In determining the required relocation or replacement of trees, the enforcement official shall associate needs of the intended use of the property together with realistic and practical evaluation of the following:
 - 1. Existing tree coverage;
 - 2. Number of trees to be removed on entire property;
 - 3. Area to be covered with structures, parking, and driveways;
 - 4. Topography and drainage of site and its environs;
 - 5. Characteristics and amounts of shrub, grass, and trees proposed for planting on the site by the applicant.
 - (b) Whenever possible and practicable, trees should be replaced with the same species as those removed. Also, to encourage lower maintenance and water conservation, native species shall be used where possible.
 - (c) Except where tree board recommendation or approval is required in subsection (H)(1)(d) below, specimen trees removed by the city on public property or within the right-of-way and that are not within the building envelope shall be replaced with either a tree of the same species or a tree of a different species that is more suitable for the location as determined by the city arborist or an arborist certified by the International Society of Arboriculture. The replacement trees shall be planted in a location deemed most appropriate by the director of public works or his or her designee.
- (5) *Land clearing.* The clearing of land includes the removal of trees and natural vegetation. The clearing of land is contrary to this ordinance except under the following conditions:
- (a) Clearing of trails and transect lines.
 - (b) Clearing within a dedicated public or private easement or right-of-way for the purpose of construction, maintenance, or improvement of roadways, utilities, or drainage systems.
 - (c) Clearing on an individual lot for which a valid building permit has been issued or on which a permanent structure exists.
 - (d) Clearing of land for bona fide agricultural purposes.

- (e) Clearing of land for which there exists an approved site plan or building permit and accompanying landscape plan.
- (f) Other land clearing as approved by the city council providing the following conditions are met:
 - 1. All conditions of the permitting section are complied with.
 - 2. All land to remain bare for a period greater than ninety (90) days shall be seeded and/or mulched so as to prevent erosion and sedimentation.
- (6) *Tree protection during construction.* During construction, protective barriers shall be placed so as to prevent the destruction or damaging of trees. Trees destroyed or receiving major damage shall be removed and replaced before occupancy or use unless approval has been granted under permit.
- (7) *Tree exemptions.* The following tree species are exempted from these regulations:
 - (a) *Schinus terebinthifolius* (Brazilian Pepper).
 - (b) *Melaleuca quinquenervia* (Melaleuca, Cajeput).
 - (c) *Metopium toxiferum* (Poison Wood).
 - (d) *Casuarina equisetifolia*
Casuarina lepidophylla
Casuarina cumminghamiana (Australian Pine).
 - (e) *Casuarina glauca* (Brazilian Oak).
 - (f) *Melaleuca leucadendra* (Punk Tree).
 - (g) *Enterlobium cyclocarpum* (Ear Pod Tree).
 - (h) *Morus Rubra* (American Mulberry).
 - (i) *Melia azedarach* (Chinaberry).
 - (j) *Citrus trees.*
- (8) *Nuisances declared.* Any tree or trees that may be declared a nuisance or a threat to the health, safety, or welfare of the citizenry of the City of Cocoa and may be so deemed by the enforcement official. If declared a nuisance, ~~the owner shall have thirty (30) days from the date of notification to remove said trees or the enforcement official may take such action to the city council pursuant to section 9-5 of the City of Cocoa Code.~~ the enforcement official shall, as provided in Section 6-903 of the Code, cause notice to be served upon the owner to remove said trees. If necessary, the enforcement official may proceed to remove or abate the nuisance in the manner provided in Section 6-903 of the Code.

(F) VARIANCES. Any person, firm, or corporation affected by this ordinance shall apply to the board of adjustment of the City of Cocoa for a variance from the requirements of this ordinance. Said application and variance procedure shall be in accordance with Appendix A, Zoning, of the Code of the City of Cocoa, Florida.

~~(G) APPEALS. Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, may, within thirty (30) days after the public hearing at which the decision was rendered, but not thereafter, apply to a court of competent jurisdiction for appropriate relief.~~

(GH) PENALTIES. Any person who violates this ordinance or causes such to be violated, shall be subject to action before the code enforcement board of the City of Cocoa, Florida.

(H) TREE BOARD. A tree board is hereby established which shall consist of the members of the city Planning and Zoning Board, and who shall serve by appointment of the City Council of the City of Cocoa, Florida.

(1) *Duties and responsibilities.*

(a) ~~It shall be the responsibility of t~~ The tree board to may investigate, develop, and advise the city council regarding policies and standards relating to study, investigate, counsel, develop, update annually, and administer a plan for the care, preservation, pruning, planting, replanting, removal, or disposition of trees and shrubs in parks, along streets, and in all other public areas. Such plan will be presented annually to the city council and, upon their acceptance and approval, shall constitute the official comprehensive tree plan for the City of Cocoa, Florida.

(b) The tree board, when requested by the City Council of the City of Cocoa, shall consider, investigate, make findings of fact, report, and make recommendations upon any special matter of questions coming within the scope of its duties.

(c) No oak tree located on city public right-of-way or city owned property shall be removed or significantly pruned prior to review and recommendation by the tree board and approved by the city council, subject to the following exceptions:

(1) ~~Trees that are an immediate and serious threat to the public health, safety and welfare. The emergency removal of a hazardous or seriously damaged oak tree, to mitigate an imminent threat to the health, safety, and welfare of the property owner or the general public. Prior to emergency removal, the imminent threat should be documented to include but not be limited to (1) photographs of the tree(s) including any areas that may be damaged, diseased, or infested (2) approximate measurements including tree height, spread, d.b.h., and (3) distance to structure(s) or other immovable target(s) if felled.~~

(2) Oak Trees that are dead.

~~(3) Any undesirable/nuisance tree species, as listed in Ordinance No. 32-84, page 17, section 4 g, 1-10 [codified herein as app. A, art. XIII, § 22(E)(7)(a)-(j)].~~

- (34) Volunteer oak trees less than four (4) inches in diameter at four and one-half (4½) feet in height.
- (45) Oak ~~T~~rees that are part of a previously approved site plan or city council-approved construction, roadway, utility or drainage project.
- (56) Pruning of less than thirty percent (30%) of the canopy.
- (d) Where an oak tree located on city public right-of-way or city owned property is removed for any reason, the tree board shall either:
- (1) Include with its recommendation to the city council regarding removal of the oak tree, a recommendation on both the location and species of a replacement tree; or
- (2) Approve the location and species of a replacement tree following removal of the oak tree when an exception as provided in subsection (H)(1)(c)(1) through (5) applies.

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Section 3. **Repeal of Prior Inconsistent Ordinances and Resolutions.** All prior inconsistent ordinances and resolutions adopted by the City Council, 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 shall be incorporated into the City Code of Cocoa and any section or paragraph, number or letter, and any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and like errors may be corrected and additions, alterations, and omissions, not affecting the construction or meaning of this Ordinance and the City Code may be freely made.

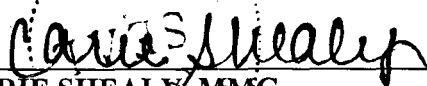
Section 5. **Severability.** If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, 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 Council of the City of Cocoa, Florida.

ADOPTED by the City Commission of the City of Cocoa, Florida, in a regular meeting assembled on the 12th day of December, 2018.


JAKE WILLIAMS, JR., Mayor

ATTEST:


CARIE SHEALY, MMC
City Clerk

First Reading:	11/28/2018
Second Reading:	12/12/2018
Legal Advertisement:	11/21/2018 & 11/28/2018
Effective Date:	12/12/2018

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