

ARTICLE 25. MINIMUM STANDARDS FOR TREE PROTECTION, CONSERVATION AND MITIGATION DURING DEVELOPMENT

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Section 25.01. Findings, intent and purpose.

The loss of mature and maturing tree species during the clearing of land for development has an adverse effect on the environment. Many communities throughout the United States require tree protection and conservation during development, and reasonable mitigation for the loss of trees as a consequence of development. The presence of trees aids in energy conservation by cooling the atmosphere, reduces air pollution by removing particulates such as dust and pollen, increases oxygen production, slows surface water runoff, reduces soil erosion, provides food, nesting sites and protection for wildlife, enhances scenic beauty, and provides other environmental benefits. The minimum standards set forth in this article for tree protection, conservation and mitigation during development are desirable environmental goals that will advance the quality of life for Duval County and its residents. Furthermore, these minimum standards should be balanced with the rights of owners of single-family residential and mobile homes to remove and/or replace trees on their property without restriction and such property rights should be protected. The intent and purpose of this article, consistent with the foregoing findings, is to establish the standards set forth in this article as minimum standards for Duval County so as to promote the health, safety and welfare of the current and future residents of Duval County.

(Referendum of 11-7-00)

Section 25.02. Definitions.

The following definitions apply to words or phrases in this article.

a. *Protected Tree; exceptions for certain species.* The term "protected tree" shall mean a tree with a circumference at breast height of three feet or more, and any tree with a smaller circumference that is utilized by a developer as a tree conservation credit or that is planted by a developer to meet mitigation requirements. However, a protected tree shall not include (a) any species of pine, other than the Long Leaf Pine (*Pinus palustris*), (b) any species of palm, other than the Cabbage Palm (*Sabal palmetto*), or (c) any tree currently identified as an invasive species, terrestrial weed or noxious weed by the Florida Department of Environmental Protection or the St. Johns River Water Management District.

b. *Development Site; exceptions for land in bona-fide agricultural use, cemeteries, existing single-family residential lots and land within a City drainage easement or City drainage right-of-way.* The term "development site" as used in this article shall mean any land area which is being cleared for any horizontal or vertical improvements or construction. However, the term "development site" shall not include (a) any land area

that is being used for bona fide agricultural purposes, (b) cemeteries, (c) any lot on which either a single-family dwelling or mobile home is located that meets the exemption criteria described in Section 25.06 of this article, or (d) any land area located within a City drainage easement or City drainage right-of-way that meets the exemption criteria described in Section 25.06 of this article.

c. *Developer*. The term "developer" shall mean any individual, corporation, partnership, joint venture, agency, estate, trust, business trust, syndicate, authority or other entity, including any public agency, authority or entity, that clears land in whole or in part for purposes of development.

d. *Breast Height*. For purposes of measurement, the term "breast height" shall mean the measurement of a tree's trunk four and one-half feet above ground level.

e. *DBH*. The term "dbh" shall mean the measurement of a tree trunk's diameter in inches at breast height. For trees with less than four and one-half feet of clear trunk, diameter shall be of the largest leader measured four and one-half feet above ground level. For multi-trunk trees it shall be the sum of the individual trunks measured four and one-half feet above ground level.

f. *Caliper*. The term "caliper" shall mean the measurement of a tree trunk's diameter in inches at a height six inches above the ground for trees up to and including four inches in caliper, and at a height 12 inches above the ground for trees exceeding four inches in caliper.

g. *Mitigation Tree (Replacement Tree)*. The terms "mitigation tree" and "replacement tree" shall mean a Live Oak (*Quercus virginiana*), Red Maple (*Acer rubrum*), Sycamore (*Platanus occidentalis*), Loblolly Bay (*Gordonia lasianthus*), Bald Cypress (*Taxodium distichum*), Swamp Chestnut Oak (*Quercus michauxii*), Tulip Poplar (*Liriodendron tulipifera*), Pecan (*Carya illinoensis*), Sweet Gum (*Liquidambar styraciflua*), Pignut Hickory (*Carya glabra*), Shumard Oak (*Quercus shumardii*), Catalpa (*Catalpa bignonioides*), Southern Magnolia (*Magnolia grandiflora*), Red Cedar (*Juniperus silicicola*), Leyland Cypress (*Cupressocyparis leylandii*), River Birch (*Betula nigra*), as well as any indigenous tree that reaches a height at maturity of at least 45 feet and a spread at maturity of at least 30 feet.

h. *Preserve Area*. The term "Preserve Area" shall mean any vegetative area required to be preserved under the jurisdiction of the Florida Department of Environmental Protection, the St. Johns River Water Management District, or the United States Army Corps of Engineers.

i. *Tree conservation credits*. The term "tree conservation credits" shall mean the aggregate number of dbh-inches for those trees between 2-inch dbh and 12-inch dbh that are preserved on the development site and are identified for preservation by the developer on a registered tree survey; however, notwithstanding the foregoing, there shall be no tree conservation credits for (a) any species of pine, other than the Long Leaf Pine (*Pinus palustris*), (b) any tree identified as an invasive species, terrestrial weed or noxious weed by the Florida Department of Environmental Protection or the St. Johns River Water Management District, or (c) any tree located in a Preserve Area. If any such tree or trees do not survive for a period of three years after the end of the development activities, the developer shall replace the same or shall pay a monetary contribution to the City of Jacksonville's Tree Protection and Related Expenses Trust Fund in the manner described in Section 25.03(c)(ii) of this article.

j. *Bona fide agricultural purposes*. The term "bona fide agricultural purposes" shall mean the use of land for bona fide agricultural purposes as described in Section 193.461, Florida Statutes, provided the land is classified for assessment purposes by the property appraiser as "agricultural" pursuant to Chapter 193, Florida Statutes.

(Referendum of 11-7-00; Ord. 2002-857-E, § 1)

Section 25.03. Tree protection and conservation; mitigation for loss or destruction of protected trees during development.

During the clearing of land for development purposes, protected trees shall be conserved on the development site wherever and whenever reasonably possible. To the extent that protected trees are lost or destroyed as a result of the clearing of a development site, the developer shall mitigate for their loss or destruction by the planting of replacement trees as follows:

(a) The total caliper-inches of replacement trees required to be planted shall equal (i) the total number of dbh-inches of protected Live Oaks (*Quercus virginiana*) lost or destroyed on the development site, plus (ii) one-third of the total number of dbh-inches of other protected trees lost or destroyed on the development site, less (iii) the total dbh-inches for the tree conservation credits for those trees preserved on the site that qualify for tree conservation credits as defined in this article.

(b) The required amount of replacement trees shall be planted, established and nurtured on the development site to the extent determined practicable by the developer, provided that such trees shall be at least two caliper-inches and shall be planted no closer than ten feet to any other tree.

(c) To the extent that the developer is unable to, or fails to, plant the required number of replacement trees on the development site, the developer shall complete the mitigation requirements.

(i) by planting, establishing and nurturing the balance of the required amount of replacement trees at some other site in Duval County, sometimes referred to as off-site mitigation, provided that such trees shall be at least two-caliper inches and shall be planted no closer than ten feet to any other tree, and/or

(ii) by paying a monetary contribution to the City of Jacksonville's Tree Protection and Related Expenses Trust Fund for the total caliper-inches of required replacement trees that are not planted on the development site or at some other site in Duval County. For each caliper-inch, the contribution amount shall equal the lesser of (x) eighty-five dollars or (y) one-half of the median wholesale price, published by North Florida nurseries located within Duval, St. Johns, Clay, Baker and Nassau Counties, for a container grown two-inch caliper Live Oak calculated as of October 1 of the prior calendar year. The contribution amount shall be recalculated annually by the City of Jacksonville's Landscape Architect at or before the beginning of each calendar year.

(Referendum of 11-7-00)

Section 25.04. Tree protection and related expenses trust fund.

All monetary contributions paid to the City of Jacksonville's Tree Protection and Related Expenses Trust Fund pursuant to section 25.03(c)(ii) of this article shall be used exclusively for the planting or replanting of mitigation trees, and for their maintenance, along the public rights-of-way and on public lands within Duval County, Florida, so as to mitigate for the loss or destruction of protected trees during development.

(Referendum of 11-7-00)

Section 25.05. Enforcement.

The City of Jacksonville and any governing body of an urban service district may bring a civil action to enforce and compel compliance with the provisions of this article. In addition, any taxpayer or resident of the consolidated City of Jacksonville may bring a civil action to enforce or compel compliance with the provisions of this article. Any person or entity bringing an action to enforce the provisions of this article shall be entitled to recover reasonable attorneys' fees if such person or entity is the prevailing party.

(Referendum of 11-7-00)

Sec. 25.06. Single-family, mobile home and City drainage exemptions.

This Article shall not apply to any individual lot on which either a single-family dwelling or a mobile home is located, provided (a) the lot is not capable of further subdivision under applicable law and (b) the single-family dwelling or mobile home is (i) occupied and used for residential purposes, or (ii) capable of occupancy in compliance with applicable law. This article shall not apply to any 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.

(Referendum of 11-7-00; Ord. 2002-857-E, § 1)

Section 25.07. Protection of Private Property Rights.

This article shall not apply to any property or person to the extent that its application would constitute an unconstitutional taking of private property in violation of the Florida Constitution or the United States Constitution.

(Referendum of 11-7-00)

Section 25.08. Severability; savings clause.

The provisions of this article are severable. If any section, subsection, sentence, clause, phrase or portion of this article is held invalid or unconstitutional, in whole or in part and as to any person or persons or state of fact or facts, by any court of competent jurisdiction, then the remainder of this article shall remain in full force and effect to the maximum extent possible.

(Referendum of 11-7-00)

Section 25.09. No repeal or modification of any existing ordinance.

This article shall not be deemed or construed to repeal, modify or otherwise affect any existing ordinance.

(Referendum of 11-7-00)

Section 25.10. Protection of property rights of single-family dwellings and mobile homes.

No owner of any single-family dwelling or mobile home that is exempt under Section 25.06 of

this article shall be limited in any way in connection with the removal of any tree that is located on such property. The owners of such single-family dwellings and mobile homes shall be free from the tree protection, conservation and mitigation provisions set forth in this article.

(Referendum of 11-7-00)