

PROPOSED
ORDINANCE NO. 09 -22

ORDINANCE NO. _____

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE AMENDING SECTION 12-6-6 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA, PROTECTED TREES, PROVIDING FOR SETBACK DEVIATION PROCESS; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Section 12-6-6 (e) of the Code of the City of Pensacola, Florida, is hereby amended to read as follows:

Sec. 12-6-6. Protected Trees.

Protected trees are those trees identified by species and size in Appendix "A" of this chapter if living and viable. Where protected trees are identified on a site proposed for lot clearing within the applicable zoning districts identified in section 12-6-2, the number of protected trees to be preserved on the site shall be determined based upon the final approved location of proposed structures, driveways, parking areas, and other improvements to be constructed or installed.

(1) *Preservation incentives.*

- a. *Parking space reduction.* A reduction of required parking spaces may be allowed when the reduction would result in the preservation of a protected tree with a trunk of 12 inches DBH or greater. Such reduction shall be required when the reduction would preserve a heritage tree. The following reduction schedule shall apply:

REDUCTION SCHEDULE

Number of Required Parking Spaces	Reduction of Required Parking Spaces Allowable
1—4	0
5—9	1
10—19	2
20 or above	10 percent of total number of spaces (total reduction regardless of number of trees preserved).

- b. *Consideration of park and open space requirement.* A reduction or waiver of the required park and open space (or payment in lieu of land dedication) for new residential subdivisions specified in section 12-7-6 may be approved by the mayor or their designee when it is determined that said waiver will result in the preservation of five or more protected trees with a trunk of 12 inches DBH or greater.
- c. *Sidewalks.* Modifications to sidewalks, their required location, and width and curb requirements, may be allowed as necessary to facilitate the preservation of any protected tree.
- d. *Credit for additional landscaping.* The city's designated arborist may authorize up to one-half of the total calculated mitigation cost (as determined according to subsections (2)d and e of this section) to be used by the applicant for additional landscaping, which is defined as landscaping that is not required by this chapter or any other law. Additional landscaping shall meet the following minimum standards:
 - 1. A minimum of 75 percent of all required plant material shall consist of evergreen species.
 - 2. All landscape material shall be placed so as to maximize its screening and/or coverage potential at maturity.
 - 3. All shrub material shall be a minimum height of 30 inches and have a minimum crown width of 24 inches when planted and shall be a species capable of achieving a minimum height of eight feet at maturity.
- e. *Setback Reductions.* Deviations to setbacks may be authorized by the mayor, or their designee for preservation of heritage trees. Such deviation shall be the minimum amount necessary for the preservation of the tree(s). *Notice.* If a setback reduction request is sought for one or more heritage trees within any property in any zoning district identified in section 12-6-2, a sign shall be posted no further back than four feet from the property line nearest each respective roadway adjacent to the property. One sign shall be posted for every 100 feet of roadway frontage. Each sign shall contain two horizontal lines of legible and easily discernible type. The top line shall state: "Heritage Tree Setback Reduction Request Applied For." The bottom line shall state: "For Further Information Contact the City of Pensacola at 311" (or other number as designated by the Mayor). The top line shall be in legible type no smaller than six inches in height. The bottom line shall be in legible type no smaller than three inches in height. There shall be a margin of at least three inches between all lettering and the edge of the sign. The signs shall be posted by the applicant at their expense, and shall remain continuously posted for two weeks prior to the requisite building, site work, or permit is issued. The city's designated arborist will notify the councilperson representing the district in which the permit has been requested upon receipt of the request.

(2) *Retention, relocation, removal, replacement, and mitigation of protected trees.*

- a. *Retention of protected trees.* Every effort must be made to protect and retain existing protected trees on proposed development sites. A minimum of ten percent of the total combined trunk diameter of protected trees on a proposed development site not located within jurisdictional wetlands shall be retained in place or relocated on site.
 1. *Credit for retention of protected trees above minimum requirements.* For each inch of trunk diameter above the minimum ten percent requirement that is protected in place or relocated on site, an equivalent trunk diameter inch credit shall be given against replacement and mitigation requirements as provided in subsections (2)d. and e. of this section.
 2. *Barrier zones.* All protected trees not designated for removal shall be protected by barrier zones erected prior to construction of any structures, road, utility service or other improvements. Barriers shall be placed at the outside of the dripline for all heritage trees and at a minimum two-thirds of the area of the dripline for all other protected trees. Barricades must be at least three feet tall and must be constructed of either wooden corner posts at least two inches by four (2 × 4) inches with at least two courses of wooden side slats at least one inch by four (1 × 4) inches with colored flagging or colored mesh attached, or constructed of one-inch angle iron corner posts with brightly colored mesh construction fencing attached.
- b. *Removal of protected trees.* Subject to the requirements of (2)a. of this section, protected trees may be approved for removal if one or more of the following conditions are present:
 1. *Visibility hazard.* Necessity to remove trees which will pose a safety hazard to pedestrians or vehicular traffic upon completion of the development.
 2. *Safety hazard.* Necessity to remove trees which will threaten to cause disruption of public services or which will pose a safety hazard to persons or buildings or adjacent property or structures.
 3. *Construction of improvements.* Necessity to remove trees in order to construct proposed improvements as a result of the location of driveways, if the location of a driveway or ingress/egress is specified and required by DOT or other regulations, buildings, utilities, stormwater/drainage facilities, or other permanent improvements. The architect, civil engineer, or landscape architect shall make every reasonable effort to locate such improvements so as to preserve any existing tree.
 4. *Site conditions.* Necessity to remove trees as a result of characteristics of the site such as site dimensions, topographic conditions and grading requirements necessary to implement

standard engineering and architectural practices. Grading shall be as limited as possible. In order to justify the removal of protected trees on the ground of site conditions, the request must be reviewed by the appropriate city staff and must be approved by the mayor or his or her designee. Appeals from the decision of the city's designated arborist shall be to the zoning board of adjustment.

5. *Diseased or weakened trees.* Necessity to remove diseased trees or trees weakened by age, storm, fire or other injury;
 6. *Compliance with other ordinances or codes.* Necessity for compliance with other city codes such as building, zoning, subdivision regulations, health provisions, and other environmental ordinances.
- c. *Relocation of protected trees.* Where feasible, when conditions necessitate removal of protected trees, said trees shall be relocated on the site in the required perimeter or interior landscaped areas. Should the relocated tree expire within a specified period of time, the appropriate mitigation (planting of replacement trees or payment to the tree planting trust fund) shall be required. For each protected tree that cannot feasibly be relocated (or all of them), a written statement from a qualified professional shall be provided stating for each tree (or all of them) that relocation is not feasible and briefly explaining why relocation is not feasible, subject to the review of the city's designated arborist.
- d. *Replacement of protected trees.* When a protected tree is approved for removal, it shall be replaced with a like species of the tree removed. The city's designated arborist may allow a deviation to this within the same species type category in the protected tree list in Appendix "A" of this chapter in order to promote ecological diversity on the site. The prescribed number of trees shall be planted for each tree removed. The minimum diameter of a replacement tree shall be three (3) inches DBH. The replacement formula is:
1. A trunk diameter of four inches to 11 inches = Two three-inch DBH trees planted for each one removed.
 2. A trunk diameter of 12 inches to 19 inches = Three three-inch DBH trees planted for each one removed.
 3. A trunk diameter of 20 inches to 29 inches = Five three-inch DBH trees planted for each one removed.
 4. A trunk diameter of 30 inches to 35 inches = Eight three-inch DBH trees planted for each one removed.
 5. A trunk diameter of 36 inches to 43 inches = Ten three-inch DBH trees planted for each one removed.
 6. A trunk diameter of 44 inches or greater = 11 three-inch DBH trees planted for each one removed.

- e. *Mitigation of protected trees.* Any replacement trees that cannot be planted on site because of lack of space, once agreed to by the city, shall be valued at \$400.00 each and the owner shall pay that total to the tree planting trust fund. Trees identified as dead and verified as such in writing by the city's designated arborist shall not be required to be replaced or mitigated.
- (3) *New planting of protected trees.* On sites proposed for development or redevelopment where no existing protected trees are identified, the owner or his agent shall be required to plant one new tree species identified in the protected tree list (Appendix "A") or the tree replant list (Appendix "B"), a minimum of three inches DBH, for each 1,000 square feet of impervious surface area. New trees or replacement trees shall be planted during the year as indicated in subsection 12-6-3(2)a.1. of this chapter.
 - (4) *New residential subdivisions.* In new residential subdivisions the private property owner of each lot shall plant one tree in the front yard within ten feet of the right-of-way, provided there is no existing tree in the front yard. The tree shall be planted prior to a certificate of occupancy being issued for the dwelling. If the existing tree is not within ten feet of the right-of-way, then one additional tree shall be required (sized as noted in subsection (4)a. of this section). The tree shall be a species from Appendix "A" or "B," and where feasible, shade trees are encouraged.
 - a. Where a protected or replant tree species is required to be replanted, such tree shall be a minimum of three inches DBH.
 - b. The location of an existing protected tree on the lot or the proposed location of a new protected or replant species, where required in this subsection, shall be identified on the plot plan submitted as part of the information submitted for a building permit.
 - (5) *Road right-of-way tree protection.* No person or agency shall cut, prune, remove, or in any way damage any protected tree in any street right-of-way or create any condition injurious to any such tree without first obtaining a permit to do so from the city's designated arborist as specified in section 12-6-7.
 - a. The city's designated arborist may issue an annual permit to public utility companies exempting them from the provisions of this subsection concerning tree preservation. In the event of flagrant or repeated disregard for the intent and purpose of this chapter, the department may revoke said permit. The reasons for revoking such a permit shall be provided in writing to the offender.
 - b. Prior to entering a targeted area for pruning by the utility, the utility representative shall submit for approval to the city a clearly marked plan of the area, showing location of trees and noting what is being requested by the utility company. The city's designated arborist shall approve the plan and an additional permit fee of seventy-five dollars (\$75.00) shall be paid

to the City of Pensacola for the specific area noted on the plan submitted (see chapter 7-10 of this Code).

- c. All public utilities, governmental agencies and their subcontractors shall comply with the American National Standards Institute, ANSI A300-1995, Tree, Shrub and Other Woody Plant Maintenance—Standard Practices, when pruning trees on public or private property. Notice shall be provided to landowners at least one (1) week in advance of pruning and/or removing landowners' trees on private property. Emergency removal requiring immediate action to protect the health and safety of the public is not subject to this chapter. In no case shall the utility company be permitted to prune more than thirty (30) percent of the existing tree canopy.
- (6) *Tree protection.* Removing, pruning, or cutting tree growth away from a permanent nonaccessory sign (billboard) on public or private property shall be permitted only if a permit is obtained from the city's designated arborist. All agencies and their subcontractors shall comply with the American National Standards Institute, ANSI A300-1995, Tree, Shrub and Other Woody Plant Maintenance—Standard Practices, when pruning trees.
 - (7) *Canopy road tree protection zone.* All lands within ten feet of the outer boundary of the right-of-way of the below described roads are hereby declared to be canopy tree protection zones:
 - a. Blount Street from "A" Street to Bayview Park.
 - b. Lakeview Avenue from 9th Avenue to 20th Avenue.
 - c. Garden Street from Alcaniz Street to Jefferson Street and from "J" Street to "N" Street.
 - d. 17th Avenue from Gregory Street to Texar Drive.
 - e. 12th Avenue from Barcia Drive to Fairfield Drive.
 - f. Baylen Street from LaRua Street to Jordan Street.
 - g. Spring Street from LaRua Street to Jordan Street.
 - h. Bayou Boulevard from Lee Street to Strong Street.
 - i. Cervantes Street/Scenic Highway from the eastern side of Bayou Texar to the city limits.

No person or agency shall cut, remove, prune or in any way damage any protected tree in any canopy road tree protection zone or create any condition injurious to any such tree without first obtaining a permit to do so from the city's designated arborist as specified in section 12-6-7. The exemption for utility companies noted in subsection (5), above shall also apply to the canopy road tree protection zone.

- (8) *Heritage trees.* No person or agency shall cut, remove, prune or in any way damage any heritage tree in any zoning district without first obtaining approval

of a landscape and tree protection plan per section 12-6-4 for new development sites or a permit from the city's designated arborist as specified in section 12-6-7 for developed property; provided, however, that currently occupied residential property may qualify for removal or pruning of a heritage tree without incurring the cost of a permit so long as documentation of danger to person or property has been submitted to the city's designated arborist in advance of removal. For purposes of this provision, "documentation" means a completed two-page Tree Risk Assessment Form, which should be completed according to the standards found within Best Management Practices: Tree Risk Assessment, Second Edition, by E. Thomas Smiley, Nelda Matheny, and Sharon Lilly, and distributed by the International Society of Arboriculture Society; further, consistent with ISA standards and tree risk assessment, a tree or tree part is a "danger" when two conditions exist: 1) the failure of the tree part or of the tree is imminent or impact is likely, and 2) the consequences of that failure are high or extreme. In the case of lot splits for single family and duplex uses, trees shall be evaluated to determine whether the lot split will have a negative effect on any heritage tree. A tree survey shall be provided to the Planning Services department along with the lot split application, and the size of proposed lots shall be evaluated for the purpose of ensuring that a lot split will not require the removal of any heritage tree as a result of that lot split.

SECTION 2. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. This ordinance shall take effect on the fifth business day after adoption, unless otherwise provided, pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk