



# City of Pensacola

## Environmental Advisory Board

### Minutes

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Thursday, September 1, 2022, 2:00 PM

Hagler/Mason Conference Room,  
2nd floor

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**Members Present:** Kristin Bennett, Chair, Neil Richards, Katie Fox, Blase Butts, Jay Massey

**Members Absent:** Kelly Hagen, Vice Chair, Kyle Kopytchak, Katie Dineen

**Others Present:** Don Kraher, Council Executive, Sonja Gaines, Council Assistant, Mark Jackson, Sustainability Coordinator, Assistant City Attorney Heather Lindsay, Christian Wagley

#### CALL TO ORDER AND WELCOME:

The meeting was called to order by Chair Bennett.

#### ROLL CALL AND DETERMINATION OF QUORUM:

A quorum was established. Chair Bennett announced that Board Member Drew Dittmar submitted his resignation from the Environmental Advisory Board.

#### APPROVAL OF MINUTES:

- [22-00427](#) APPROVAL OF ENVIRONMENTAL ADVISORY BOARD MEETING MINUTES OF AUGUST 4, 2022.  
**Recommendation:** That the Environmental Advisory Board approve the meeting minutes from the August 4, 2022  
**Sponsors:** Kristin Bennett  
**Attachments:** [EAB Minutes 08.04.2022](#)

**Member Massey moved for approval of the August 4, 2022 minutes, seconded by Member Richards. The motion carried 5 – 0, with three members absent for the vote.**

#### PRESENTATIONS:

Sustainability Coordinator made a presentation to the Board on the City's Renewable Energy Plan that was given at the City Council Agenda Conference on August 15<sup>th</sup>. They did a

technology review of the best renewable option, site assessments, evaluating over 39 sites, energy output and financial assessment on the buildings as well as a structural analysis to determine solar attachments to the roofs or solar array on the ground. They selected five projects for solar arrays on the roof and the Osceola Golf Course for a solar array on the ground.

Discussion occurred on cost analysis and benefits, return on investments, as well as percentage of renewable energy that will be met, funding options available, applying for available grants. The IRA just made governmental agencies available for 30% from the Treasury Department based off whatever renewable projects they have. Eventually, an RFP and bid package will be put out.

Further discussion occurred on the goal of reaching 30% renewable energy by 2030. FPL already gives 12% renewable energy off the grid because of what is already built throughout the state and part of their purchasing contracts for wind power purchased out of state. It is in FPL's 10 year plan they have to report to the PSC. He hopes to be able to get the 14% renewable energy going and to continue to do energy efficiency projects.

Christian Wagley asked Sustainability Coordinator to address how things could change if Power Purchase Agreements were legal in the state of Florida.

Sustainability Coordinator indicated that it would be a game changer. He would be able to put everyone of the projects that would get 100% for that building and put in one RFP for a Power Purchase Agreement. It would hopefully cut in half the power energy bill. They would be getting a reduction in energy bill and renewable energy on however many facilities are included. He further explained what a power purchase agreement entailed. Basically, the City would not own the solar panels, but allow solar companies to install the panels on the roof and then purchase the power back from the solar companies.

## **SUSTAINABILITY COORDINATOR COMMUNICATIONS:**

Sustainability Coordinator provided the following updates:

Sustainability Coordinator will be doing a presentation on September 20<sup>th</sup> at 7 p.m. via zoom and live on facebook, regarding the Inflation Reduction Act, different ways both community members as well as the city can utilize the funding that will come out of the Act.

The Urban Core Tree Canopy Assessment Inventory has listed over 6, 200 trees, focusing their efforts on trees in the right-of-way. They have not focused on Parks, yet.

The Active Transportation Plan Steering Committee will be having their first meeting at the end of September. This fall, there will also be some mobility fairs that will be helping the steering committee develop an active transportation plan.

### **ACTION ITEMS:**

There were none.

### **DISCUSSION ITEMS**

Sustainability Coordinator introduced Assistant City Attorney Heather Lindsay to the Board.

Council Executive reminded the Board that it would be extremely helpful when members of staff have been requested to be present for Board members to submit their questions to him in advance, so that the staff could be prepared to address the questions. He indicated that at the August meeting, there were questions related to Sec.12-6-2 about exemptions, i.e. the health care industry.

#### **2. [21-00966](#) REVIEW OF SECTION 12-6-2 OF THE TREE AND LANDSCAPE ORDINANCE**

Assistant City Attorney Heather Lindsay indicated that she had reviewed the last meeting. She would be glad to answer any questions they may have. One of the concerns had to do with the rights of property owners and the consequences of removing an exemption. There was also a question of tree pruning in the right-of-way.

She did not have a legal concern about the motion that was passed with regard to the elimination of the health care exemption, if that is what the Board wants to propose. The other item that came up for discussion related to removing single family and duplex uses from the exemptions, Sec.12-6-2(c). The purpose of this section is to provide where this set of regulations is applicable. Single family and duplex uses are exempt from various provisions of the chapter. She and City staff reviewed these regulations and talked about how to update these regulations. As you know, there was a statute related to tree removal that occurred in 2019 and was subsequently updated in 2022. This can be updated on those technical points. She believes that the building official would say that it is appropriate to have the single family and duplex units exempt based on the review process he has, but she doesn't want to speak for him. Because of some of the unintended consequences, she has discussed with planning staff how to protect trees that could become unintended consequences with lot splits. Single family and duplexes are sometimes related to applications for lot splits. A property owner can combine lots to

have a bigger parcel for a single family home or split the larger parcel and divide it into multiple lots that could potentially lead to the destruction of a tree. That is something that they have captured and tried to address so that those unintended consequences do not occur. With that fix they have not been confronted with issues that would suggest removal of single family and duplex uses from the exemption. She asked if there were issues the Board has seen with single family and duplex uses that don't involve lot splits that would merit legal and staff review to remove them from the exemptions. Member Hagen was the one who raised the question and she may have more information. She will be glad to come back to the next meeting to continue discussion about this issue. Tree disputes do happen and protecting trees to minimize the litigation risk to the City, to help meet the expectations of the public and the Council on how these ordinances are implemented have been a top concern of hers and other city staff to make sure that they are implementing the ordinances according to the intent of the Council. They welcome the Board's feedback on this ordinance.

The 2019 statute did not have a definition for residential. However, that was corrected with the 2022 statute, which provides a definition for residential and that definition now means developed property. It is actively being used as a single family residence. It would not mean a vacant property or other type of uses that were argued to be covered by residential previously to the 2022 statute. To respect property rights, you have to be mindful of when that property owner has a lot and the property owner wants to develop it, that property owner is not expected to maintain a garden or tree canopy there. If the lot split is approved and the lot cannot be developed without the removal of a heritage tree, then you are confronted with respecting their property rights while also implementing the will of the Council. That has been the conflict they have encountered. With the 2022 update to the statute, hopefully they won't see the conflicts they were experiencing. You have to respect the rights of the property owner and can't interfere with them.

Member Butts inquired as to what happens when the property owner has their own arborist that is disagreeing with the city arborist over the health or danger of a tree?

Assistant City Attorney addressed the statute with regard to removing a tree without getting a permit from the City. The way the statute is written it is understood that there could be judicial review. If a permit is required, then that is what would prevail what has been reviewed by staff and the city arborist. Our practice within the city has always been opened to consider alternate views and continued review. The statute as amended in 2022 has not been tested yet. The 2019 statute was so vague, there was not a clear

understanding of what was anticipated or intended by the legislature. That is why that dispute has been ongoing. Under the new statute there has to be a risk assessment according to standards.

As the Board moves through the discussion of the tree ordinance, if there are particular sections that the Board has questions about, they can be forwarded to the Council Executive so that he can forward to her for her review and she can come back to a future meeting and help discuss whatever is of interest to the Board.

Member Richards asked how familiar she is with the pruning restrictions for utility companies to carve tunnels through tree canopies.

Assistant City Attorney said that was covered under Section 12-6-6 – protected trees of the tree ordinance. Paragraph 5 (c) references public utilities complying with the American National Standards Institute on pruning trees and in no case shall a public utility be permitted to prune more than thirty (30) percent of the existing tree canopy. With some of the current negotiations with FPL they certainly don't want to be governed by that. It is something that they have made FPL aware of in their negotiations on the franchise agreement. She will be glad to study whether the ordinance can be strengthened and, also check to be sure that the City is not pre-empted by the state for pruning practices.

Member Fox indicated that FPL is suppose to submit their tree trimming plan to the City and asked whether language could be inserted in the ordinance to have the city arborist spot check or show up to confirm they are in compliance.

Assistant City Attorney stated she was aware that protecting a tree canopy and how it is pruned was part of the discussion in negotiating the franchise agreement. She would be glad to check to see if it would be legal to do and to look if there were any pre-emptions that would apply. It was in the franchise agreement. Even if there is pre-emption from the state, if the utility agrees on it in the franchise agreement, in spite of their protection to pre-emption, is there a pre-emption that would limit the City's ability to protect the tree canopy if the utility company no longer wants to agree to that in a future franchise agreement. If a tree is over pruned, what is the remedy? If a contractor over pruned a tree and it died, who is going to pay the mitigation fee? It would be more useful to know how much protection can be imposed to protect the tree canopy because if a mistake occurs, that can kill the tree. It would be better to prevent the

the problem from occurring. Whatever the Board would like to recommend, she would be glad to review in advance. She would need to review the pre-emptive language granted to power companies.

## **BOARD MEMBER COMMENTS**

Chair Bennett open discussion on the placing of way finder, educational signs at stormwater ponds and a no spray zone if it was around a pollinator habitat previously discussed at the August meeting. This was not a City Council referral to the EAB, but just an issue that was raised from a facebook post.

Sustainability Coordinator indicated that there were educational signs in place on various city projects that explain the project. Outside of the stormwater ponds that are highly visible in the downtown area, the majority of the stormwater ponds are isolated in a way and not necessarily interactive because they are mostly dry ponds. Would it be of value to have at certain facilities and what facilities?

Member Richards stated from an educational standpoint, he likes to see what type of plants are used. Need to look at possibly partnering with other non-profit organizations.

Sustainability Coordinator indicated that educational signs are already included in the Bruce Beach Project. Perhaps that may be something the Parks and Recreation Board could consider in established parks. Any signage identifying trees or plantings in parks could not be paid out of the Tree Planting Trust Fund. That fund would only pay for tree plantings.

The consensus of the Board was to not take any action.

Member Butts inquired as to whether the tree trust fund money goes back to the district where the trees were cut or if it went into one fund.

Sustainability Coordinator indicated that it went collectively into one fund. There was some root revitalization done on a tree on Garden Street and the planting in the parks after Hurricane Sally. The ultimate intent should be to increase the tree canopy throughout the city, helping areas with few trees

**PUBLIC COMMENT:**

Christian Wagley announced an Environmental Concert on Thursday, September 8 at the East Pensacola Heights Community Center. On Tuesday, September 13 at Waterboyz on 9<sup>th</sup> Avenue, he is hosting an evening of films relating to off shore drilling and the recently unveiled 5 year plan for drilling in the Gulf of Mexico.

Sustainability Coordinator will be presenting on the City's sustainability efforts at a science hour program hosted by IFAS at Goat Lips on September 15 at 6 p.m.

**ADJOURNMENT:**

Chair Bennett thanked Vice Chair Hagen for chairing the August meeting in her absence. With no further business to come before the Board, the meeting was adjourned at 3:42 p.m.