



City of Pensacola

Planning Board

Agenda

Tuesday, January 12, 2021, 2:00 PM

Hagler-Mason Conference Room,
2nd Floor

Members of the public may attend and participate via live stream or phone.
Monitor the City's website for updates.

QUORUM / CALL TO ORDER

APPROVAL OF MEETING MINUTES

[21-00048](#) MINUTES FOR THE MEETING OF NOVEMBER 10 2020

Attachments: [November 10 2020 Minutes.pdf](#)

REQUESTS

[21-00050](#) PROPOSED AMENDMENT TO THE LAND DEVELOPMENT CODE -
SECTION 12-6 TREE/LANDSCAPE REGULATIONS

Attachments: [Proposed Ordinance 47-20.pdf](#)
[MEMO Council Edits for Tree Ordinance](#)

OPEN FORUM

DISCUSSION

ADJOURNMENT

If any person decides to appeal any decision made with respect to any matter considered at such meeting, he will need a record of the proceedings, and that for such purpose he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based.

ADA Statement

The City of Pensacola adheres to the Americans with Disabilities Act and will make reasonable accommodations for access to City services, programs and activities. Please call 850-435-1670 (or TDD 435-1666) for further information. Request must be made at least 48 hours in advance of the event in order to allow the City time to provide the requested services.

If any person decides to appeal any decision made with respect to any matter considered at such meeting, he will need a record of the proceedings, and that for such purpose he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

The City of Pensacola adheres to the Americans with Disabilities Act and will make reasonable accommodations for access to City services, programs and activities. Please call 435-1606 (or TDD 435-1666) for further information. Request must be made at least 48 hours in advance of the event in order to allow the City time to provide the requested services.



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 21-00048

Planning Board

12/8/2020

SUBJECT:

Minutes for the Meeting of November 10 2020



MINUTES OF THE PLANNING BOARD
November 10, 2020

MEMBERS PRESENT: Chairperson Paul Ritz, Board Member Grundhoefer, Board Member Murphy, Board Member Sampson

MEMBERS ABSENT: Vice Chairperson Larson, Board Member Powell, Board Member Wiggins

STAFF PRESENT: Planning Director Morris, Historic Preservation Planner Harding, Assistant City Attorney Lindsay, Network Engineer Johnston

OTHERS PRESENT: Robert Rushing, Matthew Hoffman, Kelly Hagen, Councilperson Myers

AGENDA:

- Quorum/Call to Order
- Approval of Meeting Minutes from October 13, 2020.
- **New Business:**
 - Carver Darden Sign Variance**
 - Open Forum
- Discussion on the Proposed Amendment to the Tree Ordinance
- Adjournment

Call to Order / Quorum Present

Chairperson Ritz called the meeting to order at 2:01 pm with a quorum present and explained the procedures of the quasi-judicial Board meeting.

Approval of Meeting Minutes

1. **Board Member Grundhoefer made a motion to approve the October 13, 2020 minutes, seconded by Board Member Murphy, and it carried unanimously.**

New Business

2. Carver Darden Sign Variance –

A Variance application was previously submitted by Carver Darden to install a fifty (50) square foot sign on the second floor, northwest front of the building, at 151 Main Street. This request was brought before the Planning Board on October 13, 2020. The Planning Board subsequently made a motion to deny the Variance application to the maximum signage allowance requirements for this property.

A new Variance application has been submitted by Carver Darden requesting a sixty-four (64) square foot sign at this same location. The existing signage for the first-floor tenants currently occupies thirty-nine (39) square feet.

This property is located in the Waterfront Redevelopment District (WRD) and per Section 12-4-4, Signs and Section 12-2-12 (C) (4) (a), Redevelopment Land Use District, of the Land Development Code, the following regulations apply in the WRD:

- “Size: Ten (10) percent of the building elevation square footage (wall area) which fronts on a public street, not to exceed fifty (50) square feet. Buildings exceeding five (5) stories in height; one attached wall sign or combination of wall signs not to exceed two hundred (200) square feet and mounted on the fifth floor or above.

This request has been routed through the various City departments and utility providers with comments provided.

Chairperson Ritz advised this item was a quasi-judicial matter. Assistant Attorney Lindsay explained the Board would be acting – as a court, gathering information from the witnesses and applying the law to those facts for a particular instance. The applicant would present their evidence to show they meet the criteria for a variance, there would be an opportunity for objections from the audience or by phone, and if anyone presented evidence against the variance, the applicant would have opportunity for rebuttal. At this time, the Board could ask questions of the persons making presentations. Once the facts had been gathered, the Chairperson would then close the hearing for gathering the facts, then the Board would be sitting as a Board to determine how the law applied to those facts. She stressed that the Board would allow due process and make findings, identifying why it agreed or disagreed with the request, citing the particular variance criteria. She explained the next step for this applicant would be the Circuit Court to review the Board’s decision. Planning Director Morris advised that a variance of 50 sq. ft. was denied at the previous Board meeting. The applicant would not have been allowed to come before the Board with the exact same request, and they had revised the current request to 64 sq. ft. for a sign to be attached to the second floor. The other tenants had consumed the square footage and had 11 sq. ft. remaining. Regarding similar signage granted in previous years, she explained the language allowing the Board to approve signage in the WRD was relatively new and more stringent which allowed the Board to take in aesthetics and surrounding characteristics of the district, calling them into a different standard than adjacent properties. Assistant City Attorney Lindsay advised regardless of what was presented to the Board at the previous meeting, the applicant should be allowed to make their presentation today without the Board referring back to what it remembered in the last presentation; the evidence heard today needed to determine the decision, however, the Board could ask questions if they did not hear something in today’s presentation that was presented earlier. Robert Rushing presented to the Board and stated his firm occupied the entire second

floor. He explained they had requested a 55 sq. ft. addition in the variance for a total of 64 sq. ft. He confirmed the first-floor tenants had taken up everything but 11 sq. ft. He emphasized clients were unable to locate their offices. They wanted the sign to go between the second and third floors facing Main Street for visibility purposes. In addressing the special conditions creating the need for the variance, he pointed out there were trees in the front which made it necessary for the sign to be located on the second floor. He noted other business in the area which had received variances beginning with the Blue Wahoos, Maritime Park and Nick's Boat House. He advised when the first-floor tenants took up their space, the second floor was occupied by real estate agents who worked out in the field, whereas they had clients coming in constantly for mediations, depositions, etc., thus needing the signage for location purposes. He explained other property owners in the area received variances for their signage, so they would not be receiving any special treatment but would be getting the same privileges as everyone else. He suggested their sign was the minimal request for the building structure. He pointed out they had no objections from the public utilities, police, fire or the general public, and their signage would not be injurious to anyone. He argued when individuals were slowing down on Main Street in order to locate their facilities or searching their cell phones, not having a visible sign presented more of a danger to the public.

Matthew Hoffman presented a visual of the signage granted in the past and pointed out the Maritime Park variance was 230 sq. ft. for a 180 sq. ft sign to identify the park, and they hoped their sign would do the same. He also submitted the Blue Wahoos Stadium and Nick's Boat House signage as approved sizable variances in the WRD. He suggested the requested signage would meet the architectural integrity of the look on Main Street.

Chairperson Ritz did not have any questions, but stated the tenants in the Blue Wahoos Stadium did have individualized signs. Board Member Murphy asked why 64 sq. ft., and Mr. Rushing stated originally, they had submitted 66 sq. ft., and they had chosen to make the signage smaller. He advised they had already paid for the sign, but could not pull the permit without a variance. Staff advised the tenant variances for Blue Wahoos Stadium were approved prior to the revised language for the WRD. It was noted that the Blue Wahoos Stadium signage was the catalyst for the change in language since a significant request could get approved without the notification process for neighboring properties. Procedures for the WRD now required a legal notice for the public and notification to adjacent property owners for input.

Board Member Grundhoefer asked if the WRD allowed illuminated signs, and staff stated this district did not prohibit that type of signage. It was also determined a cumulative total of 50 sq. ft. could be allowed on all sides. Mr. Rushing confirmed it was 50 sq. ft. of signage all around the entire building, and with this variance proper notice had been given, and no one had objected. Chairperson Ritz then closed the item for new evidence and opened it for deliberation.

Chairperson Ritz advised he found that all the variance items had been addressed by the applicants. He pointed out when people drive, they do refer to their cell phones for directions and felt this was a true case for safety. He suggested their criteria met the requirements for this requested variance. He stated this signage also fit with building aesthetically and was not significantly different from others in the area. Board Member Murphy questioned if the LDC would be revised for future tenants coming into that building. Staff advised if multiple situations were requested, the language might be reviewed. Chairperson Ritz suggested if the other buildable areas in this district get a building, this issue might be addressed again. Board Member Grundhoefer explained the whole district

would be built out, and if each one got a 64 sq. ft. sign because this variance was granted, it could be a hodge-podge of signs in that area. Assistant City Attorney Lindsay appreciated the policy questions being raised which could be addressed to Council to update the ordinance, but the role of the Board today was to apply the ordinance as it is written to the facts presented, and if the facts as they are presented are enough to meet the criteria as they are shown in the law today, then a motion to approve would be in order; if the Board did not agree that the facts support the variance as the Chairperson has stated, engage in the facts presented and debate whether that evidence is sufficient. Board Member Grundhoefer did not see that any changes needed to be made in the language; he referenced Item 3 in the variance criteria where they state three other businesses have been granted special privileges, and they should get the same privilege. The previous privileges were granted by other boards, and that did not mean they should get a special privilege. Those prior privileges were granted before the current LDC language which was designed to protect the city. Chairperson Ritz suggested other property owners were enjoying special privileges that would be denied this applicant. Board Member Murphy agreed that the first floor tenants did not get the special privilege, and they meet the square footage of the building which again went back to the LDC to allow everyone to have a certain amount or let the landlord tell the first floor tenants to reduce their signage so everyone can be fair. Board Member Grundhoefer was disappointed that the request was for 64 sq. ft. and not 50 sq. ft. Assistant City Attorney Lindsay stated the Board could place a special condition on its approval, but the applicant could go to the Circuit Court who would determine if the criteria was met and would either overrule the Board's decision or not. She also stated whatever the Board decided on this applicant would not affect what it decided on a different applicant for a different request. Staff clarified that the sign size requirements had not changed with the new requirements, but the notification and Board process had changed. Chairperson Ritz stated prior to now, the Board did not operate in the quasi-judicial format for this meeting. Board Member Murphy explained the applicants felt their rights were denied based on Nick's Boat House and the Blue Wahoos because the signage was based on the requirements back then and not the new Code, so then they would meet the legal terms.

Chairperson Ritz made a motion to approve on the variance requested, seconded by Board Member Sampson. Board Member Grundhoefer stated he would not support the 64 sq. ft. but would support a reduced version. Board Member Murphy asked if the sign could be reduced. Board Member Grundhoefer stated he would approve 50 or 49 sq. ft. that way if another applicant wanted to apply, at least they would know this Board did not approve an increase in the size. Assistant City Attorney Lindsay stated the applicants had already paid for the sign before they knew they needed a variance and reducing the size of the sign would incur additional costs to them. She also clarified that the applicants had submitted a variance based on a certain sized sign. Board Member Murphy indicated the applicants had met the criteria by law. Board Member Grundhoefer still felt it was a special privilege to give the applicants a 64 sq. ft. sign, but he would be agreeable to review it if they requested below the 50 sq. ft. Board Member Sampson had an issue with special privilege, but after the presentation today, she felt they met all the necessary criteria. **The motion then carried 3 to 1 with Board Member Grundhoefer dissenting.**

The quasi-judicial process was closed, and the Board returned to the normal formatted meeting.

Open Forum – Councilperson Myers addressed the Board and stated the last time she

was before the Board, she was there to speak on her amendments to part of the tree ordinance, and Council directed that those amendments be brought before this Board. She did not know that Mr. Bilby or that a counter amendment was going to be presented to the Board. She indicated the Board had been provided with bullet points, and the Board meeting went on so long she could not stay, so she went home and called in. She indicated she never saw those bullet points. She stated when Mr. Bilby advised he had incorporated her notice provisions in his ordinance, she indicated that was fine with her.

She was now taking back everything she said. After looking at those bullet points, which she obtained from Board Member Murphy later, the Board was not given some critical information in those bullet points and neither was she as a member of the audience. She stated she objected to this ordinance for a lot of reasons, especially the power grabbing part that takes away the authority of the City Council, especially the control of how those funds are being spent. And something they fought for on Council for many years was where trees would be planted. She stated there were reasons they wanted trees to go back into the area that they were taken from; this ordinance takes away that requirement and puts all of the power to control the funds and where those trees go really into the hands of the Mayor, and she would never, never support that and was prepared to vigorously fight it. All the gains that had been made – most of the Tree Trust Fund has come out of her district around Carpenters Creek. She advised when she got into Council in 2011, we had almost \$1 million in the Tree Trust Fund – almost all of that came from around Carpenters Creek and has continued to do so to this day. The Board was not given bullet points that addressed that issue; it was not mentioned, and there was a reason it was not mentioned in her opinion. So, it was a lack of transparency. The Land Development Code and our Comprehensive Plan speak to the issue of reforestation, and we are not doing any reforestation; that's why it is important that trees go back into the area that they are taken from because really and truly, the only areas or forests we have left are slivers along Carpenters Creek; and what they are cutting down around Airport and Grande by the time this ordinance, if it ever gets modified in order to have some meaningful notice, it will probably all be gone. So, the issue will pretty much be moot. A bigger issue now will probably be looking at all of the devastation from Hurricane Sally which is pretty extensive in her district and other areas she has driven to. She stated she had driven down every single street in District 2, and it is pretty devastating around the bayou and in certain parks that have devastated with long leaf pines that have been taken down by that hurricane. She explained she was interested in hearing the Board's conversation and hoped that they made modifications to the tree ordinance that protects urban and forest habitat and requires the reestablishment of urban forest and wildlife habitat. She just wanted the Board to know they had not been given all the facts in those bullet points.

Discussion on the Proposed Amendment to the Tree Ordinance

Ms. Murphy then presented to the Board as a citizen, and advised she had been looking for feedback from videos she had provided to Assistant Planning Director Cannon on information and background of the professor and the extension agent for the University of Florida for the Board's thoughts about their backgrounds, on what they have achieved and how they go about their process; they also wanted to know the Board's feedback so they could take it and build it into a personalized program for the City of Pensacola.

Chairperson Ritz explained the Board had moved one item before the Council, and if there was ever a near-term item on the tree ordinance, Ms. Murphy obtaining any of that information from the Board which related to that item would not be in the Sunshine Law.

The Board could not give the comments to Ms. Cannon to relay it to Ms. Murphy, since that would make her a conduit for two Board members to speak to each other outside the gavels. If the information comes back before the Board in some form, if some of what Ms. Murphy had worked on becomes either evidence or presentation, unless Ms. Murphy recused herself from that entire vote for that reason, Ms. Murphy could not vote on a tree ordinance should it come before this Board. He explained even though the Board had submitted one to Council and it became another agenda item, Ms. Murphy and the Chairperson could not have any communications and doubted if staff would facilitate that communication since it would become very questionable. He emphasized that Ms. Murphy and other Board members could not communicate.

Ms. Murphy explained she thought of herself as getting the process going to obtain a nice tree ordinance through the community and was recusing herself from the final vote since she did not want anyone to think she had a personal agenda. She did not know that in recusing herself from that vote meant recusing herself permanently from any tree ordinance even if it came from someone else. Assistant City Attorney Lindsay did not see any problem with Ms. Murphy voting on the other ordinance, but felt Chairperson Ritz was concerned about talking about outside of the Sunshine anything to do with trees because it could become unclear to the public whether there had been some discussion out of the Sunshine. She also advised the ordinance approved by the Board and going before Council needed some additional work from a staff prospective, not to change the content but the form, and it would not go before Council at this time. She also explained the Code itself was being recodified, so there could be some organizational changes where it might need to be brought before the Board again for review. Chairperson Ritz advised he felt uncomfortable talking about anything related to the tree ordinance outside of this venue. If he were to speak with Ms. Murphy and she spoke to Councilperson Myers, it would create a very clouded situation. Planning Director Morris suggested the Board members could provide feedback in this setting of a public meeting. Ms. Murphy advised she had voted on the previous tree ordinance which created the change in the language (arborist, updating departments). Chairperson Ritz suggested an appropriate action would be for Assistant Planning Director Cannon to forward the information to the Board, and they could send it back to staff who could collect the comments which could be addressed in the next Board meeting as long as she was not becoming a conduit for response from any Board member. Planning Director Morris explained the comments could be collected as part of the agenda, but the discussion would take place in the public Board meeting.

Ms. Hagan, Vice President of the Sanders Beach Neighborhood Association, addressed the Board as a private citizen to speak for the heritage trees. She was encouraged by the discussion on the proposed amendments to the tree ordinance, however, she proposed that we engage the citizens of Pensacola, open a public session and give the opportunity to hear from the people who care about protecting our trees. She also believed the new Council should be engaged in the discussion; she encouraged the Board and the City to abstain from adjudication and not to vote on this matter until all sides were considered.

Chairperson Ritz advised there was legislation that would be before the Council sometime in the future; however, this Board might not see this ordinance again unless Council sent it back. He explained there had been a public forum where citizens were allowed to speak on this ordinance. He suggested that Ms. Hagan monitor the Council agenda to have a chance to speak at that time.

Board Member Grundhoefer advised what the Board had voted on a month ago was dealing with arborists and some of the immediate needs the Board thought to be

necessary, and he did not see or hear anything that would take the power from the Council and give it to the Mayor in the Board's discussion. Chairperson Ritz stated without that document, he could not respond. Board Member Grundhoefer noted the main object was to notify the Council member in that particular district so they could do something about the trees being affected. He thought it was good language, and the amendments and changes that come from these workshops could be reviewed to put some more teeth into the document to make sure the trees were protected. Chairperson Ritz indicated this had been a discussion item for over a year, and this Board could create something on its own since it has that power which could be presented to Council. Planning Director Morris advised that the document being reviewed by the City Attorney was regarding formatting and to make sure that nothing was in conflict with the recodification effort, and to her knowledge, there was no change to content; if there was any significant change to content, it would return to this Board.

Board Member Sampson did not recall anything about the Mayor; Board Member Murphy stated originally when the document came about, there was a lot of clearcutting taking place in District 2, and Councilperson Myers was very concerned, and she wanted to place an immediate change forward to require a phone number on the signs; also, some of the positions in the document were outdated. She advised at the end of the document, before it gets to the list of trees, it states that the Mayor could have full power over the Tree Trust Fund to decide where the money goes, and if trees come out of Councilperson Myers' district, they could be placed in Councilperson Hill's district. Chairperson Ritz stated in the past, Council has chosen to spend Tree Fund monies on other than trees. Planning Director Morris advised that the tree ordinance approved by the Board originated in the Mayor's office. She explained that when staff brings something forward, it is considered a mayoral item. She explained we have a new Sustainability staff person under Public Works and Engineering, and there was some desire to streamline the Code as far as how things function internally, and the document presented to the Board was a collaborative effort between departments.

Assistant City Attorney Lindsay stated since she worked on the Vickery Tree Case on Spring Street, she had a recommendation that staff or Council look at the ordinance since we want to be able to protect the trees according to the law. The way the legislature wrote the ordinance with the property owners being able to remove dangerous trees, there was not a lot of definitions, and there was a lot of confusion in the way it could be applied. Any certified arborist or landscape architect could say a tree was dangerous without necessarily any evidence. According to industry standards, what is dangerous or not, is the inquiry that was considered for that case. Part of those recommendations were to protect trees under the standards we think the legislature intended.

Adjournment – With no further business, Chairperson Ritz thanked the Board for its patience and adjourned the meeting at 3:55 pm.

Respectfully Submitted,

Cynthia Cannon, AICP
Assistant Planning Director
Secretary to the Board



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 21-00050

Planning Board

1/12/2021

TO: Planning Board Members

FROM: Cynthia Cannon, AICP, Assistant Planning Director

DATE: 1/12/2021

SUBJECT:

Proposed Amendment to the Land Development Code - Section 12-6 Tree/Landscape Regulations

BACKGROUND:

The City of Pensacola Department of Engineering have proposed amendments to Sec. 12.6 Tree/Landscape Regulations. The proposed Tree and Landscape ordinance has been amended to streamline the review and enforcement process into one department, implement a process that complies with Florida statutes, add further protection of Heritage trees, and clarify tree fund usage.

PROPOSED
ORDINANCE NO. 47-20

ORDINANCE NO. _____

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE AMENDING THE CODE OF THE CITY OF PENSACOLA, FLORIDA, SECTION 12-6 TREE/LANDSCAPE REGULATIONS, STREAMLINING REVIEW AND ENFORCEMENT INTO ONE DEPARTMENT AND PROCESS, ASSURING COMPLIANCE WITH FLORIDA STATUTES, PROTECTING HERITAGE TREES, AND FUNDING OVERSIGHT AND ENFORCEMENT; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Section 12-6-2(C), (D), and (F) of the Code of the City of Pensacola, Florida, is hereby amended, and a new subparagraphs (G) and (H) is created, to read as follows:

Sec. 12-6-2. - Applicability.

(A) *Zoning districts.* The provisions of this chapter shall be applicable within the following zoning districts:

(1) *Residential districts.*

- (a) R-1AAAAA through R-1A districts
- (b) R-ZL (zero lot line dwelling district)
- (c) R-2A and R-2B (multiple-family)

(2) *Mixed residential districts.*

- (a) R-2 (residential/office)
- (b) R-NC (residential/neighborhood commercial)

(3) *Commercial districts.*

- (a) C-1 (local commercial)
- (b) C-2 (general commercial)
- (c) R-C (residential commercial)
- (d) C-3 (general commercial and limited industry)

(4) *Industrial districts.*

- (a) M-1 (wholesale/light industry)
 - (b) M-2 (light industry)
- (5) *Other districts.* The provisions of this chapter shall also be used as guidelines in reviewing site plans in site specific zoning and development (SSD) amendment applications, airport transition zone (ATZ-1 and ATZ-2) districts and in applications for special planned developments.
- (B) *Public institutional uses and churches.* The provisions of this chapter shall be applicable to public institutional uses and churches. Public institutional uses and churches located in R-1AAAAA through R-1A zones shall not be exempt from the provisions of this chapter. In addition, these uses shall conform with the requirements of subsection 12-6-3(A) and all other sections of this title applicable to the R-ZL, R-2A, R-2B and R-2 zones.
- (C) *Exemptions.* All single-family and duplex uses are exempt from the provisions of this chapter, except as provided for in section 12-2-32 (buffer yards), subsection 12-6-2(D) (heritage trees) ~~and~~, subsection 12-6-6(D) (new subdivisions) and subsection 12-6-7(E) (pruning of heritage trees). The C-2A downtown retail commercial district is exempt from the provisions of this chapter, except as provided for in subsections 12-6-6(A), (E), (F), and (G). All healthcare related uses of property owned or controlled by an entity which is licensed as an acute care hospital under F.S. Ch. 395, owned or controlled by a parent company of an entity which is licensed as an acute care hospital under F.S. Ch. 395 are exempt from the provisions of this chapter, except as provided for in section 12-6-3 and subsections 12-6-6(A), (C), (E), (F), and (G). In conjunction with the development of any such healthcare related use, a payment of five thousand dollars (\$5,000.00) per acre of new developed impervious surface area shall be made to the tree planting trust fund. The designated clear zone areas around the Pensacola Regional Airport and any other area identified by the airport manager and approved by the city council as critical to aircraft operations shall be exempt from this chapter.
- (D) *Heritage trees.* A protected tree identified by species in Appendix A of this chapter which is thirty-four (34) inches or greater in diameter as measured at Diameter Breast Height (DBH). Heritage trees are protected in all the zoning districts listed in section 12-6-2, and for all land uses. Removal, cutting or pruning of heritage trees on proposed development sites may be permitted upon approval of a landscape and tree protection plan (section 12-6-4). Removal, cutting or pruning of heritage trees on developed property may be authorized ~~upon issuance of a permit~~ per section 12-6-7. A permit will be required for removal or pruning of a heritage tree in all zoning districts listed in section 12-6-2, and for all land uses, including single-family or duplex as set out in section 12-6-7.
- (E) *DBH.* All tree measurements shall be taken at Diameter Breast Height (DBH), which is the diameter of the tree at four and one-half (4½) feet (54 inches) above ground. If the tree has a bump or branch at four and one-half (4½) feet above ground then DBH shall be measured immediately below the bump or branch. If the tree is growing vertically on a slope, DBH shall be measured from the midpoint of the trunk along the slope. If the tree is leaning, DBH shall be measured from the midpoint of the lean. If

the tree forks below or near DBH the tree shall be measured at the narrowest part of the main stem below the fork. If the tree splits into more than one (1) trunk close to ground level, DBH shall be determined by measuring each of the trunks separately and then taking the square root of the sum of all squared stem DBHs.

(F) City-designated arborist. All references to the City’s designated arborist shall be construed to mean the Mayor’s designee who is charged with administering and enforcing the provisions contained within this chapter and is an International Society of Arboriculture (ISA) certified arborist.

(FG) Notwithstanding any other provision of this chapter, the mitigation cost to a residential property owner (single-family and duplex uses) where the property is already developed shall not exceed one thousand dollars (\$1,000.00); provided, however, no mitigation cost shall be charged where statutorily prohibited. Mitigation costs for residential property owners on property being developed shall be assessed in accordance with 12-6-6(B)(5).

(H) Prior to pruning, or removal of any tree(s), any permit issued under this chapter must be posted, promptly upon receipt, in a conspicuous place where the tree(s) is located.

SECTION 2. Section 12-6-3(B) of the Code of the City of Pensacola, Florida, is hereby amended to read as follows to read as follows:

Sec. 12-6-3. - Landscaping requirements.

(A) *Landscape area requirements.* The minimum percentage of the total developable site, which shall be devoted to landscaping, unless otherwise specified in this chapter, shall be as follows:

ZONING DISTRICT		PERCENT
R-ZL, R-2A, R-2B, R-2	25
R-NC, C-1, C-2, R-C	25
C-3, M-1, M-2	20
SSD, ATZ-1, ATZ-2	25

(B) *Off-street parking and vehicle use areas.* Off-street parking regulations apply to all parking facilities of ~~twenty (20)~~ ten (10) spaces or more. Off-street parking facilities and other vehicular use areas shall meet the following requirements:

(1) *Perimeter requirements.* A ten-foot wide strip of privately owned land, located along the front and/or side property line(s) adjacent to a street right-of-way shall be landscaped. In no case shall this strip be less than ten (10) feet wide. Width of sidewalks shall not be included within the ten-foot wide

perimeter landscape area. This perimeter landscape requirement shall be credited toward the percentage required for the total developable site in subsection 12-6-3(A), above. Material requirements in perimeter area are as follows:

- (a) One (1) tree for each thirty-five (35) feet of linear foot frontage along the right-of-way shall be preserved or planted. Trees planted to meet this requirement shall measure a minimum of three (3) inches DBH. The trees shall be container grown if planted during the months of March through October. During the remaining months, balled and burlapped (B&B) material may be used. Appropriate documentation shall be provided to the ~~parcs and recreation department~~City's designated arborist. An automatic irrigation system shall be required with a separate zone with bubblers to each tree planted on site. When multiple trunk trees are specified, such as crape myrtle, each stem must be a minimum of one and one-half (1½) inches DBH, with a minimum of three (3) stems. These type trees shall not be cut back prior to planting. Seventy (70) percent of the trees for any site shall be shade trees, unless a lesser percentage is approved by the ~~parcs and recreation department~~City's designated arborist. The remaining area within the perimeter strip shall be landscaped with other landscape materials.
 - (b) Trees and other landscaping required in the perimeter strip shall be maintained to assure unobstructed visibility between three (3) [feet] and nine (9) feet above the average grade of the adjacent street and the driveway intersections through the perimeter strip.
 - (c) If trees are required where overhead utilities exist, and such trees may create a maintenance potential, only species whose expected height at maturity will not create interference may be planted.
- (2) *Interior planting areas.* Interior planting areas within parking lots shall be determined by subtracting the area set aside in the ten-foot perimeter strip from the total minimum area required to be landscaped in subsection 12-6-3(A), above. This remaining percentage shall be allocated throughout the parking lot or in areas, which are adjacent to the parking lot other than in the perimeter strip. Interior planting areas shall be located to most effectively accommodate stormwater runoff and provide shade in large expanses of paving and contribute to orderly circulation of vehicular and pedestrian traffic. Minimum sizes of interior planting areas are as follows:
- (a) A minimum of one hundred (100) square feet of planting area shall be required for each new species type A tree identified in Appendix "A" and small species identified in Appendix "B".
 - (b) A minimum of two hundred (200) square feet of planting area shall be required for each new species type B and type C tree identified in Appendix "A" and medium and large species identified in Appendix "B".

- (c) A twelve-foot by thirty-six-foot planting island shall be required on each end of every double row of parking and a twelve-foot by eighteen-foot island on each end of a single row of parking shall be required. Also, a minimum of one (1) additional island at the midpoint of the parking bays for rows having over ten (10) parking spaces shall be required. The additional island shall be centered in each row. Any adjustment to this requirement must have written approval from the ~~building official~~City's designated arborist.
 - (d) A minimum planting area of seventy-five (75) percent of the dripline area of the tree shall be required for all existing trees. If conditions warrant that an area greater than seventy-five (75) percent is needed to preserve the tree, the city shall have the right to require up to one hundred (100) percent of the dripline. Approved pavers may be used in certain situations, if approved by the ~~building official~~City's designated arborist. Pervious surfaces are strongly encouraged.
- (3) *Vehicle overhang.* Vehicles shall not overhang any interior planting area or perimeter strip. Tire stops are required to be used in these situations.
 - (4) *Curbs; protection of vegetation.* Where landscaping is installed in interior or perimeter strip planting areas, a continuous curb or other acceptable means of protection shall be provided to prevent injury to the vegetation. Such curb shall be designed to allow percolation of the water to the root system of the landscape material. Where existing trees are preserved, tree wells, tree islands or a continuous curb shall be utilized to protect the trunk and root system from alterations to surrounding grade elevations and damage from automobiles. A drainage system, sufficient enough to allow percolation into permeable soil, shall be provided in the area defined by the dripline of the tree(s).
- (C) *Buffer yards between zoning districts and uses.* Regulations applicable to buffer yards are specified in section 12-2-32 of this Code.

SECTION 3. Section 12-6-4, (B), and (D) of the Code of the City of Pensacola, Florida, is hereby amended to read as follows to read as follows:

Sec. 12-6-4. - Landscape and tree protection plan.

A landscape and tree protection plan shall be required as a condition of obtaining any building permit or site work permit for ~~townhouse residential, multi-family residential,~~ commercial and industrial development as specified in section 12-6-3. The plan shall be submitted to the ~~community development department inspection services division~~Inspection Services Department and reviewed by the City's designated arborist. A fee shall be charged for services rendered in the review of the required plan (see chapter 7-14 of this Code).

No building permit or site work permit shall be issued until a landscape and tree protection plan has been submitted and approved. Clearing and grubbing is only permitted after a site has received development plan approval and appropriate permits

have been issued. The City's designated arboristbuilding official may authorize minimal clearing to facilitate surveying and similar site preparation work prior to the issuance of permits. No certificate of occupancy shall be issued until the City's designated arboristbuilding official has determined after final inspection that required site improvements have been installed according to the approved landscape and tree protection plan. In lieu of the immediate installation of the landscaping material and trees, the city may require a performance bond or other security in an amount equal to the cost of the required improvements in lieu of withholding a certificate of occupancy, and may further require that improvements be satisfactorily installed within a specified length of time.

- (A) *Contents of landscape and tree protection plan.* The landscape and tree protection plan shall be drawn to scale by a landscape architect, architect or civil engineer licensed by the State of Florida, and shall include the following information unless alternative procedures are approved per sections 12-6-8 or 12-6-9:
- Location, size and species of all trees and shrubs to be planted.
 - Location of proposed structures, driveways, parking areas, required perimeter and interior landscaped areas, and other improvements to be constructed or installed.
 - Location of irrigation system to be provided. All planted areas shall have an underground irrigation system designed to provide one hundred-percent coverage.
 - Landscape and tree protection techniques proposed to prevent damage to vegetation, during construction and after construction has been completed.
 - Location of all protected trees noting species and DBH.
 - Identification of protected trees to be preserved, protected trees to be removed, including dead trees, and trees to be replanted on site.
 - Proposed grade changes which might adversely affect or endanger protected trees with specifications on how to maintain trees.
 - Certification that the landscape architect, architect or civil engineer submitting the landscape and tree protection plan has read and is familiar with Ch. 12-6 of the Code of the City of Pensacola, Florida, pertaining to Tree and Landscape Regulation.
- (B) *Installation period.* All landscape materials and trees depicted on the approved landscape plan shall be installed ~~within one (1) year of the date of issuance of the building permit for the site~~ prior to the issuance of the certificate of occupancy.
- (C) *Quality.* All plant materials used shall conform to the standards for Florida No. 1 or better as given in "Grades and Standards for Nursery Plants", current edition, State of Florida, Department of Agriculture and Consumer Services, Division of Plant Industry, Tallahassee, Florida, a copy of which shall be maintained for public inspection in the department of leisure services.

(D) *Notice.* If removal is sought for ~~two~~ one (12) or more heritage trees or for more than ten (10) protected trees (including heritage trees sought to be removed) and/or if removal of more than fifty (50) of existing protected trees is sought within any property in any zoning district identified in section 12-6-2, a sign shall be posted no further back than four (4) feet from the property line nearest each respective roadway adjacent to the property. One (1) sign shall be posted for every one hundred (100) feet of roadway frontage. Each sign shall contain two (2) horizontal lines of legible and easily discernable type. The top line shall state: "Tree Removal Permit 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 or his or her designee)." The top line shall be in legible type no smaller than six (6) inches in height. The bottom line shall be in legible type no smaller than three (3) inches in height. There shall be a margin of at least three (3) inches between all lettering and the edge of the sign. The signs shall be posted ~~at~~ by the applicant at their expense, and shall remain continuously posted until the requisite building, site work, or tree removal permit has been issued, but in no event for less than two (2) weeks prior to tree removal. The City's designated arborist will notify the councilperson in which the removal is requested.

Exception: This provision does not include any tree located on a currently occupied, residential property so long as the City's designated arborist has determined the tree meets the qualifications as a diseased or weakened tree as specified in Section 12-6-6(B)(2)(e), or, in the alternative, 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.

SECTION 4. Section 12-6-5 of the Code of the City of Pensacola, Florida, is hereby amended to read as follows to read as follows:

Sec. 12-6-5. - Maintenance.

The legal owner of record as appears on the current tax assessment roll or the designated lessee or agent shall be responsible for the maintenance of all landscape areas which shall be maintained so as to present a healthy, neat and orderly appearance at all times and shall be kept free from refuse and debris. Within three (3) months of a determination by the ~~building official or other city-designated official~~ City's designated arborist, that a protected tree required to be retained on a development site (as part of an approved site development plan) or required landscaping is dead or severely damaged or diseased, the protected tree or landscaping shall be replaced by

the owner in accordance with the standards specified in this chapter (chapter 12-6). The ~~building official~~ City's designated arborist may approve additional time appropriate to the growing season of the species in question, not to exceed one (1) year.

All portions of any irrigation system shall be continuously maintained in a condition such that the intent of an irrigation design is fulfilled. Uncontrolled emission of water from any pipe valve, head, emitter, or other irrigation device shall be considered evidence of non-maintenance.

SECTION 5. Section 12-6-6(A), (B), (D), (E), (F), (G), and (H) of the Code of the City of Pensacola, Florida, is hereby amended to read as follows 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.

(A) *Preservation Incentives.*

- (1) *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 twelve (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).

- (2) *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 12-8-6 may be approved

by the mayor or their designee when it is determined that said waiver will result in the preservation of five (5) or more protected trees with a trunk of twelve (12) inches DBH or greater.

- (3) *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.
- (4) *Credit for additional landscaping.* ~~The mayor or his or her designee~~City's designated arborist may authorize up to one-half ($\frac{1}{2}$) of the total calculated mitigation cost (as determined according to subsection 12-6-6(B)(4), (5)) 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:
 - (a) A minimum of seventy-five (75) percent of all required plant material shall consist of evergreen species.
 - (b) All landscape material shall be placed so as to maximize its screening and/or coverage potential at maturity.
 - (c) All shrub material shall be a minimum height of thirty (30) inches and have a minimum crown width of twenty-four (24) inches when planted and shall be a species capable of achieving a minimum height of eight (8) feet at maturity.

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

- (1) *Retention of protected trees.* Every effort must be made to protect and retain existing protected trees on proposed development sites. A minimum of ten (10) 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.
 - (a) *Credit for retention of protected trees above minimum requirements.* For each inch of trunk diameter above the minimum ten (10) 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 subparagraphs (4) and (5) below.
 - (b) *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 ($\frac{2}{3}$) of the area of the dripline for all other protected trees. Barricades must be at least three (3) feet tall and must be constructed of either wooden corner posts at least two by four (2 x 4) inches with at least two (2) courses of wooden side slats at least one by four (1 x 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.

- (2) *Removal of protected trees.* Subject to the requirements of (1) above, protected trees may be approved for removal if one (1) or more of the following conditions are present:
- (a) *Visibility hazard.* Necessity to remove trees which will pose a safety hazard to pedestrians or vehicular traffic upon completion of the development.
 - (b) *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.
 - (c) *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 ~~planner~~landscape architect shall make every reasonable effort to locate such improvements so as to preserve any existing tree.
 - (d) *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~~mayer or his designee~~ shall be to the Zoning Board of Adjustment.
 - (e) *Diseased or weakened trees.* Necessity to remove diseased trees or trees weakened by age, storm, fire or other injury;
 - (f) *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.
- (3) *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~~an independent certified arborist shall be provided stating for each tree (or all of them) that relocation is not feasible and briefly explaining why relocation is not feasible.
- (4) *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:

- (a) A trunk diameter of four (4) inches to eleven (11) inches = Two (2) three-inch DBH trees planted for each one removed.
 - (b) A trunk diameter of twelve (12) inches to nineteen (19) inches = Three (3) three-inch DBH trees planted for each one removed.
 - (c) A trunk diameter of twenty (20) inches to twenty-nine (29) inches = Five (5) three-inch DBH trees planted for each one removed.
 - (d) A trunk diameter of thirty (30) inches to thirty-five (35) inches = Eight (8) three-inch DBH trees planted for each one removed.
 - (e) A trunk diameter of thirty-six (36) inches to forty-three (43) inches = Ten (10) three-inch DBH trees planted for each one removed.
 - (f) A trunk diameter of forty-four (44) inches or greater = Eleven (11) three-inch DBH trees planted for each one removed.
 - (5) *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 four hundred dollars (\$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.
- (C) *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 (1) new tree species identified in the protected tree list (Appendix "A") or the tree replant list (Appendix "B"), a minimum of three (3) inches DBH, for each one thousand (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(B)(1)(a) of this chapter.
- (D) *New residential subdivisions.* In new residential subdivisions the private property owner of each lot shall plant one (1) tree in the front yard within ten (10) 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 (10) feet of the right-of-way, then one (1) additional tree shall be required (sized as noted in (1) below). The tree shall be a species from Appendix A or B, and where feasible, shade trees are encouraged.
- (1) Where a protected or replant tree species is required to be replanted, such tree shall be a minimum of three (3) inches DBH.
 - (2) 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 ~~parcs and recreation department~~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 7-14 of this Code).

(E) *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 ~~parcs and recreation department~~City's designated arborist as specified in section 12-6-7.

(1) The ~~parcs and recreation department~~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.

(2) 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 ~~parcs and recreation department~~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 7-14 of this Code).

(3) 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.

(F) *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 ~~parcs and recreation department~~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.

(G) *Canopy road tree protection zone.* All lands within ten (10) feet of the outer boundary of the right-of-way of the below described roads are hereby declared to be canopy tree protection zones:

- Blount Street from "A" Street to Bayview Park.

- Lakeview Avenue from 9th Avenue to 20th Avenue.
- Garden Street from Alcaniz Street to Jefferson Street and from "J" Street to "N" Street.
- 17th Avenue from Gregory Street to Texar Drive.
- 12th Avenue from Barcia Drive to Fairfield Drive.
- Baylen Street from LaRua Street to Jordan Street.
- Spring Street from LaRua Street to Jordan Street.
- Bayou Boulevard from Lee Street to Strong Street.
- 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 ~~parcs and recreation department~~ City's designated arborist as specified in section 12-6-7. The exemption for utility companies noted in subsection (E), above shall also apply to the canopy road tree protection zone.

(H) *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 ~~parcs and recreation department~~ 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. ~~The provisions of this subsection related to pruning do not apply to existing single-family and duplex uses.~~

SECTION 6. Section 12-6-7 (A), (B), (C), (D), and (F) of the Code of the City of Pensacola, Florida, is hereby amended to read as follows to read as follows:

Sec. 12-6-7. - Tree removal and pruning permit in right-of-way and canopy road tree protection zones and heritage trees on developed property.

No person shall cut, remove, prune, or in any way damage any heritage tree on developed property or protected tree within the road right-of-way and canopy road tree protection zones identified in subsections 12-6-6(E) and (G), without first obtaining a tree removal and pruning permit from the ~~parcs and recreation department~~City's designated arborist as provided below. An inspection fee of seventy-five dollars (\$75.00) shall be charged for services rendered by the ~~parcs and recreation department~~City's designated arborist in the required review and on-site inspection for tree removal or pruning permits (see chapter 7-14 of this Code).

- (A) *Canopy road tree protection zone and road right-of-way tree protection zone.* Prior to cutting, removing, pruning or in any way damaging a protected tree in the canopy road tree protection zone and road right-of-way tree protection zone, an owner, developer or his agent must submit a copy of an accurately scaled drawing including the following information:
 - (1) Location of the subject protected tree, noting species, size and general condition.
 - (2) The ~~parcs and recreation department~~City's designated arborist may issue an annual permit to public utilities exempting them from this requirement as specified in subsection 12-6-6(E).
- (B) *On-site inspection.* Prior to the issuance of a tree removal and pruning permit, the ~~parcs and recreation department~~City's designated arborist shall conduct an on-site inspection and shall issue a written report setting forth a recommendation for granting or denying the permit including any explanation necessary to clarify the basis for the recommendation.
- (C) *Conditions of approval.* The ~~parcs and recreation department~~City's designated arborist may approve the permit if one (1) or more of the conditions set forth in subsections 12-6-6(B)(2)(a)—(f) is present.
- (D) *Review.* In the event an application is denied, the ~~parcs and recreation department~~City's designated arborist shall specify to the applicant in writing the reason for said action.
- (E) *Heritage tree removal mitigation.* In the event that a heritage tree is approved for removal, tree replacement shall be provided per subsection 12-6-6(B)(4)(f) or a fee shall be paid into the tree planting trust fund per subsection 12-6-6(B)(5).
- (F) *Pruning ~~permitted~~ on residential properties.* ~~Notwithstanding any contrary provision, pruning of heritage trees on properties with existing single-family and duplex land uses shall not require compliance with this section. However,~~Permits are not required for pruning of trees on developed, currently occupied, residential property, except for pruning of heritage trees; provided, permit fees are waived where the limb(s) is diseased, weakened, or a danger or hazard to person or property. A permit shall be obtained from the City' as described in 12-6-7 and pruning shall be performed by, or done under the supervision of, a certified

independent arborist. In no instance shall more than one-third (1/3) of the existing, healthy tree crown may be removed from a heritage tree. If trimming of any heritage tree on a residential property results in substantial and irreparable harm or death to the heritage tree, such trimming shall be deemed an unauthorized and unpermitted removal of such heritage tree and shall be subject to penalties as such mitigation in the form of tree replacement as a provided per subsection 12-6-6(B)(4)(f), or a fee shall be paid into the tree planting trust fund per subsection 12-6-6(B)(5). A residential property owner is excused from obtaining a permit by submitting to the City's designated arborist a completed two-page Tree Risk Assessment Form, prepared by an ISA certified arborist 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, so long as, consistent with ISA standards and tree risk assessment, the heritage tree or tree part presents a danger because the following 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. Upon approval of the tree risk assessment by the City's designated arborist, no mitigation shall be required.

SECTION 7. Section 12-6-8 of the Code of the City of Pensacola, Florida, is hereby amended to read as follows to read as follows:

Sec. 12-6-8. - Best management practices.

The ~~mayor or his or her designee~~ City's designated arborist may determine that the required irrigation percentage for a site may be reduced, and may also reduce the required mitigation payment into the Tree Planting Trust Fund when it has been demonstrated and set forth in writing that Best Management Practices have been employed in the proposed plans for development of a site. Areas in which the utilization of Best Management Practices would be applicable include, but are not limited to: Enviroscaping; Xeriscaping; Landscape Irrigation; and LEED/Green Building Techniques such as, but not limited to, green roofs, rain garden landscape design, shading constructed surfaces on the site with landscape features, and minimizing the overall building footprint and parking area; which are designed to reduce heat islands (thermal gradient differences between developed and undeveloped areas) to minimize impact on the environment.

Best Management Practices for a site include a demonstrating to the ~~mayor or his or her designee~~ City's designated arborist, that the property owner has met the minimum requirements of this section in addition to the proposed best management practices to be utilize.

** "Waterwise Florida Landscapes" is the required reference guide for Xeriscaping and irrigation techniques.

SECTION 8. Section 12-6-9 of the Code of the City of Pensacola, Florida, is hereby amended to read as follows to read as follows:

Sec. 12-6-9. - Modifications.

Under certain circumstances, the application of the standards of this chapter may be either inappropriate or ineffective in achieving the purpose of this chapter. When planting is required by this chapter or by other provisions herein, and the site design, topography, unique relationships to other properties, natural vegetation or other special considerations exist relative to the proposed development; the developer may submit a specific alternate plan for the planting. This plan must demonstrate how the purposes and standards of this chapter will be met by measures other than those in sections 12-6-3 and 12-6-6. The ~~building official~~City's designated arborist shall review the alternate proposal and advise the applicant of the disposition of the request within fifteen (15) working days of submission by the applicant. Any appeals by the applicant shall be in accordance with section 12-6-11 of this chapter.

SECTION 9. Section 12-6-10(A), (B), and (C) of the Code of the City of Pensacola, Florida, is hereby amended to read as follows to read as follows:

Sec. 12-6-10. - Enforcement.

- (A) *Stop work order.* Whenever the ~~building official~~City's designated arborist determines that a violation of this chapter has occurred, the following actions shall be initiated:
- (1) *Written notice.* Immediately issue written notice by personal delivery or certified mail to the person violating this chapter of the nature and location of the violation, specifying what remedial steps are necessary to bring the project into compliance. Such person shall immediately, conditions permitting, commence the recommended remedial action and shall have ten (10) working days after receipt of said notice, or such longer time as may be allowed by the ~~building official~~City's designated arborist, to complete the remedial action set forth in said notice.
 - (2) *Remedial work and stop work orders.* If a subsequent violation occurs during the ten (10) working days referred to in subsection (A)(1) above, or if remedial work specified in the notice of violation is not completed within the time allowed, or if clearing and development of land is occurring without a permit, then the ~~building official~~City's designated arborist shall issue a stop work order immediately. Said stop work order shall contain the grounds for its issuance, and shall set forth the nature of the violation. The stop work order shall be directed not only to the person owning the land upon which the clearing and development is occurring, but also a separate stop work order shall be directed to the person or firm actually performing the physical labors of the development activity or the person responsible for the development activity, directing him forthwith to cease and desist all or any portion of the work upon all or any geographical portion of the project, except such remedial work as is deemed necessary to bring the project into compliance. If such person fails to complete the recommended remedial action within the time allowed, or fails to take the recommended action after the issuance of such stop work order, then the ~~building official~~City's designated arborist may issue a stop work order on all or any portion of the entire project.

- (3) *Notice of compliance.* Upon completion of remedial steps required by notice the ~~building official~~ City's designated arborist shall issue a notice of compliance and cancellation of said notice or stop work order.
- (B) *Penalty.* The fine for violating this chapter shall be based on the size of limb(s) or the tree(s) removed without a permit. The measurement to establish said fine shall be based on the remaining tree material left intact on the site. If a tree is removed, the trunk caliper shall be measured at DBH and at the point of removal for a limb or each limb. If, in the opinion of the ~~parcs and recreation department~~ City's designated arborist, the tree has been substantially damaged so that its normal growth character will never return, i.e., a tree is topped and will never recover the original character, then the fine may be based upon the caliper of the tree trunk or each limb removed, whichever is the greater. Each day a violation of a stop work order continues shall constitute a separate offense (see subsection 7-14-6(2), penalty fees, of this Code). Each protected tree removed without a permit or in violation of a permit shall constitute a separate offence. Any person may seek an injunction against any violation of this chapter, and recover such damages as he may suffer. In addition to the fines and prohibitions contained herein, the provisions of section 1-1-8 of the Code shall apply applicable to willful violations of this chapter.
- (C) *Tree planting trust fund.* A tree planting trust fund has been established and funded by the fines pursuant to subsection (B) and mitigation fees paid pursuant to section 12-6-6. Expenditures from the tree planting trust fund are hereby authorized and may be made by the mayor and shall be utilized for acquiring, planting, and maintaining trees and in cases where necessary other vegetation for public purposes within the City of Pensacola for projects up to twenty five thousand dollars (\$25,000) to replant trees, or to plant new trees and other appropriate landscape vegetation, purchase irrigation supplies and purchase equipment dedicated to the planting and maintaining of the city's trees. The first priority for expenditure of funds deposited in the tree planting trust fund is for restoration of the tree canopy in the area where trees generating the funds were removed. Any expenditure in excess of twenty-five thousand dollars (\$25,000) must be approved by the city council following review by the environmental advisory board.

A grant program is hereby established for community organizations such as neighborhood associations, civic organizations, and garden clubs, according to the following criteria:

- Each grant is limited to ~~seventy-five (75)~~ fifty (50) percent of the cost of the proposed project up to ~~seven five thousand five hundred dollars (\$7,55,500.00);~~
- ~~The required twenty-five (25) percent grant match may be waived for projects deemed as a high priority canopy restoration project by the city council;~~
- The tree planting trust fund must have sufficient funds for the project requested;
- Grant requests must be submitted to the environmental advisory board for review prior to consideration by the City's designated arborist and city council;

- The city council must approve each grant request; and
- The funds must be utilized for providing trees or other appropriate vegetation along with associated irrigation that will help restore the tree canopy as deemed appropriate by proper planting location requirements and may enhance the natural beauty of the community, serve to deter graffiti or the defacement of public or private property, and may create sound buffers where desirable.

SECTION 10. Section 12-6-11 of the Code of the City of Pensacola, Florida, is hereby amended to read as follows to read as follows:

Sec. 12-6-11. - Appeal.

Any person directly and adversely affected by any decision ~~made of the parks and recreation department, the building official, or the mayor or his or her designee~~ in the interpretation or enforcement of the provisions of this chapter may appeal such decision to the zoning board of adjustment. Such appeal shall be submitted in writing to the planning administrator within thirty (30) days of the rendering of the subject order, requirement, decision or determination.

...

SECTION 12. 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 13. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 14. 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

MEMORANDUM

TO: Planning Board

FROM: Mark Jackson, Sustainability Coordinator

DATE: January 8, 2021

SUBJ: Council member edits to Agenda Item 21-00050 Proposed Ordinance 47-20

A Council member has submitted edits to the Proposed Tree Ordinance before the Planning Board. The staff has reviewed these edits and found appropriate places for them to be added. Attached is the appropriate amended section in which each edit would be placed.

Thank you.

Attachment
Council member edits

Section 12-6-2(D) Heritage trees. A protected tree identified by species in Appendix A of this chapter which is four (4) times the minimum Diameter Breast Height (DBH) thirty-four (34) inches or greater in diameter as measured at Diameter Breast Height (DBH). Heritage trees are protected in all the zoning districts listed in section 12-6-2, and for all land uses and are considered natural resources. Removal, cutting or pruning of heritage trees on proposed development sites may be permitted upon approval of a landscape and tree protection plan (section 12-6-4). Removal, cutting or pruning of heritage trees on developed property may be authorized ~~upon issuance of a permit~~ per section 12-6-7. A permit will be required for removal or pruning of a heritage tree in all zoning districts listed in section 12-6-2, and for all land uses, including single-family or duplex as set out in section 12-6-7.

Section 12-6-4(D) Notice. If removal is sought for ~~two~~ one (1) or more heritage trees or for more than ten (10) protected trees (including heritage trees sought to be removed) and/or if removal of more than fifty (50) of existing protected trees is sought within any property in any zoning district identified in section 12-6-2, a sign shall be posted no further back than four (4) feet from the property line nearest each respective roadway adjacent to the property. One (1) sign shall be posted for every one hundred (100) feet of roadway frontage. Each sign shall contain two (2) horizontal lines of legible and easily discernable type. The top line shall state: "Tree Removal Permit 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 or his or her designee)." The top line shall be in legible type no smaller than six (6) inches in height. The bottom line shall be in legible type no smaller than three (3) inches in height. There shall be a margin of at least three (3) inches between all lettering and the edge of the sign. The signs shall be posted at by the applicant at their expense, and shall remain continuously posted for two (2) weeks prior to until the requisite building, site work, or tree removal permit is has issued. The City's designated arborist will notify the councilperson in which district the permit has been applied for upon the receipt of the request.

Exception: This provision does not include any tree located on a currently occupied, residential property so long as the City's designated arborist has determined the tree meets the qualifications as a diseased or weakened tree as specified in Section 12-6-6(B)(2), or, in the alternative, 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.

Section 12-6-6(H) 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 ~~parcs and recreation department~~ 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 to determine if any heritage tree will be required to be removed as a result of the lot split. ~~The provisions of this subsection related to pruning do not apply to existing single-family and duplex uses.~~

Section 12-13-1 – Definitions enumerated. The following words, terms and phrases, when used in this title, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

...

Lot, nonconforming means any lot that does not meet the requirements for minimum lot area, lot width, preservation of Heritage trees not subject to removal under this Code, or yard requirements for any use, for the district in which such lot is located.

Appendix A

PROTECTED TREE LIST*

Species Type A (Small, 4" + diameter trunk)	
1.	Dogwood (<i>Cornus florida</i>)
2.	Redbud (<i>Cercis canadensis</i>)
3.	Crape Myrtle (<i>Lagerstroemia indica</i>)
4.	Fringe Tree (<i>Chionanthus virginicus</i>)
5.	Flatwoods Plum (<i>Prunus umbellata</i>)
6.	Crabapple (<i>Malus angustifolia</i>)
7.	Sand Oak (<i>Quercus geminata</i>)
Species Type B (Medium, 6" + diameter trunk)	
1.	American Holly (<i>Ilex opaca</i>)
2.	Dahoon Holly (<i>Ilex cassine</i>)
3.	Southern Magnolia (<i>Magnolia grandiflora</i>) **
4.	Eastern Red Cedar (<i>Juniperus virginiana</i>) **
5.	Southern Red Cedar (<i>Juniperus silicicola</i>) **
6.	White Cedar (<i>Chamaecyparis thyoides</i>)
7.	River Birch (<i>Betula nigra</i>)
<u>8.</u>	<u>Long Leaf Pine (<i>Pinus palustris</i>)</u>
Species Type C (Large, 8" + diameter trunk)	
1.	Live Oak (<i>Quercus virginiana</i>)**

2.	Laurel Oak (<i>Quercus laurifolia</i>)**
3.	Sweet Gum (<i>Liquidambar styraciflua</i>)**
4.	Sycamore (<i>Platanus occidentalis</i>)**
5.	Pecan (<i>Carya illinoensis</i>)**
6.	Red Maple (<i>Acer rubrum</i>)**
7.	Hickory (<i>Carya spp.</i>)**
8.	White Oak (<i>Quercus alba</i>)**
9.	Southern Red Oak (<i>Quercus falcata</i>)
10.	Florida Sugar Maple (<i>Acer barbatum</i>)
11.	Black Tupelo (<i>Nyssa sylvatica</i>)
12.	Silver Maple (<i>Acer saccharinum</i>)