

ORDINANCE NO. 20-2021

AN ORDINANCE OF THE CITY OF TITUSVILLE, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS TO PROVIDE FOR STANDARDS OF TREE PROTECTION INCLUDING THE DESIGNATION OF PROTECTED TREES, CREATION OF TOTAL CANOPY AND PRESERVED CANOPY REQUIREMENTS, STANDARDS FOR REMOVAL OF HERITAGE TREES, ESTABLISHMENT OF INCENTIVES TO PRESERVE TREES AND REDUCE MITIGATION, AND AMENDING CRITICAL ROOT ZONE, TREE SURVEY AND BUFFER YARD REQUIREMENTS, BY AMENDING CHAPTER 30 "DEVELOPMENT STANDARDS" SPECIFICALLY AMENDING SECTIONS 30-31 "INTENT", 30-32 "CRITERIA FOR REMOVAL", 30-33 "RELOCATION OR REPLACEMENT OF TREES" 30-34 "MITIGATION PLAN", 30-35 "EXCEPTIONS", 30-39 "TREE REMOVAL, PERMIT REQUIRED", 30-40 "TREE SURVEY REQUIRED BEFORE PERMIT" 30-324 "LANDSCAPE", 30-334 "REDUCTION IN REQUIRED LANDSCAPE YARDS", AND 30-338 "NATURAL BUFFER YARDS", AND CREATING NEW SECTION 30-31.5 "CANOPY REQUIREMENTS"; PROVIDING FOR GRANDFATHER PROVISION, SEVERABILITY, REPEAL OF CONFLICTING ORDINANCES, EFFECTIVE DATE AND INCORPORATION INTO THE CODE.

WHEREAS, pursuant to Article VII, Section 2, The Florida Constitution, and Chapter 166, Florida Statutes, the City of Titusville is authorized to protect the public health, safety, and welfare of its residents and has the power and authority to enact regulations for valid government purposes that are not inconsistent with general or special law; and

WHEREAS, the retention of trees and vegetation reduces erosion, provides natural water retention and filtration, provides shade, buffers incompatible uses, aids in urban temperature control, provides wildlife habitat, and improves the aesthetic quality of a community; and

WHEREAS, the preservation of trees and natural vegetation increases property values and contributes to human health; and

WHEREAS, the Conservation Element of the Titusville comprehensive plan states the City shall not allow the total removal of vegetation during land development, and;

WHEREAS, the comprehensive plan further recognizes the value of trees as an important community resource, and requires that land development regulations shall afford adequate protection of trees during development while allowing developers latitude in some cases to devise alternative strategies to save and preserve trees during development; and

WHEREAS, the establishment and implementation of policies, regulations and standards are necessary to ensure that the City of Titusville continues to realize benefits provided by trees as recognized through the "Tree City USA" designation by the Florida Department of Urban Forestry; and

WHEREAS, according to the United States Department of Agriculture Forest Service (USDA.gov), tree canopy has numerous benefits, includes reducing summer peak temperatures and air pollution, increasing property values, providing wildlife habitat, providing aesthetic benefits, and attracting businesses and residents to a community; and

WHEREAS, *Florida's Urban Forest: A Valuation of Benefits* (University of Florida Institute of Food and Agricultural Sciences (IFAS) Publication #ENH1331, November 3, 2020) estimates that based upon 2019 leaf-on aerial imagery from National Agricultural Imagery Program in 2019, the Palm Bay-Melbourne-Titusville area had a canopy cover of 37.3% +/- 2.1% (95% confidence interval); and

WHEREAS, research published in the journal *Landscape and Urban Planning* found that the presence of a tree ordinance having some form of heritage or significant tree designation was associated with a 6.7% increase in urban tree canopy for municipalities in Florida (*Landscape and Urban Planning* 190 (2019) 103630), and

WHEREAS, the Titusville Environmental Commission considered and made recommendations regarding this ordinance; and

WHEREAS, the Planning and Zoning Commission considered the recommendations of the Titusville Environmental Commission and made recommendations regarding this ordinance; and

WHEREAS, the City Council has considered the recommendations of the Titusville Environmental Commission, the Planning and Zoning Commission and interested members of the public during their review of the ordinance, and

WHEREAS, this ordinance is internally consistent with the goals, objectives and policies of the Titusville Comprehensive Plan; and

WHEREAS, the requirements of this ordinance generally maintain a balance between important environmental concerns and compatible development by allowing development while encouraging the establishment of an acceptable amount of tree coverage on public and private lands within the City while protecting property rights; and

WHEREAS, the City Council find this ordinance to be in the best interests of the public health, safety and welfare of the citizens of Titusville.

NOW, THEREFORE, BE IT ENACTED by the City of Titusville, Florida as follows:

Section 1. Recitals. The foregoing recitals are deemed true and correct and are hereby adopted and incorporated herein by this reference.

Section 2: That Chapter 30 "Development Standards", Article II "Environmental", Division 2 "Trees and Vegetation (Preservation and Mitigation)", Section 30-31 "Intent" of the Land Development Regulations of the City of Titusville is hereby amended to read as follows:

Sec. 30-31. Intent, general standards and definitions.

(a) Intent. This article is intended to improve and protect the environment, character and value of surrounding properties. The provision of landscaping and the retention of natural plant growth reduces erosion, provides natural water retention and filtration, provides shade, buffers incompatible uses, aids in urban temperature control, provides wildlife habitat, and improves the aesthetic quality of a community, thereby promoting the public health, safety and general welfare.

(b) General standards.

- (1) Residential subdivisions are required to meet the minimum requirements of preserved and total tree canopy areas, and associated reduced tree mitigation requirements. Incentives are also provided for those developments that satisfy and exceed tree canopy requirements.
- (2) Other developments described in Section 30-31.5 (b), "Canopy area requirements", have the option to either meet the minimum requirements of preserved and planted tree canopy areas, and associated reduced tree mitigation requirements, or meet the full tree mitigation requirements. For those projects for which tree canopy requirements are optional, mitigation requirements are provided which are greater than those required for residential subdivisions. The applicant can choose either option, but cannot mix the two approaches. Incentives are also provided for developments exceeding tree canopy area requirements.
- (3) Except as described in this Article, all developments are required to meet the provisions related to heritage trees.

(c) -Protected trees are designated as follows:

<u>Tree Designation</u>	<u>Species</u>	<u>Size – Diameter at Breast Height</u>
<u>Significant</u>	<u>Native or IFAS-designated Florida-friendly, excluding palms</u>	<u>Equal to or greater than fourteen (14) inches and less than twenty (20) inches</u>
<u>Specimen</u>	<u>Native or IFAS-designated Florida-friendly, excluding palms</u>	<u>Equal to or greater than twenty (20) inches and less than forty-six (46) inches</u>
<u>Heritage</u>	<u>Native or IFAS-designated Florida-friendly, excluding palms</u>	<u>Equal to or greater than forty-six (46) inches</u>

(d) Canopy means the area consisting of a tree's branches in all directions from its trunk, the outer edge of which is the dripline.

(e) Canopy area is the combined total area covered by tree canopy after the removal of invasive species, dead or diseased trees. The canopy area shall be set aside for the purpose of preserving and planting trees as identified on the site plan/plat.

(f) Critical root zone (CRZ) is also called the "tree protection zone" is often defined as an imaginary circle on the ground that corresponds with the "dripline" of the tree. However, the dripline is very irregular and misleading, so the trunk diameter is referred to.

(1) To determine a CRZ:

- a. Measure tree diameter four and one-half (4.5) feet above grade.
- b. Multiply this by twelve (12) inches.

c. The calculation gives the diameter of the CRZ centered on the tree. For example, a twenty-five-inch diameter tree would have a twenty-five-foot diameter CRZ.

(2) Limited development in the CRZ is allowed as follows.

- a. Impervious surfaces are allowed in the CRZ if no more than twenty-five percent (25%) of the CRZ area is impervious. Additional impervious surface may be approved by the Development Review Committee when methods are utilized that would permit water to adequately penetrate the root zone to allow the continued viability of the tree. Grade changes within the CRZ shall not exceed a difference of three (3) inches between the pre-development grade and the post-development grade.
- b. If new development or a grade change occurs in the CRZ, except as described in (a) above, the tree shall be considered as being fully impacted and mitigation/replacement as required by code shall be applied; no mitigation credit shall be allowed.
- c. The CRZ of a preserved tree may include existing impervious area(s) not adversely affecting the viability of the tree.

(g) Development area is the total site area to be utilized in canopy area calculations as determined by the applicant. Land that may be excluded from the development area includes wetlands, drainage or utility easements, water bodies, or any other land which will not be altered. Only land included within the development area may be utilized to meet canopy area requirements.

Section 3: That Chapter 30 "Development Standards", Article II "Environmental", Division 2 "Trees and Vegetation (Preservation and Mitigation)", of the Land Development Regulations of the City of Titusville is hereby amended by adding a section, to be numbered Section 30-31.5 "Canopy area requirements", which said section reads as follows:

Sec. 30-31.5. – Canopy area requirements.

(a) Residential subdivisions shall meet required tree canopy area as a percentage of the development area. Minimum canopy area requirements may be met through a combination of preserved and planted trees as provided below:

- (1) In the event there is insufficient preserved canopy area to meet the required minimum preserved canopy area, the applicant shall be required to plant additional trees to meet the total tree canopy area requirement. Any trees planted to address a shortfall of preserved canopy area shall not receive mitigation credit.
- (2) Within subdivisions, required canopy areas shall not include portions of individual residential lots.

<u>Development Type</u>	<u>Total Canopy Area as a Percentage of Development Area</u>	<u>Minimum Preserved Canopy Area as a Percentage of Development Area</u>
<u>Residential subdivision</u>	<u>25%</u>	<u>15%</u>
<u>Developments listed in (b) below</u>	<u>20%</u>	<u>10%</u>

(b) Optional canopy area requirements. The following categories of development are not required to satisfy the canopy area requirements shown above, but may voluntarily satisfy the canopy area requirements to benefit from reduced mitigation requirements as set forth in Section 30-34, "Mitigation plan, incentives". In the event there is insufficient preserved canopy area to meet the required minimum preserved canopy area, the applicant shall be required to plant additional trees to meet the total canopy area. Any trees planted to address a shortfall of preserved canopy area shall not receive mitigation credit.

- (1) Residential development not located in a subdivision and single family lots located outside of a subdivision.
- (2) Commercial development.
- (3) Industrial development.
- (4) All development in the Downtown Mixed-Use zoning district.

(c) An aerial photograph not more than one (1) year old may be utilized to determine the tree canopy area.

(d) Canopy Area Requirements

- (1) Canopy coverage is calculated by adding together the canopy area of single trees and tree clusters, which are defined as three (3) or more trees which canopies are within five (5) feet of each other. The entire area within tree clusters shall be considered within the canopy area calculation.
- (2) Undisturbed vegetated scrub habitat consisting of, but not limited to, chapman oak, scrub oak and sand live oak, in excess of an average of thirty-six (36) inches in height may be considered as part of the tree canopy area.
- (3) Category I invasive plant species as listed by the Florida Exotic Pest Plant Council shall not be counted toward canopy area requirements.
- (4) All required tree canopy areas shall be permanently protected in a recorded plat condition, or declaration of covenants recorded in the official records of Brevard County, Florida, or with sufficient protective language, noted on the approved site plan as a condition of approval, in property records maintained by the City of Titusville.
- (5) Loss of canopy area to a level below the required total canopy area requirements shall require replacement.
- (6) Canopy areas may include portions of Low Impact Development (LID) stormwater management features incorporating existing and/or planted trees and native vegetation.

- (7) Canopy areas may include areas of planted trees in stormwater retention or detention areas and other nutrient removal mechanisms when utilizing LID techniques.
- (8) Canopy areas may be located in code required buffers, wetlands and wetland buffers, and any preservation areas or buffers required by zoning, conditional use permit, master plan, planned development or development agreement approval.
- (9) Up to fifty (50) percent of canopy area containing preserved trees may be forested wetlands provided the wetlands are free of invasive species.
- (10) Canopy areas may contain passive recreation areas, boardwalks, trails, decks and paths as long as these areas are pervious and will not cause damage to the CRZ required in Section 30-31, "Intent, general standards and definitions."
- (11) Canopy from planted trees shall be calculated at fifty percent (50%) of the size at maturity as referenced in Appendix A (attached) to the extent that the expected canopy coverage would be contained within the designated, legally-protected canopy area.
- (12) Placement of canopy areas within the interior of the development is encouraged.

Section 4: That Chapter 30 "Development Standards", Article II "Environmental", Division 2 "Trees and Vegetation (Preservation and Mitigation)", Section 30-32 "Criteria for removal" of the Land Development Regulations of the City of Titusville is hereby amended to read as follows:

Sec. 30-32. - Criteria for removal.

- (a) The following criteria shall be considered by the Administrator to be justification for removal of protected trees. For heritage trees, additional criteria are provided in paragraph (e), below.
 - (1) Trees located in a portion of a lot or parcel in which a building, driveway, sidewalk, retention area or accessory structure will be constructed where redesign, including LID techniques or alternative construction methods, to avoid tree removal is not feasible.
 - (2b) Trees located with their critical root zone in such close proximity to buildings, driveways, sidewalks, or accessory structures that they prevent the property development of the lot or parcel.
 - (3) Trees that are deemed to be hazardous to persons or property, as determined by an evaluation of a certified arborist, Florida licensed landscape architect, or Florida Nursery Growers and Landscaping Association (FNGLA) certified horticulture professional;
 - (4) Trees, including heritage trees, which are dead, diseased or weakened by age, storms, fire or other injuries, which pose a threat to the welfare of the general public as determined by a certified arborist, Florida licensed landscape architect, or FNGLA certified horticulture professional. The permit fee will be waived in these cases.
 - (5) Tree removal activities authorized and preempted by state or federal law or regulation, which include, but are not limited to:
 1. Removal of trees on residential property which pose danger to persons or property in accordance with Section 163.045, F.S., for which no permit or replacement tree will be required.

2. Removal of trees by an electric utility to clear trees away from power lines in order to ensure the safe transmission of electricity to customers, as provided by Florida Statutes and Electric Tariff Rules, including the preemption under Section 163.3209.

(b) Sufficient evidence in the form a written statement must be provided to the Administrator to substantiate the need for any tree removal.

(c) ~~Critical root zone (CRZ) is also called the "tree protection zone" is often defined as an imaginary circle on the ground that corresponds with the "dripline" of the tree. However, the dripline is very irregular and misleading, so the trunk diameter is referred to. To determine a CRZ:~~

- (1) ~~Measure tree diameter four and one-half (4.5) feet above grade.~~
- (2) ~~Multiply this by twelve (12) inches.~~
- (3) ~~The calculation gives the diameter of the CRZ centered on the tree. For example, a twenty-five-inch diameter tree would have a twenty-five-foot diameter CRZ.~~

(d) ~~Trees, which are dead, diseased or weakened by age, storms, fire or other injuries, which pose a threat to the welfare of the general public. The permit fee will be waived in these cases.~~

(e) If after consideration of the above criteria, tree removal cannot be avoided, the Administrator is authorized to grant reduction up to twenty-five percent (25%) to the setback regulations applicable, ~~for all non-single family residential uses, up to twenty-five (25) percent of the required setback~~ in order to avoid the removal of the protected tree. However, no setback shall be reduced to less than the required fire separation for the proposed structures of the proposed.

(d) Shredding, chipping and/or off-site wood logging is the desired method for removing vegetation from the site. In electing this option, a twenty-five percent (25%) credit will be given towards the required monetary contribution to the City's Public Landscaping Trust Fund.

(e) Heritage trees may be removed if approved by the Development Review Committee, utilizing the criteria in (a) above in addition to the following criteria:

- (1) Whether the project can be reasonably reconfigured to preserve the heritage tree(s);
- (2) Whether a reduction of required setbacks, buffers, road width or other code requirement by the Development Review Committee, would be sufficient to preserve the heritage tree(s);
- (3) Whether alternative construction methods, including the use of low-impact (LID) techniques such as pervious pavement, grade beams, retaining walls, and/or tree wells, can be utilized to preserve the tree;
- (4) Where seventy-five percent (75%) or more of the existing heritage trees are proposed to be preserved, review by the Development Review Committee shall not be required.
- (5) Other site specific conditions as may be presented by the applicant.
- (6) Appeals to the decision of the Development Review Committee shall be processed as described in Section 34-248(b), "Appeals of site plan."

(f) Appeals/Variances. All applications for appeals or variances that are not otherwise addressed in this Article, shall be considered by the Board of Adjustments and Appeals. If an individual has exhausted all available administrative remedies and is of the opinion that the application of these regulations denies all reasonable use of the property, an additional procedure for relief is afforded in Chapter 34 "Procedures", Article X "Beneficial Use".

Section 5: That Chapter 30 "Development Standards", Article II "Environmental", Division 2 "Trees and Vegetation (Preservation and Mitigation)", Section 30-33 "Relocation or replacement of trees" of the Land Development Regulations of the City of Titusville is hereby amended to read as follows:

Sec. 30-33. - Relocation or replacement of trees.

- (a) As a condition of granting a permit, the applicant may be required to relocate trees being removed or replace the tree being removed with a Florida-friendly species tree of similar type elsewhere on the site which shall meet the be a minimum specifications provided in Table 30-5, "Minimum Landscape Planting Specifications", Section 30-322, "Minimum size of plantings/grading of planting" of one (1) inch caliper as measured at a height of four and one-half (4½) feet above ground (dbh) provided the site can reasonably support the relocation or replacement as determined by the Administrator. Replacement trees shall have a healthy root system and a minimum grade of Florida #1.
- (b) For every protected tree, reasonable relocation includes techniques such as root pruning, tree spades and other similar techniques. Relocation techniques shall be reviewed and approved by the City prior to being used for any relocation of trees on the property.
- (c) The mitigation plan shall include designation of any proposed relocation area(s). All relocation areas shall be permanently protected in a recorded plat condition, or declaration of covenants recorded in the official records of the City of Titusville Brevard County, Florida, or with sufficient protective language, as noted on the approved landscape site plan, which shall be noted as a condition of approval, in property records maintained by the City of Titusville.
- (d) No new overstory tree shall be planted within the drip line of an existing tree being preserved.
- (e) The City may not require a property owner to replant a tree that was pruned, trimmed, or removed in accordance with Section 163.045, F.S., as may be amended.
- (f) Replanting and/or mitigation of trees removed by an electric utility to clear trees away from power lines, as provided by Florida Statutes and Electric Tariff Rules shall be consistent with the provisions of Section 163.3209, F.S., as may be amended.

Section 6: That Chapter 30 "Development Standards", Article II "Environmental", Division 2 "Trees and Vegetation (Preservation and Mitigation)", Section 30-34 "Mitigation plan" of the Land Development Regulations of the City of Titusville is hereby amended to read as follows:

Sec. 30-34. — Mitigation Planplan, incentives.

- (a) As a condition of granting a permit, the applicant is required to prepare a Mitigation Plan for all protected major trees (measuring twenty (20) inches dbh or more) which are designated for removal. Said plan shall provide for a two-to-one replacement based on tree caliper (i.e.

~~if a twenty-two-inch dbh tree is being removed a total of forty-four (44) inches dbh shall be replanted on the site). as provided below.~~

(1) For residential subdivisions and developments meeting the optional minimum preserved and total canopy area:

- a. Significant tree – fifty percent (50%) mitigation replacement based on trunk dbh
- b. Specimen tree – one hundred percent (100%) replacement based on trunk dbh
- c. Heritage tree – two-hundred percent (200%) mitigation replacement based on trunk dbh,

(2) For developments that do not meet minimum preserved and total canopy area, required mitigation shall be a two-to-one replacement based on tree dbh of specimen and heritage trees being removed. No mitigation is required for significant trees.

(b) All replacement mitigation trees shall be depicted on the mitigation plan with identification of the type of tree. The replacement mitigation tree plantings on site shall be in addition to any landscape planting required by the land development regulations.

(c) Mitigation plantings are permitted within preserved and planted canopy areas if there is sufficient room to ensure viability of canopy and mitigation plantings. Caliper inches planted above the minimum size for canopy areas and required landscape areas may be credited toward mitigation planting requirements.

(d) The mitigation plan shall include a list (including species and size) of all protected trees proposed for removal, a list of all protected trees to be preserved, and the location of any required canopy areas.

(e) Alternatively, For residential subdivisions and those projects meeting the minimum canopy requirements established in Section 30-31.5 "Canopy area requirements", the applicant may in lieu of replanting, preserve native vegetation on the site consisting of at least one hundred (100) square feet per tree ~~caliper dbh~~-inch lost. The preservation of native vegetation shall be in addition to any required landscaping or preservation required by any other regulation-the land development regulations, with the exception of preserved wetlands and natural buffer areas which may be counted as part of preserved area credited toward mitigation. This mitigation credit shall not be given for preserved or planted tree canopy areas. Native vegetation preservation credit may be allowed in preserved wetlands not to exceed a maximum of fifty percent (50%) of the total required mitigation inches. The mitigation plan shall include designation of proposed areas to be preserved and specifications of the kind of existing vegetation in such areas.

(f) For those projects choosing not to meet optional canopy area requirements (described in Section 30-31.5 (b) "Canopy area requirements"), the applicant may in lieu of replanting preserve native upland vegetation on the site consisting of at least of one hundred (100) square feet per tree dbh-inch lost. The preservation of native vegetation shall be in addition to any required landscaping or preservation required by any other regulation.

(g) As a last resort for sites which cannot accommodate the plantings required by the Mitigation Plan this section (as determined by the Administrator), the applicant shall contribute to the City's Public Landscaping Trust Fund an amount equal to ~~one hundred seventy-five~~ dollars (\$75.00 ~~100.00~~) per net ~~caliper dbh~~-inch lost ~~where canopy requirements are met~~. For those developments which do not choose to fulfill the optional tree canopy requirements established in Section 30-31.5, Canopy area requirements, the contribution shall be ~~one-hundred~~ dollars (\$100.00) per net dbh inch lost. This provision can be reduced to ~~seventy-five~~ dollars (\$75.00) per a net caliper inch lost when the trees are logged, in lieu of burning.

(hb) When mitigation trees are removed to address requirements established by floodplain compensatory storage regulations (Section 30-103(f)(3)), the mitigation criteria for that portion of the development shall be enforced as shown below:

- (1) The replacement ratio shall be one-to-one replacement based on tree caliper.
- (2) The contribution to the City's Public Landscape Trust Fund shall be an amount equal to one hundred dollars (\$100.00) per net ~~caliper~~^{dbh}-inch lost ~~for those developments which do not choose to fulfill the optional tree canopy area requirements established in Section 30-31.5, Canopy area requirements. For residential subdivisions, the contribution to the City's Public Landscape Trust Fund shall be an amount equal to seventy-five dollars (\$75.00) per net dbh-inch lost.~~

(ie) The provision of payment into the City's Public Landscaping Trust Fund shall not be eligible for a variance before the Board of Adjustment and Appeals.

(jd) Appeals. Appeals of the Administrator's determination as to the practicality of installing required mitigation trees shall be processed as described in Section 34-248(b), Appeals of site plan. If the appeal is granted by the Board of Adjustment and Appeals, the applicant shall make the required payment as stipulated by Section 30-34, "Mitigation plan, incentives", into the City's Public Landscaping Trust Fund.

(k) Incentives to preserve canopy areas and reduce mitigation are shown below.

- (1) Incentive 1. Developments satisfying all requirements for minimum preserved canopy area and total canopy area are exempt from further mitigation for significant trees that are removed. In addition, a fifty percent (50%) reduction in mitigation of specimen trees shall be granted. On developments where this is achieved, a tree survey of significant trees is not required outside of the total canopy area.
- (2) Incentive 2. If a site plan or subdivision plan provides for a total canopy area increase of 5% of the site in accordance with the table below, then no further tree mitigation or payment in lieu of mitigation is required, with the exception of heritage trees.

	<u>Total Canopy-Area</u>
<u>Residential subdivisions</u>	<u>30% or greater</u>
<u>Development described in Section 30.31.5</u>	
<u>choosing to meet canopy requirements</u>	<u>25% or greater</u>

(l) If trees four (4) inches dbh or larger are used to satisfy required landscape requirements of Division 10 of the Land Development Regulations, one-hundred percent (100%) of the tree caliper shall be eligible for mitigation credits.

Section 7: That Chapter 30 "Development Standards", Article II "Environmental", Division 2 "Trees and Vegetation (Preservation and Mitigation)", Section 30-35 "Exceptions" of the Land Development Regulations of the City of Titusville is hereby amended to read as follows:

Sec. 30-35. - Exceptions.

- (a) Emergency conditions. The City Manager or ~~his~~-designated representative may waive all or part of these requirements in the event of natural disaster such as hurricanes, tornados, floods, or hard freezes.

- (b) Licensed plant and tree nurseries shall be exempt from the terms and provisions of this article when trees planted or growing on the premises of said licensee are so planted and growing for the sale to the general public in the ordinary course of business.
- (c) Persons donating trees to a public body for transplanting on public property shall be exempt from the payment of fees for obtaining the required permit when said trees are accepted by the public body.
- (d) Nuisance trees shall be removed; ~~and~~ a permit is not required. A list of nuisance trees ~~can be found Section 2.3 of the Tree Protection/Removal of the Environmental Technical Manual~~ shall be those identified as Category I by the Florida Exotic Pest Plant Council.

Section 8: That Chapter 30 "Development Standards", Article II "Environmental", Division 2 "Trees and Vegetation (Preservation and Mitigation)", Section 30-39 "Tree removal, permit required" of the Land Development Regulations of the City of Titusville is hereby amended to read as follows:

Sec. 30-39. - Tree removal, permit required.

- (a) No person, organization, society, association or corporation, or any agent or representative thereof, directly or indirectly, shall cut down, destroy, remove or move, or effectively destroy through damaging any tree ~~with a trunk diameter of four (4) inches or more, said diameter being measured four and one-half (4½) feet above ground level, prior to the issuance of a permit by the City of Titusville, unless such removal is pre-empted by state or federal regulation.~~.
- (b) Diameter breast height (DBHdbh) is the measurement of the tree's diameter made by tree professionals, taken at breast or chest height. This diameter is measured over the outside bark using a diameter tape at the point "breast height." Breast height is specifically defined as a point around the trunk at four and one-half (4.5) feet (1.37 meters in metric using countries) above the forest floor on the uphill side of the tree. For the purposes of determining breast height, the forest floor includes the duff layer that may be present, but does not include unincorporated woody debris that may rise above the ground line.
- (c) A tree removal permit shall not be required from an owner of an existing single-family residential dwelling. For the purposes of tree removal, a single-family residence shall be considered existing one (1) year after issuance of the certificate of occupancy.
- (d) Common areas and tracts within ~~a single-family developments~~ shall not be exempt from permit requirement for removal of trees.

Section 9: That Chapter 30 "Development Standards", Article II "Environmental", Division 2 "Trees and Vegetation (Preservation and Mitigation)", Section 30-40 "Tree survey required before permit" of the Land Development Regulations of the City of Titusville is hereby amended to read as follows:

Sec. 30-40. - Tree survey required before permit.

- (a) Before obtaining a clearing and grubbing permit, building permit, sketch plat, preliminary plat approval or site plan approval, in addition to other requirements set out in these regulations all applicants shall submit a survey provided by a registered land surveyor, landscape architect or FNGLA certified nursery horticulture professional detailing the following information shown below.

(b) As a condition of granting a permit, the developer shall work with staff to adjust the proposed layout to achieve preservation of healthy native trees where feasible. The developer shall be required to consider, and where feasible, implement the recommendations of staff regarding the redesign of the site and utilize low impact development methods to preserve such trees.

(c) Tree survey requirements

(1) The tree and vegetation survey requirements as described below supersede all other provisions for tree surveys found in the City land development code and technical manuals.

(2) For all sites the applicant shall provide the following:

(a) A survey of trees and a sampling of understory vegetation prepared by a Florida Licensed surveyor that lists the tree species, dbh, and quantity of each tree species with fourteen (14) inch dbh and larger. For areas to be preserved for mitigation credit, the tree survey shall also include all trees six (6) inch dbh and larger. Smaller size trees may be shown in order to meet landscape planting requirements. A general description of the understory species and coverage shall be provided.

(b) The survey shall also include a sampling of vegetation that is representative of the species diversity and distribution throughout the interior of the site as follows: 100 feet by 100 feet sample areas at the rate of one (1) sample area per three (3) acres. An inventory in each sample area shall list all trees six (6) inch dbh and larger, and show their species, quantity, and dbh. The City reserves the right to request additional sample areas based on site conditions.

(a) The location of trees six (6) inches or more in trunk diameter;
(b) Designation of trees proposed to be removed, retained or replaced due to buildings, roads, sidewalks, manmade structures or improvements;
(c) Designation of such trees considered diseased or hazardous to buildings, pavement, utilities or other proposed improvements; and
(d) Designation of trees which may be adversely affected by proposed grade changes.
(e) For subdivisions, and individual lots greater than five (5) acres, the developer shall provide the following:

(1) An aerial photograph of the subject property which indicates where the streets and utilities are planned and which trees are proposed to be removed.

(2) Written evaluation of the number of trees to be removed and any reasons for the proposed layout. All trees twelve (12) inches dbh and greater, proposed to be removed shall be flagged or painted in the field.

(3) The location of all mitigation size trees as located by a registered land surveyor, landscape architect or certified nursery professional.

(4) The location of trees six (6) inches or greater in buffer areas or twenty (20) feet from property lines.

(5) An explanation of how trees are to be protected during site clearing activities.

(6) Whenever possible, shredding, chipping and/or off site wood logging is desirable alternative to burning. In electing this option, a twenty-five (25) percent credit will be

~~given towards required tree mitigation and/or contribution to the City's Public Landscaping Trust Fund.~~

~~(7) The developer agrees to work with staff and adjust the proposed layout to preserve more trees and specifically to preserve mitigation size trees.~~

Section 10: That Chapter 30 "Development Standards", Article III "Improvements", Division 10 "Landscaping", Subdivision 2, Section 30-324 "Landscape" of the Land Development Regulations of the City of Titusville is hereby amended to read as follows:

Sec. 30-324. - Landscape.

(a) Residential development:

- (1) All ~~single-family~~ residential subdivision lots or developments shall meet the canopy area requirements of Section 30.31.5, "Canopy area requirements". Residential developments that are not within subdivisions shall preserve an area of approved low and moderate tolerant water usage mixed vegetation (native trees and shrubs are preferred) equal to at least ten (10) percent of the total lot or development area. In the event there is no approved low and moderate tolerant water usage mixed vegetation on a lot or development, the applicant shall be required to establish an area of approved low and moderate tolerant water usage mixed vegetation equal to ten (10) percent of the lot or development. Required landscaping may be credited as established in the Landscape Credits Table, 30-7 of this section.
- (2) At a minimum, fifty (50) percent of newly installed vegetation must be shrubs.
- (3) The front yard tree requirement may be waived by the Administrator if the residential lot(s) preserves trees and underlying vegetation in the front yard setback area.

(b) Commercial development:

- (1) Ten (10) percent of the required landscape area for a commercial development shall utilize low and moderate tolerant water usage mixed vegetation (native trees and shrubs are preferred). The City can supply the applicant with a list of approved mixed low and moderate tolerant water usage vegetation upon request (see Landscape Technical Manual). Required landscaping may be credited as established in the Landscape Credits Table, 30-7 of this section.

(c) Industrial development:

- (1) Ten (10) percent of the required landscape area for an industrial development shall utilize low and moderate tolerant water usage mixed vegetation (native trees and shrubs are preferred). The City can supply the applicant with a list of approved mixed low and moderate tolerant water usage vegetation upon request (see Landscape Technical Manual). Required landscaping may be credited as established in the Landscape Credits Table, 30-7 of this section.
- (2) Industrial development may consolidate all required landscaping between the public right-of-way and the building. For example, the required planting materials in a building perimeter landscape strip for the entire perimeter of the proposed structure may be consolidated along the front edge of the building. As the minimum plant materials will be consolidated along the front of the building, the remainder of the perimeter will not require a building perimeter landscape strip. This consolidation can be applied to required building perimeter landscape strips, and required landscape yards except as

noted below. This regulation shall not be construed to not require landscaping between the building and any public right-of-way.

- (3) Required landscape yards may only be consolidated between the building and public right-of-way for property lines that abut other industrial development or zoning districts. Industrial development that abuts non-industrial development or zoning districts shall provide the required buffer along those property lines abutting non-industrial development or zoning districts.
- (4) Industrial development which is adjacent to two (2) public rights-of-way (ex: a corner lot) may consolidate the required landscaping between the building and the two (2) rights-of-way.

[(d)] [Reserved.]

(e) Downtown Mixed-Use (DMU) zoning district. The DMU landscape standards can be found in Division 7 of this chapter.

(f) Required landscaping may be credited as established in the landscape credits table below.

Table 30-7: Landscape Credits

Plant Material	Minimum size	Equivalency
Preserved tree	Minimum 4-inch caliper	Equals 200 square feet of approved mixed vegetation
Newly installed tree	Minimum 2½—3-inch caliper	Equals 200 square feet of approved mixed vegetation
Existing or newly installed shrub	Minimum 18 inches in height	Equals nine (9) square feet of approved mixed vegetation

Note— Irregular shaped lots — It is the intent that by following the above-outlined performance standards, each newly planted tree (palms not included) will have an average two hundred (200) square foot rooting area. If a conflict occurs between newly planted trees, trees preserved, and the number of trees required because of lot size, the Administrator may make the determination to ensure the required rooting area of two hundred (200) square feet for each tree.

Section 11: That Chapter 30 “Development Standards”, Article II “Improvements”, Division 10 “Landscaping”, Subdivision 3 “Landscape Yard (Buffer/Screen), Section 30-334 “Reduction in required landscape yards” of the Land Development Regulations of the City of Titusville is hereby amended to read as follows:

Sec. 30-334. - Reduction in required landscape yards.

- (a) The Administrator is authorized to grant reduction of up to fifty percent (50%) of the width of a required landscape buffer in order to avoid the removal of a protected tree. The protected tree shall be designated for preservation on the site plan and/or within a preservation area. Any person aggrieved by a decision or determination of the Administrator pursuant to this chapter may appeal such decision to the Development Review Committee.

(b) Any landscape areas reduced in size shall be offset by an equal amount in another area of the site, unless this requirement is waived by the Administrator based upon a determination of an arborist, landscape architect or FNGLA certified horticulture professional that the site will not support the required plantings.

Section 12: That Chapter 30 "Development Standards", Article II "Improvements", Division 10 "Landscaping", Subdivision 3, Landscape Yard (Buffer/Screen), Section 30-338 "Natural buffer yards" of the Land Development Regulations of the City of Titusville is hereby amended to read as follows:

Sec. 30-338. - Natural buffer yards.

Existing vegetation natural buffer yards with native vegetation shall be preserved. Existing vegetation may be used to meet any of the buffer yard requirements if the criteria of the required landscape yard type table are met. ~~The applicant shall retain as much of the existing native vegetation towards the buffer or landscape yard requirement. In cases where a significant change of grade would result in removal of vegetation, the Administrator may grant a waiver to this provision. Natural buffer yards meeting canopy requirements may count toward preserved canopy requirements provided in Sec. 30-31.5, Canopy requirements.~~

Section 13. GRANDFATHER PROVISION. All lawful existing development shall be entitled to complete development that has been previously authorized and the City recognizes the right of any person to complete the following development in compliance with the former regulations:

- (a) Building permits approved as of the effective date of this ordinance, which remains valid consistent with the Florida Building Code and requirements of this Code.
- (b) Development that has received final plat approval, site plan approval, sketch plat, preliminary plat approval and previously approved and recorded development agreements which remain valid consistent with all Code requirements.
- (c) Development that has on file with the City a completed application for a building permit, site plan, sketch plat, preliminary plat or final plat, including acceptance of all required exhibits and payment of all applicable fees and the application continues to remain active and processed consistent with the requirements of the Code, and previously approved and recorded development agreements which remain valid. Issuance of a permit from an outside agency is not required for compliance with this grandfathering provision.
- (d) The City may recognize other applications for vested rights consistent with Chapter 34 Procedures, Division 3 Vested Rights Determination, of this Code.

Any person who has a right to complete said development and has secured a building permit, final plat approval, final site plan approval, preliminary plat or sketch plat approval as provided above shall lose its right to complete said development if said development does not maintain a current building permit, or current site plan or development approval as provided for by the Code of Ordinances of the City. Once a development has lost its current approval, then in that event, future development shall comply with applicable regulations.

Section 14: SEVERABILITY. If any provisions of this Ordinance are for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 15: REPEAL OF CONFLICTING ORDINANCES. All ordinances or parts of ordinances, and all resolutions and parts of resolutions, in conflict herewith are hereby repealed to the extent of such conflict.

Section 16: EFFECTIVE DATE. This Ordinance shall be in full force and effect upon adoption by the City Council in accordance with the Charter of the City of Titusville, Florida.

Section 17: INCORPORATION INTO CODE. This ordinance shall be incorporated into the City of Titusville Code of Ordinances and any section or paragraph, number or letter, and any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and like errors may be corrected and additions, alterations, and omissions, not affecting the construction or meaning of this ordinance and the Code may be made.

PASSED AND ADOPTED this 28th day of September 2021.

Daniel E. Diesel, Mayor

ATTEST:

Wanda F. Wells, City Clerk