

ORDINANCE NUMBER 2008-0606

AN ORDINANCE OF THE CITY OF STARKE, FLORIDA, AMENDING SECTION 6-44 OF THE CITY OF STARKE LAND DEVELOPMENT REGULATIONS TO PROVIDE FOR THE CREATION AND MAINTENANCE OF A UNIFORM POLICY FOR SITE CLEARING AND TREE PROTECTION REQUIREMENTS; PROVIDING FOR EXEMPTIONS THEREFROM; PROVIDING FOR THE ISSUANCE OF SITE CLEARING AND TREE REMOVAL MITIGATION; PROVIDING FOR THE PROTECTION OF TREES DURING CONSTRUCTION; PROVIDING FOR THE CREATION AND MAINTENANCE OF A TREE MITIGATION FUND; PROVIDING FOR THE REPEAL OF ALL ORDINANCES INCONSISTANT WITH THIS ARTICLE; PROVIDING DIRECTIONS TO THE CODIFIER; PROVIDING AN EFFECTIVE DATE;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF STARKE, FLORIDA AS FOLLOWS:

Section 1. Purpose.

This Ordinance amends the Starke land development regulations so as to created and maintain a uniform policy for site clearing and tree protection requirements.

Section 2. Amendment of Section 6-44.

(A) Section 6-44 of the Land Development Regulations of Starke, Florida is hereby amended by substitution in its entirety with the following:

Section 6-44. Site Clearing and Tree Protection Standards

(A) Definitions.

Approving authority means the Starke City Commission or other body granted authority by the Starke City Commission in the City of Starke to act on subject entitlements.

Dead tree means a lifeless tree. Evidence of lifelessness may include but is not limited to unseasonable lack of foliage, brittle dry branches or lack of any growth during the growing season.

Diameter at breast height (DBH) means the diameter of a tree trunk measured at four and one-half (4 and 1/2) feet above ground level along the center of the trunk axis. The diameter shall be calculated using of the formula, DBH equals circumference at breast height divided by 3.14.

Non-profit organization means an organization whose primary objective is to support an issue or matter of private interest or public concern for non-commercial purposes, without concern for monetary profit, as duly authorized and allowed by Federal and State laws.

Protected tree means any native tree with a trunk that is a minimum of eight (8) inches in diameter at breast height (DBH), or, any native tree with multiple trunks that include at least one trunk with a minimum diameter at breast height of six (6) inches and with trunks that have an aggregate diameter at breast height of at least twelve (12) inches.

Public involvement means the process of involving the public in the early stages of the planning process in a development project by knowing their views and opinion about the project. The extent of participation of public to be termed as public involvement shall be decided by city officials and city government.

Tree mitigation means a fee paid and/or a quantity of trees planted in exchange for the removal of one or more protected trees.

Tree mitigation committee means a committee established by approving authority comprising of city officials for purpose of evaluating a tree removal permit, related applications and concerns regarding tree mitigation funds.

Tree mitigation fund means a fund that will be used for tree-related activities including, but not limited to: the purchase of trees or tree care products, planting activities, preservation and care of trees, and education about trees in the City of Starke. The fund may receive funding from tree mitigation fees and other sources and shall be administered by the City Clerk as authorized by the City Commission.

Tree permit means a permit to be issued by the City of Starke, based upon a city permit application and a processing fee to be established by the city.

(B) Site Clearing and Tree Protection Requirements.

No person, directly or indirectly, shall engage in site clearing or cut down, remove, damage or destroy, or authorize the removal, damage or destruction of any protected tree as defined in this Code or shall commit or authorize any act which physically causes the clearing of a site or destruction of any protected tree, such as damage inflicted upon the root system by heavy equipment or by changes to the existing grade, without first having obtained a site clearing and tree removal permit pursuant to Sections 6-44(E) and (F).

(C) Exemptions to Site Clearing and Tree Protection Requirements.

1. The following are exempt from the site clearing and tree protection requirements:

- a. Any species or subspecies of trees commonly referred to as pine trees that are not protected trees under this article;

- b. Any tree located in botanical gardens or in state approved or government nurseries and groves which are grown for sale or public purpose; and
- c. Any tree located on an individually-owned, single family home, either property or subdivided lot.

2. Upon approval by the approving authority of written certification of the need to remove such a tree or trees by an individual having the requisite expertise to make such a certification, the following are exempt from the site clearing and tree protection requirements:

- a. Any tree that poses imminent danger to the public health, safety or welfare;
- b. Any tree that is diseased or weakened by age, weather, storm, fire or other act of God; and
- c. Any tree which is likely to cause injury or damage to persons, buildings or other improvements.

(D) Suspension of Site Clearing and Tree Protection Requirements.

During a period of emergency, such as a hurricane, flood or other natural disaster, the requirements of this article may be temporarily waved by the Starke City Commission so that public or private work to restore the city will be in no way inhibited.

(E) Site Clearing and Tree Removal Permits.

Prior to the removal of any protected tree or the issuance of any permit for construction, improvement, paving, or surfacing under the provisions of this Code, an application for a Site Clearing and Tree Removal Permit must be submitted for approval to the city pursuant to the procedures and standards of this article.

1. Contents of Application.

The plans submitted with the site clearing and tree removal permit application shall include the following information:

- a. A survey showing the location and identification by common name and DBH of protected trees to be removed, relocated, or retained, including any trees being preserved for credit under the provisions of Section 6-49(F), and a listing of protected trees by type and size so as to provide a summary of the removal and replacement proposal. Inclusion of the botanical names of the protected trees on the survey is desirable, but is not required. In preserve areas where groups of trees need to remain and no soil is to be disturbed, the trees may be identified by general species.
- b. A statement explaining why any protected trees is to be removed and/or relocated.
- c. The location of all proposed buildings and improvements. These shall be oriented by the applicant, to the extent the applicant determines possible, in a manner which allows for preserving of the greatest number of trees and in doing so the applicant is encouraged to design by taking into consideration the site's limitations and assets. Trees located within the existing right-of-way shall not be counted as it pertains to the minimum preservation percentage.

2. Inspections of Tree Removal Sites.

Compliance with the intent of this article may be verified by inspection prior to tree removal, development plan approval, during construction, and following the installation of landscaping.

3. Standards for issuance of permits.

The issuance of a Site Clearing and Tree Removal Permit by the city shall be based on the consideration criteria including but not limited to the following:

- a. The necessity to remove trees which pose a safety hazard to pedestrian or vehicular traffic or threaten to cause disruption to public services or which pose a safety hazard to buildings.
- b. The necessity to remove diseased trees or trees weakened by age, weather, storm, fire or acts of God, or which are likely to cause injury or damage to people, buildings, or other improvements on a lot or parcel of land.
- c. The extent to which tree removal is likely to result in damage to the property of other owners public or private, including damage to lakes, ponds, streams or rivers through runoff or erosion.
- d. The proposed landscaping approved as part of the site plan process.
- e. The topography of the site and the effect of tree removal on erosion, soil erosion, soil retention, and the diversion or increased flow of surface water.
- f. The necessity to remove trees in order to construct proposed improvements to allow access around the proposed structure for

construction equipment, access to the building site for construction equipment, or essential grade changes.

- g. The land use and natural vegetative ground coverage of surrounding property.
- h. The extent of any damage or hardship to the applicant resulting from a denial of the requested permit.
- i. The species and size of trees proposed for removal and whether the trees to be removed include exceptional specimen trees.

(F) Tree Removal Permits.

1. Any person who intends to remove or otherwise disturb any protected trees on a private property or a published easement or right-of-way shall first obtain a permit from the city.

2. All utility, right-of-way or easement specialty pruning work shall require a permit and shall be conducted in strict accordance with recognized state and national standards.

3. A tree removal permit is required for the removal of the following:

- a. Any protected tree if on undeveloped or vacant land;
- b. Any sized tree if it was required in a previous site plan development approval.
- c. Any protected tree located within any lot which is not an individually-owned, single family home, either property or subdivided lot.

4. A tree removal permit is not required for the removal of any tree located within an individually-owned, single family home, either property or subdivided lot.

- a. The exemption of the tree removal permit requirement for an individually-owned, single family home, either property or subdivided lot, applies only when the property remains an individually-owned, single family home, either property or subdivided lot for a period of one (1) year after removal of the tree.
 - b. In the event that an individually-owned, single family home, either property or subdivided lot, to which the exemption provided by Section 4(a) herein applies, is sold or is otherwise utilized for a purpose other than as an individually-owned, single family home, within one year of the exemption, then the exemption shall be considered waived and the new, after-sale property owner shall be responsible for complying with the permitting and fee requirements of this Section.
5. The approving authority shall issue a tree removal permit if any of the following general criteria are met:
- a. The tree is dead, diseased, damaged or deteriorated so as to present a danger of falling and cannot be controlled or remedied through reasonable preservation and/or preventative procedures and practices such that the public health or safety requires its removal. These conditions may include, but are not limited to, age, insects, disease or natural calamity such as hurricanes or tornadoes, storms or lightning. Written notification of such determination by a certified tree expert may be required by the city prior to consideration of the application.

- b. The tree could potentially cause substantial damage to an existing or proposed structure or existing or proposed utility services and cannot be controlled or remedied through reasonable locations or modification of the structure or utility services.

6. For those activities mandated by the city for the city's electric, water, sewer, gas and telecommunications utilities and for safety reasons, only an authorized person, employed by the responsible entity or government unit, shall do tree removal or tree trimming and related activities.

(G) Tree Removal and Mitigation.

Mitigation shall be provided for all protected trees approved for removal in association with a tree removal permit. Trees used for mitigation shall be provided with the intent to reflect the character of the site prior to development. Native trees are preferred trees for mitigation; however site appropriate non-native trees may be permitted for mitigation purposes.

1. Mitigation Replacement Formula.

The total caliper inches of replacement trees required to be planted shall equal the total DBH inches of the protected trees removed at a ratio of one inch replaced per one inch removed.

2. Replacement Credits.

Existing protected trees may be used to satisfy the tree replacement and the landscape requirements of Section 6-45, provided that the protected trees satisfy the following conditions:

- a. All trees shall be protected in accordance with tree and landscape protection standards of Section 6-45 and shall be healthy and free of damage and insect manifestations potentially lethal to the tree.
- b. One (1) inch of DBH of protected trees is retained for each one (1) inch of DBH of protected tree removed.
- c. Replacement trees must be planted on-site. Relocation of either existing protected trees onsite or replacement trees to pre-approved off-site locations can be considered, where maintenance is provided to insure survival of the trees. In certain cases, the city may consider the relocation of native trees from within a project area or to an off-site project area. Credit shall be given for relocation on the same basis as replacement, based on pre-approval from the city from within a project area or to an off-site project area. Credit shall be given for relocation on the same basis as replacement, based on pre-approval from the city.
- d. Replacement trees shall be planted for existing trees removed from the site, no replacement tree shall be considered, however as a part of landscape requirements of Section 6-45.
- e. The guidelines and limitations for relocation tree limitations are as follows:
 - i. The tree(s) being recommended for relocation must be approved by the city or its designee, whose decision will be based upon factors relating to health, type, size, and time of year, spacing, and proposed location.

- ii. Tree relocation shall be conditioned on a secured one-year replacement agreement for the tree(s). If at the end of one (1) year an arborist, registered landscape architect or registered professional forester determines the tree to be in a substantially similar condition to its consideration prior to the transplanting, the agreement will be fulfilled. If during the one (1) year period a tree dies or it has not reached a condition substantially similar to its condition prior to the transplanting, it shall be mitigated as required by this section.
- f. In the event that the applicant is unable to plant the total number of required replacement inches or trees on site as a result of insufficient planting area or adverse impact to the site development, the applicant may choose to or be directed to deposit a tree mitigation fee into a city sustained and regulated tree mitigation fund.

3. Replacement Tree Species and Size.

Replacement trees shall meet the tree and landscape material standards of Section 6-45. If multi-trunk trees are used as replacement trees, the total caliper of the two (2) largest trunks shall equal the replacement caliper.

4. Other Mitigation Alternatives.

Other tree mitigation alternatives may be authorized using one of the following methods:

a. Land Dedication.

Mitigation for the removal of protected trees may be in the form of preserving an existing and sustainable preserve of native trees. The value of the trees to be preserved shall be determined by the city. The preservation area must be either dedicated to the city, placed in a conservation easement, or some other method accepted by the city to insure preservation of the woodland habitat.

b. Tree mitigation Fee.

The city may determine that the remedies described above are not feasible or desirable, and may require instead, payment of a cash contribution based upon the cost of purchasing, planting, irrigating, and successfully establishing the required number of native trees (e.g. 2" DBH or fifteen (15) gallon native trees). The "per tree cost" shall be as established by the city and shall be deposited into the tree mitigation fund.

5. Special Provisions Allowed.

This section does not preclude the development of special provision permits providing for certain blanket tree removals without tree replacement mitigation as may benefit the city or may support Comprehensive Plan policies.

(H) Protection of Trees During Construction.

All protected trees, preserved under story vegetation, and trees retained for tree credit pursuant to this section, shall be protected from injury during any land clearing and construction process in the following manner:

1. Temporary barriers shall be constructed to prevent disturbance of the soil a minimum of six (6) feet from the trunk at any point or an area equal to fifty (50) percent of the area within the drip line. The barriers shall remain in place throughout construction.

2. The developer shall not cause or allow the cleaning of equipment, storage, or disposal of materials or waste materials such as paints, solvents, asphalt, concrete, mortar, or any other material that may endanger the health of trees or vegetation within the drip line of protected trees.

3. The protected area shall be maintained at its original grade with no trenching or cutting of any roots, and there shall be no storage of fill or compaction of soil. In no event shall motorized vehicles or equipment be allowed to park on or traverse that area within the drip line of protected trees, nor shall any dirt or other materials be stored within the barriers.

4. No attachment, wires (other than protective guy wires), signs or permits shall be fastened to a tree.

5. Developers shall post signs governing tree removal. The sign shall be not less than two (2) feet by two (2) feet in size and shall contain the following language:

PROTECTED TREES

ALL TREES MARKED TO BE SAVED ARE PROTECTED BY THE CITY OF STARKE LAND DEVELOPMENT CODE. ANY PERSON DAMAGING ANY MARKED TREES WILL BE SUBJECT UP TO A FINE OF UP TO \$250.00 PER DAY AND A STOP WORK ORDER.

6. Standards for protection of trees on disturbed sites are contained in the publication, *Tree Protection Manual for Builders and Developers*, published by the

Florida Department of Agriculture and Consumer Services (February 1986) and available through the Florida Department of Agriculture, Division of Forestry.

(l) Tree Mitigation Fund.

A tree mitigation fund shall be established for the deposit of tree mitigation fees and any penalty assessments.

1. Establishment of Per Unit Fee.

The Tree Mitigation Fund will receive cash contributions based upon the cost of purchasing, planting, irrigating and successfully establishing the required number of native trees. The “per tree cost” shall be as established and adjusted from time to time by the city and shall be documented as to the basis for the established per tree or per unit fee.

2. Intended Use of Funds.

- a. The city shall establish a Tree Mitigation Committee for administering the tree mitigation funds and assuring the appropriate use of the funds. The role of Tree Mitigation Committee shall be to allocate funds to projects deemed to be in the best interest of the city. The fund shall be utilized to propagate and protect trees and can be used in general; but not limited to planting trees on other public properties and education, purchasing property to plant or protect trees, propagating trees from seed or container stock, relocating native trees, maintaining existing trees, for public tree give-a-ways, planting or for any supporting services of costs.
- b. In addition to above stated uses, the funds can be also utilized as follows:
 - i. **Use of Funds for the City of Starke.**

The Tree Mitigation Committee will identify a list of projects that could be financed by the tree mitigation funds. Projects must be consistent with the funding objectives identified in this section. The projects, which can be included in the listing, shall be of the following types: Historic District and Streetscape Improvement Projects, Educational Programs or City Park Tree Enhancement or Replacement (for infill and areas outside of city of Starke). Tree Mitigation funds shall be considered for any project that includes tree planting or tree maintenance.

ii. Use of Funds for Other Government Projects.

Funding for any other governmental unit besides the city shall require the prior approval of the Tree Mitigation Committee and the Starke City Commission. The projects considered for funding shall directly influence the tree and existing landscape environment. The projects that can be included are Suwannee River Waste Management District Restoration or Improvement Projects, Wetland Conservation Study, Wildlife Conservation Impacts, and Urban Forestry Improvements or other similar projects.

iii. Use of Funds for Any Other Projects.

The Tree Mitigation Funds can also be partially utilized for any “Public Supported Private” or “Non-Profit Organizations”. The Tree Mitigation Committee shall review the projects and in consultation with and approved from the city have a direct influence on natural

vegetation or trees. The project shall also demonstrate substantial “public involvement” in support of the project implementation. The entities that can be included are generally homeowner associations, Chamber of Commerce, Downtown Development Agencies, civic groups and other similar organizations.

iv. Use of Funds in an Emergency.

In the case of any state of emergency such as the result of hurricanes, tornadoes and any other natural disasters that may lead to damage to public property, the responsible city department may borrow funds from the Tree Mitigation Fund upon approval of the City Commission. The funds can be utilized in implementing the evacuation strategies or the Disaster Management Plan with construction of necessary infrastructure in the city. The funds utilized from the Tree Mitigation Fund shall be returned by the borrowing agency or department within two (2) years of the date of their withdrawal. The repayment requirement may be waived by a unanimous vote of the Starke City Commission.

3. Maintenance of Funds.

The monies within the fund shall be recorded and accounted for in a manner that distinguishes them from other general funds of the city and shall be disbursed in a manner consistent with the purposes for which this fund has been established.

4. Distribution of Funds.

To receive distribution from these funds, the requesting department shall submit a brief proposal outlining a funding request amount, how the money will be used (e.g., how many trees will be planted or describe what education will be provided) and identify how the proposal complies with the policies outlined herein, for approval to the Tree Mitigation Committee.

(J) Establishment of Tree Board.

There is hereby established a City of Starke Tree Board which shall oversee the organization, implementation and modification of this Section, which shall serve as the Tree Mitigation Committee and which shall otherwise make all decisions regarding the maintenance and development of the City of Starke's urban forest.

1. Composition of Tree Board.

The City Commission of the City of Starke, Florida shall act as the City of Starke Tree Board.

Section 3. Repealer.

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

Section 4. Directions to codifier

It is the intention of the City Commission of Starke, Florida, that Section 2 of this ordinance shall become and be made a part of the City of Starke Code of Ordinances, and that the sections and paragraphs of this ordinance may be renumbered or re-lettered in order to accomplish such intentions.

Section 5. Severability.

If any subsection, sentence, clause, phrase or portion of this ordinance is for any reason held or declared to be unconstitutional, invalid or void, such holding or invalidity shall not affect the remaining portions of this ordinance, and the unconstitutional, invalid or void provisions shall be deemed to have been severed herefrom, and the remainder of this ordinance, after the exclusion of such part or parts, shall be deemed to be valid, as if such parts has not been included herein. If this ordinance or any provisions hereof shall be held inapplicable to any person, group of persons, property, or kind of property, circumstances, or set of circumstances, such holdings shall not affect the application hereof to any other person, property, or circumstances.

Section 6. Effective Date.

This ordinance shall become effective upon its filling with the Secretary of State.

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PASSED BY FIRST READING, with a quorum present and voting, by the City Commission of Starke, Florida in regular session, this _____ day of December 2008.

PASSED AND DULY ADOPTED BY SECOND READING with a quorum present and voting, by the City Commission of Starke, Florida in regular session, this _____ day of January 2009.

CITY COMMISSION OF
STARKE, FLORIDA

TOMMY CHASTAIN
DANIEL NUGENT
CAROLYN B. SPOONER
WILBUR WATERS
TRAVIS WOODS

By: _____
WILBUR WATERS
MAYOR AND COMMISSIONER

ATTEST:

LINDA W. JOHNS
CITY CLERK