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ORDINANCE NO. 09-19

AN ORDINANCE AMENDING THE LAND DEVELOPMENT REGULATIONS; AMENDING ARTICLE II, SECTION 204.00, NEW SMYRNA BEACH TREE PROTECTION REGULATIONS DEFINITIONS; AMENDING ARTICLE VI, SECTION 604.051, TREE PRESERVATION; AMENDING SECTION 604.052, TREES ON SINGLE-FAMILY PROPERTIES; PROVIDING FOR PUBLIC HEARING; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida requests supplemental administrative text amendments to expand preservation of historic and specimen trees within the City of New Smyrna Beach; and

WHEREAS, the Planning and Zoning Board at a regular meeting held on February 4, 2019, voted 5-0, to recommend the City Commission approve the requested text amendments; and

WHEREAS, the City Commission deems it is in the best interests of the citizens of the City of New Smyrna Beach to amend the Land Development Regulations as more particularly set forth hereinafter.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF NEW SMYRNA BEACH, FLORIDA:

SECTION 1: That Article II., Section 204.00 of the New Smyrna Beach Land Development Regulations is hereby amended as follows: (**Note: Omissions from text are indicated by [...], deletions from text are indicated by ~~strikeout~~, and additions to text are indicated by underline.**)

ARTICLE II. - DEFINITIONS

204.00. - New Smyrna Beach tree protection regulations definitions.

For the purposes of [sub]section 604.05A. of this LDR, the following definitions shall apply:

City horticulturist. The person responsible for administering and enforcing the provisions contained herein or a person designated by the city horticulturist.

DBH. Tree diameter at breast height, measured at 4.5 feet above ground level.

44 *Drip line.* A vertical line running through the outermost portion of the tree crown extending to the
45 ground.

46 *Historic tree.* Any ~~live oak (quercus virginiana) or bald cypress (taxodium distichum) tree, exclusive of~~
47 ~~those found on the Florida Exotic Pest Plan Council list, 36 inches DBH or greater or tree in the city selected~~
48 ~~and duly designated a Florida State Champion, United States Champion or a World Champion by the~~
49 ~~American Forestry Association shall likewise be considered an historic tree, or any other tree designated~~
50 ~~by the City Commission to be of such unique and intrinsic value to the general public because of its size,~~
51 ~~age, historic association, or ecological value as to justify classification as a historic tree.~~

52 *Lot, developed.* A parcel of land occupied by one main building and its accessory buildings with such
53 open and parking space as required and having its principal frontage upon a street.

54 *Lot, unimproved.* An undeveloped parcel of land.

55 *Person, applicant, subdivider/developer.* Shall include an individual, partnership, corporation,
56 association, group, company, firm, society or other legal entity of human beings, whether natural or artificial,
57 including the city, and all other municipal state and federal governments, and shall include the plural as well
58 as the singular.

59 *Remove or removal.* Remove or removal shall include actual removal and effective removal through
60 killing, damaging or destroying.

61 *Specimen tree.* The following species of trees with the minimum specified diameter at breast height
62 (DBH) are determined to be specimen trees. When a Specimen tree reaches 36 inches DBH, it shall be
63 considered a Historic tree for purposes of removal under Section 604.051(f) of these LDRs.

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Common Name	Botanical Name	DBH
Turkey Oak	Quercus leavis	12 inches and larger
Other Oak Species	Quercus spp.	18 inches and larger
Maple	Acer spp.	18 inches and larger
Hickory	Carya spp.	18 inches and larger
Elm	Ulmus spp.	18 inches and larger
Lobloly Bay	Gordonia lasianthus	12 inches and larger
Sweet Bay	Magnolia virginiana	12 inches and larger
Real Bay	Persea borbonia	12 inches and larger
Swamp Bay	Persea borbonia	12 inches and larger

Sycamore	Platanus occidentalis	18 inches and larger
Magnolia	Magnolia grandiflora	12 inches and larger
Bald Cypress	Taxodium distichum	18 inches and larger
Red Cedar	Juniperup silicicola	12 inches and larger
<u>Banyan</u>	<u>Ficus benghalensis</u>	<u>12 inches and larger with accessory trunks</u>

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Tree. Any self-supporting woody plant which normally grows to an overall height of a minimum of 15 feet, with one main trunk, ~~and which at the time of application, measures no less than six inches in diameter measured four feet above ground level.~~

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SECTION 2: That Article VI., Section 604.051(F) of the New Smyrna Beach Land Development Regulations is hereby amended as follows: **(Note: Omissions from text are indicated by [...], deletions from text are indicated by ~~strikeout~~, and additions to text are indicated by underline.)**

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ARTICLE VI. - DEVELOPMENT DESIGN AND IMPROVEMENT STANDARDS

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604.051. *Tree preservation.*

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- F. *Permitting.* The tree removal application shall be made in the following manner:
 - (1) Sites requiring plan review committee (class II or class III site plans) approval shall be required to provide a survey of the property prepared by a surveyor registered with the State of Florida showing existing features of the property including elevations, buildings, structures, trees over six inches in trunk diameter at 4.5 feet above ground level, all specimen and historic trees, streets, utility easement rights-of-way, and land use. For properties east of the Indian River the survey must show trees over four inches in diameter at 4.5 feet above ground level. In lieu of a tree survey an applicant may submit any generally accepted method of calculating the number of trees.

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Class I site plans may submit a sketch in place of a tree survey.
No permit to clear or grade shall be issued until either the required survey or sketch is filed.

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- (2) The location of all trees on the site, designating the trees to be retained, removed, relocated or replaced. Groups of trees in close proximity may be designated as "clumps" of trees with the estimated number shown. Historic trees, specimen trees, and those trees to be removed, relocated or replanted must be named (botanical) on the site plan.
- (3) In the case of partial development, show only those areas and items affected.
- (4) Upon receipt of the application and fee for tree removal permit, the city manager or his designee shall review the plans and may inspect the site.
- (5) If the work described is not begun within ~~six months~~ one year from the date of issuance of the permit for tree removal, said permit shall be void. The city manager or his designee reserves the right to extend or rescind the tree removal permit if conditions warrant.
- (6) Historic trees in all zoning districts shall be removed only upon a tree removal permit granted by the city commission at a quasi-judicial public hearing, after a finding that the evidence presented is more compelling for the removal of the historic tree than for it to remain.
 - a. Petitioners wishing to obtain a permit must show:
 - i. The tree is currently damaging or is posing an imminent danger to an existing structure; or
 - ii. The tree is damaging and/or interfering with the installation, operation, and/or maintenance of existing or proposed public infrastructure; or
 - iii. The tree is dead, diseased, structurally unsound, or severely injured such that the tree is likely to die within two years; or
 - iv. Other extraordinary circumstance or hardship where the applicant has demonstrated that no other feasible option exists to preserve the tree.
 - b. Applications for historic tree removals shall be accompanied by a written tree evaluation report prepared by an ISA certified arborist which identifies the tree's location, size, species, condition, and basis for meeting one or more of the listed removal conditions.
- (7) Specimen trees 24-inches DBH or greater shall be removed only upon a tree removal permit approved by the Development Services Director, based on the proposed tree removal meeting one of the four conditions listed in Section 604.051(F)(6)(a). Appeals of the Director's decision may be made to the City Commission as a quasi-judicial matter.

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SECTION 3: That Article VI., Section 604.052 of the New Smyrna Beach Land Development Regulations Article II. is hereby amended as follows: (Note: Omissions from text are indicated by [...], deletions from text are indicated by ~~strikeout~~, and additions to text are indicated by underline.)

~~604.052. Trees on single family properties.~~

138 ~~Any tree that could fall on a residential structure is exempt from all city tree preservation~~
139 ~~requirements and may be removed at any time with the permission of the owner. To qualify for this~~
140 ~~exemption, the residential structure subject to being hit by the tree must be located on a lot zoned and used~~
141 ~~for single family dwellings. The removal of a tree under this provision requires the tree owner's written~~
142 ~~authorization and a tree removal permit issued by the city. Trees removed under this provision are exempt~~
143 ~~from all tree replacement requirements.~~
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146 **SECTION 4: Public Hearing.** That a public hearing considering the
147 adoption of this ordinance was held March 12, 2019, in the City
148 Commission Chambers at City Hall, 210 Sams Avenue (south entrance
149 on Julia Street), New Smyrna Beach, Florida, after notice is found
150 to comply with §166.041(3)(c), F.S.
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152 **SECTION 5: Applicability.** That this ordinance shall not be
153 applicable to any development application received for a final
154 site plan, preliminary and final subdivision plats, building
155 permit, tree removal permit, or any conceptual site plans submitted
156 with a PUD/MDA application with current tree survey attached, prior
157 to the effective date of this ordinance.
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159 **SECTION 6: Conflicting Ordinances.** That all ordinances or parts
160 thereof that are in conflict with this ordinance shall be and the
161 same are hereby rescinded and repealed.
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163 **SECTION 7: Severability.** That if any section, sentence, clause or
164 phrase of this ordinance is held invalid or unconstitutional by
165 any court of competent jurisdiction, then said holding shall in no
166 way affect the validity of the remaining portions of this
167 ordinance.
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169 **SECTION 8: Effective Date.** That this ordinance shall take effect
170 60 days after final adoption.
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173 **APPROVED AS TO FORM AND CORRECTNESS:**

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175 _____
176 **CARRIE AVALLONE**
177 **City Attorney**
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180 **DATE:** 4/5/2019