



# **PROTECTION OF TREES AND NATIVE VEGETATION**

Chapter 23 of the Municipal Code of Ordinances  
for the City of Atlantic Beach

Adopted: January 12, 2009  
Amended: February 22, 2010

NOTE: This document is a reproduction of Exhibit A, Protection of Trees and Native Vegetation, as initially adopted by Ordinance Number 95-09-98 on January 12, 2009, Exhibit A, Article III, Tree and Vegetation Regulations, as amended by Ordinance Number 95-10-101 on February 22, 2010.

The TABLE OF CONTENTS included herewith is not an official part of said ordinances and exhibits, but is provided as a convenience to assist in the use of these regulations. Page numbers of this document may vary from the officially recorded Exhibit A of the enacting Ordinance or subsequent amending Ordinances. Page numbers may also vary from that found in the comprehensive Code of Ordinances for the City of Atlantic Beach as prepared by the Municipal Code Corporation. Copies, including official certified copies, of all enacting Ordinances and Exhibits may be obtained from the City Clerk for a fee as established by ordinance adopted by the City Commission.

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This Table of Contents is not a part of Ordinance Number 95-09-98, an Ordinance of the City of Atlantic Beach enacting these regulations for the Protection of Trees and Native Vegetation, or any amendments thereto, but is provided to assist the user of this document.

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**REVISIONS TO CHAPTER 23, PROTECTION OF TREES AND NATIVE VEGETATION  
SINCE JANUARY 12, 2009**

<b>SECTION</b>	<b>SUBJECT (GENERAL)</b>	<b>ORDINANCE</b>	<b>EFFECTIVE DATE</b>
Chapter 23	Chapter 23 re-write and adoption	95-09-98	January 12, 2009
Article III	Dissolution of the Tree Conservation Board; reassignment of duties & responsibilities.	95-10-101	February 22, 2010

## ARTICLE I. IN GENERAL

### SECTION 23-1. PURPOSE AND INTENT.

- (a) *Purpose.* The provisions of this Chapter are established for the purpose of enhancing, conserving, restoring, protecting and preserving the natural environment, specifically related to *trees* and *native coastal vegetation*. Priority shall be given to the protection and preservation of existing resources.
- (b) *Intent.* The provisions of this Chapter are intended:
- (1) To establish efficient and effective procedures, regulations and guidelines for the protection of existing *vegetation*, installation of *native* landscaping and maintenance thereof regarding *vegetation*, including, but not limited to *trees*, *shrubs*, salt marsh and beach dune grasses, and *ground covers*.
  - (2) To promote and sustain community values by providing for an aesthetically pleasing environment where a healthy *tree canopy* is maintained and regenerated.
  - (3) To protect natural systems and avoid impairment of their natural functions including the provision of shade and cooling on lots and *development* parcels, sidewalks, *streets* and other public places.
  - (4) To provided protection for *Environmentally Sensitive Areas*.
  - (5) To encourage protection of healthy *trees* and provide for replacement and/or relocation of *trees* which are necessarily *removed* during construction, *development* or *redevelopment*.

### SECTION 23-2. APPLICABILITY.

All lands within the *City of Atlantic Beach* shall be subject to the provisions of this Chapter.

### SECTION 23-3. RELATIONSHIP TO LAND DEVELOPMENT REGULATIONS AND THE COMPREHENSIVE PLAN.

This Chapter contains specific and detailed provisions intended to implement the related policies as set forth in the *City of Atlantic Beach Comprehensive Plan*, as may be amended. The provisions of this Chapter shall be implemented in coordination with Chapter 24 of this Code, the *Land Development Regulations*, and in the case of any conflict between the two Chapters, the provisions establishing the higher standard shall prevail.

### SECTION 23-4. AMENDMENTS TO THIS CHAPTER.

The *City Commission* shall have the authority to amend this Chapter as needed to implement its intent, or to implement objectives and policies of the *City of Atlantic Beach Comprehensive Plan*, or otherwise enact updates as may be appropriate. Amendment to this Chapter shall be made in accordance with the established procedures for amending any portion of this *Code of Ordinances*.

### SECTION 23-5 THROUGH 23-7. RESERVED.

## ARTICLE II. LANGUAGE AND DEFINITIONS

### SECTION 23-8. DEFINITIONS.

For purposes of this Chapter, the following terms shall have the meanings as set forth within this Section, and where interpretation is required, shall be interpreted so as to give these terms the meaning they have in common usage. Where applicable and appropriate to the context, definitions as set forth within Chapter 24, **Land Development Regulations**, of this Municipal Code, **Florida State Building Codes** or within **Florida Statutes**, as these may be amended, shall be used in conjunction with these terms and the requirements of this Chapter.

**Adverse Site Conditions** shall mean existing *site* conditions that unfavorably affect the implementation of the provisions of this Chapter and that hinder plant *viability* and growth. Examples include, but are not limited to:

- (1) Existing topographic elevation changes that would result in the likelihood that preserved or planted materials would not survive.
- (2) Existing areas of buried solid waste at a depth that would affect the viability of preserved or planted materials.
- (3) Existing electrical lines or utility easements that would prevent or restrict the preservation or planting of *landscape materials*.
- (4) Barrier island or dune ecosystem planting conditions that cannot support certain *hardwood* species.
- (5) *Redevelopment sites* where existing landscaping does not meet current standards and where existing *site* conditions, such as, but not limited to, impervious surfaces, access locations, or building locations, prevent the *site* from meeting the current requirements.
- (6) *Sites* where type or distribution of existing *canopy* or other protected *trees* are such that preservation requirements would prohibit *site development* or conflict with required *development* standards, such as stormwater or roadway designs.
- (7) Designs and plans that do not, to the greatest extent feasible, avoid encroachment upon preservation areas and/or *trees* are not considered *adverse site conditions*.

**Administrator** shall mean the representative of the *City* as designated by the *City Manager* to oversee administration of this Chapter.

**After-the-Fact Permit** shall mean a *permit* issued after a violation has occurred, for the primary purpose of correcting the violation (if the activity would have been permissible) or for the purpose of bringing the violator into compliance with existing regulations.

**Appeal** shall mean a request for the rehearing or review of a decision made pursuant to any provision of this Chapter.

**Applicant** shall mean the *person(s)* subject to or seeking a *tree or vegetation removal permit* as required by the provisions of this Chapter.

**Approval** shall mean written permission in the form of a *tree or vegetation removal permit* from the *Administrator* pursuant to a duly executed application submitted on a form as provided by the *City*, authorizing the *applicant* to proceed with an action as proposed in the application. Such *approval* may consist of limitations or conditions specific to the project.

**Atlantic Beach Prohibited Species List** shall consist of those *invasive exotic species* recognized by the State of Florida as detrimental to the *native* ecosystems and included on the **Florida Noxious Weed and Invasive Plants Lists** (FLORIDA ADMINISTRATIVE CODE r. 5B-57.007).

**Atlantic Beach Recommended Species List** shall consist of those *native* species best adapted to the local ecosystem and providing the most desirable characteristics to the community.

**Buildable Area** shall mean the area of a *site*, parcel or lot, excluding any area which is not eligible for the issuance of a building *permit* by the *City*, such as building setback areas, shoreline protection buffers, coastal construction setback areas, wetlands or other similar areas required pursuant to the applicable provisions of this Chapter and the **Land Development Regulations**. This is also referred to as the **Interior Zone**.

**Caliper** shall mean the diameter of a *tree* trunk measured at a point six (6) inches above the existing or proposed grade for *trees* four (4) inches in trunk diameter and under, and twelve (12) inches above the existing or proposed grade for *trees* larger than four (4) inches in trunk diameter. *Caliper* measurement is used in reference to nursery stock for new plantings.

**Canopy** shall mean the horizontal extension of a *tree's* branches in all directions from its trunk.

**City** shall mean the *City of Atlantic Beach*.

**Certified Arborist** shall mean any *person* holding a valid and current arborist certification as issued by the International Society of Arboriculture (ISA).

**Clear Trunk** shall mean the height of a palm *tree* measured from the ground to the point where the lowest green frond is attached to the trunk.

**Coastal Dune Vegetation** shall mean the naturally-occurring, salt-tolerant *native* species of grasses, *shrubs*, vines and *trees* that stabilize the dunes by holding existing sand and that serve to repair the dunes of damage inflicted by either natural phenomena or human impact by trapping wind-blown sand.

**Community Forest** shall mean the collection of *trees* in and around the *City*, including park and *street yard trees* on public property, and *yard trees* on private property.

**Crown** shall mean all portions of a *tree*, excluding the trunk and roots; specifically, the branches, leaves, flowers and fruit that grow above ground.

**Developed Area** shall mean that portion of a *site* upon which any building, structure, pavement or stormwater facility is placed.

**Development or Development Activity** shall mean any alteration of the natural environment which requires the *approval* of a *development* or *site* plan and issuance of a *development permit*; shall also include the “thinning” or *removal of trees* from an *undeveloped* land, including that carried on in conjunction with a forest management program, and the *removal of trees* incidental to the *development* of land or to the marketing of land for *development* and shall also include activities defined as *development* within Section 24-17 of this **Code of Ordinances**.

**Diameter at Breast Height (DBH)** shall mean the outside bark diameter of a *tree* measured at a height of 54 inches above the naturally occurring ground level. *Trees* with gross abnormalities or buttressing at the breast height should be measured above or immediately adjacent to the irregularity. *Trees* that fork at or above breast height should be measured below breast height and recorded as a single trunk. *Trees* that fork below breast height should be recorded as separate **DBH** for each.

**Diseased Tree** shall mean a *tree* with a sustained or progressive impairment caused by a parasite, *pest* or infestation which seriously compromises the *viability* of the *tree* in that it is unlikely the *tree* will remain living and *viable* for a period of more than three years or the *tree* causes other imminent peril to *viable trees*, existing structures or *persons* in the vicinity of the *diseased tree*.

**Dripline** shall mean the imaginary vertical plumb line that extends downward from the tips of the outermost *tree* branches and intersects with the ground.

**Equivalent Value** shall mean a monetary amount reflecting the cost of *vegetation* to be replaced.

**Excavation** shall mean the act of digging, cutting or scooping soil or in any way changing the existing grade of the land. See **Grading** also.

**Excessive Pruning** shall mean the substantial alteration of a *tree* such that there is irreversible *removal* and/or damage of more than twenty-five (25) percent of the natural shape or form of a *tree*.

**Exotic** shall mean a plant species that was introduced to Florida, either purposefully or accidentally, from a natural geographic range outside of Florida.

**Exterior Zone** shall mean the outer area of a lot, public or private, defined by an imaginary line drawn parallel and offset twenty (20) feet in from the front and rear property lines and seven and one-half (7 ½) feet in from side property lines.

**Grading** shall mean the placement, *removal* or movement of earth by use of mechanical equipment on a property. See **Excavation** also.

**Ground Cover** shall mean a plant material which reaches an average maximum height of not more than eighteen (18) inches at maturity.

**Grubbing** shall mean the effective *removal* of *understory vegetation* from a *site*, which does not include the *removal* of any *trees* with **DBH** greater than three (3) inches.

**Hardwood** shall mean an angiosperm, a flowering *tree* or a broad-leaved *tree*, as distinguished from a gymnosperm or cone-bearing *tree*.

**Hazard or Hazardous** shall mean a danger or risk of bodily injury or property damage.

**Indigenous** shall mean a plant species naturally occurring within a specific habitat or biogeographical region prior to significant human impacts. See **Native** also.

**Interior Zone** shall mean the inner area of a lot, public or private, defined by an imaginary line drawn parallel and offset twenty (20) feet in from the front and rear property lines and seven and one-half (7 ½) feet in from side property lines. This is also referred to as the **Buildable Area**.

**Invasive Exotic Plant** shall mean an *exotic* plant species that has escaped cultivation, *naturalized* and established in a natural area allowing it to aggressively expand and reproduce on its own, and subsequently, alter *native* plant communities by out-competing for resources such as light, nutrients, water and space, killing *native* species, or otherwise adversely affecting natural ecosystems. *Invasive exotic* plants are those plants recognized on the **Florida Noxious Weed and Invasive Plants List** (FLORIDA ADMINISTRATIVE CODE r. 5B-57-007).

**Landscape Materials** shall mean living material, including *trees, shrubs, vines, lawn grass and ground cover*; landscape water features; and non-living durable material commonly used in landscaping, including rocks, pebbles, sand and brick pavers, but excluding impervious surfaces (pavement).

**Mitigation** shall mean prorated payment for *trees removed*, either in terms of replacement *trees* (newly planted or relocated), or alternatively, deposit of a cash *equivalent value* in the *Tree Conservation Trust Fund*.

**Native** shall mean a plant species occurring within the *City* boundaries prior to European contact according to the best available scientific and historical documentation. More specifically, it includes those species understood as *indigenous*, occurring in natural associations in habitats that existed prior to significant human impacts and alterations of the landscape.

**Naturalized Exotic** shall mean an *exotic* species that sustains itself outside cultivation.

**Nondevelopment Activity** shall mean any alteration of the natural environment which does not require *development approval* or issuance of a building *permit*, but which would include the proposed *removal* or destruction of any *trees* or *vegetation regulated* by this Chapter.

**Nuisance** shall mean any *tree, shrub, bush, grass or ground cover*, or other woody *vegetation*, on public or private property, which is endangering or which in any way may endanger the public health, safety, security or usefulness of any public *street*, public utility line or sidewalk; also any *tree, shrub, bush, grass or ground cover*, or other woody *vegetation* with an infectious disease or insect problem.

**Off-site** shall mean any location outside the boundaries of the project *site*.

**On-site** shall mean any location within the boundaries of the project *site*.

**Person** shall mean any landowner, lessee, building contractor, developer or other entity involved in the use of real property, including agents, employees, independent contractors, whether *persons, firms, associations, corporations, partnerships, joint ventures, estates, trusts, business trusts, syndicates, fiduciaries, governmental bodies, agencies or officials*.

**Pest** shall mean any organism, insect, rodent, fungus, virus, bacteria or other agent that causes any damage, abnormal growth or mortality of any *tree, shrub, bush, grass or ground cover*, or woody *vegetation*.

**Prune** shall mean the *removal* of dead, dying, *diseased*, weak or objectionable branches in order to increase usefulness, beauty and vigor.

**Pruning Standard** shall mean the following: *American National Standard Institute, Standard for Tree Care Operations – Tree, Shrub and Other Woody Plant Maintenance – Standard Practices* (ANSI A300, Current Edition); *American National Standard Institute, Safety Standards for Tree Care Operators* (ANSI Z133.1, Current Edition); *National Arborist Association Pruning Standards for Shade Trees* (Current Edition).

**Qualified Professional** shall mean a *person* who possesses, in addition to skill, a special registration, certification, or knowledge which is obtained by formal education and training, and which is inherently or legally necessary to render him or her capable, competent and eligible to perform the particular responsibilities called for.

**Regulated Tree** shall mean any *tree* as follows:

- (1) **Private Regulated Tree** shall mean any *tree* on private property, except those species listed on the *Florida Noxious Weed and Invasive Plant List* (Current Edition), meeting the following conditions:
  - a. A *DBH* of six (6) inches or more, and located within the *exterior zone* of said private property; or
  - b. A *DBH* of twenty (20) inches or more, and located within the *interior zone* of said private property, if zoned residential; or
  - c. A *DBH* of ten (10) inches or more, and located within the *interior zone* of said private property, if zoned non-residential.
  
- (2) **Public Regulated Tree** shall mean any *tree* on public property, except those species listed on the *Florida Noxious Weed and Invasive Plant List* (Current Edition), meeting the following conditions:
  - a. A *DBH* of six (6) inches or more, and located within the *exterior zone* of said public property.
  - b. A *DBH* of ten (10) inches or more, and located within the *interior zone* of said public property.
  
- (3) **Heritage Tree** shall mean any *tree* determined by the *City Commission* to be of unique or intrinsic value due to its age, size, species and/or cultural, ecological or historical significance or some other contribution to the *City's* character, specifically including all Cypress, Live Oak and Magnolia *trees* with a *DBH* of thirty (30) inches or greater and in good condition, as determined by a recognized knowledgeable *person* or *qualified professional*; also, any *tree* designated as a Florida State Champion, United States Champion, or World Champion by the American Forestry Association. *Heritage trees* may be located within parks, on *street* yards, or other public property. On private property, *heritage trees* are voluntarily nominated by the property owner. The *Administrator* shall keep a record of all *heritage trees* so designated and their location.

**Regulated Vegetation** shall mean *vegetation* located within any area designated as an *Environmentally Sensitive Area*, as defined by the **City of Atlantic Beach Comprehensive Plan**, including but not limited to all wetlands, all beach and dune areas seaward of the Coastal Construction Control Line, and all areas designated as Conservation on the **Future Land Use Map**.

**Shade Tree** shall mean any self-supporting woody plant of a species that is generally well-shaped, well-branched, and well-foliated, which normally grows to a minimum average height of at least thirty-five (35) feet with a minimum average mature *crown* spread of at least thirty (30) feet, and which is commonly accepted by local horticultural and arboricultural professionals as a species which can be expected to survive for at least fifteen (15) years in a healthy and vigorous growing condition over a wide range of environmental conditions.

**Shrub** shall mean a self-supporting woody perennial plant differing from a perennial herb by its persistent and woody stems and from a *tree* by its low stature and habit of branching from the base.

**Site** shall mean the total area within the property boundaries of a principal parcel to be *developed*, or contiguous parcels intended for *development* under a common scheme or plan

**Stop Work Order**, as used in this Chapter, shall mean an order from the designated administrative official to immediately halt all *vegetation* and *tree removal*, any form of *site* or soil disturbance, or other activity with potential to impact *trees* or *vegetation regulated* by this Chapter.

**Street** shall mean a public or private thoroughfare, which affords the principal means of access to abutting property, including but not limited to alley, avenue, drive, lane, place, road, *street*, terrace, way, or other means of ingress or egress, regardless of the term used to describe it.

**Tree** shall mean any self-supporting woody or fibrous plant which at maturity attains a trunk *DBH* of at least three (3) inches or more and which normally attains an overall height of at least fifteen (15) feet, usually with one (1) main stem or trunk and many branches. *Trees* shall be classified as follows:

- (1) Large: having an average mature height of fifty (50) feet or more.
- (2) Medium: having an average mature height of at least thirty (3) feet but less than fifty (50) feet.
- (3) Small: having an average mature height of at least fifteen (15) feet but less than thirty (30) feet.

**Tree Conservation Trust Fund** shall mean an account established by the *City* to provide an opportunity to make *equivalent value* cash payments to the *City* in lieu of providing the required landscape or *tree stock on site*.

**Tree Protection Plan** shall mean the *plan* required pursuant to this Chapter, identifying and showing the location, type, size and health of existing *trees*, stating the ultimate disposition of the *trees*, showing the type, size and location of any *trees* to be planted and setting forth measures to protect *trees* before, during and after construction.

**Tree Protection Zone** shall mean the area located around the perimeter of the *dripline* of a *tree* in which no activity such as clearing, filling, excavating, storage of materials, parking of vehicles, or any other activity that, in the opinion of the *Administrator*, may damage the *tree*. At the discretion of the *Administrator*, the *tree protection zone* may be reduced for *trees* located on smaller lots in order to reasonably protect the *tree* and facilitate construction on the *development* parcel.

**Tree Removal** shall mean any act that physically *removes* the *tree* or its roots from the earth or causes a *tree* to die, including but not limited to changing the natural grade above or below the root system or around the trunk or improper *pruning* where the natural form of the *tree* is permanently changed and results in the *tree's* death or decline.

**Tree or Vegetation Removal Permit** shall mean the written authorization issued by the *City* to proceed with *vegetation* or *tree removal* in accordance with the provisions of this Chapter, which may include *mitigation* requirements and other terms and conditions as needed to create consistency with this Chapter. The terms *permit*, *tree permit*, *vegetation removal permit*, or *tree removal permit* may be used interchangeably as appropriate to the context.

**Tree Technical Manual (TTM)** shall mean a manual, developed and maintained by the *City*, pursuant to this Ordinance, which contains the standards and specifications for sound arboricultural practices, techniques and procedures to be practiced within the *City*.

**Underbrushing** shall mean the *removal* of *understory vegetation*, either by hand or with the use of equipment, which neither disturbs the soil nor causes the destruction of any *tree*.

**Understory Vegetation** shall mean assemblages of natural low-level woody, herbaceous and *ground cover* species not normally considered to be *trees* which exist in the area below the *canopy* of *trees*, including any *tree* that is less than three (3) inches *DBH*.

**Vegetation** shall mean any plant material, including but not limited to *trees*, *shrubs*, vines, herbs and grasses including marsh grasses and any *coastal dune vegetation*.

**Vegetation Inventory** shall mean a scaled drawing which delineates the location and common and/or scientific name of *vegetation* upon a parcel of land, including *trees* greater than three (3) inches *DBH* and palms with an overall height of more than eight (8) feet. If necessary, a survey or other professionally prepared document, certified as appropriate, may be required as part of the *vegetation inventory* to specifically identify *sites* or *vegetation* to be preserved.

**Viable** shall mean having the capacity to live and develop.

**Weed** shall mean any undesired, uncultivated plant that grows in profusion so as to crowd out a desired plant. See also **Nuisance**.

**SECTION 23-9 THROUGH 23-10. RESERVED.**

## ARTICLE III. TREE AND VEGETATION REGULATIONS

### DIVISION 1. IN GENERAL

#### SECTION 23-11. SCOPE.

The provisions of this Chapter shall be administered as set forth within this Chapter. Administrative procedures, authorities and responsibilities of the *City Commission* and the *Administrator* are set forth herein.

### DIVISION 2. ADMINISTRATION

#### SECTION 23-12. CITY COMMISSION.

The *City Commission* shall have the following authorities and responsibilities:

- (a) To establish fees and fines related to the administrative costs of carrying out the requirements of this Chapter.
- (b) To establish a *Tree Conservation Trust Fund* to collect and disburse monies for the purpose of growing and maintaining the *City's Community Forest*.
- (c) To amend this Chapter as may be needed to accomplish the stated purpose and intent of this Chapter.
- (d) To hear and decide *appeals* where it is alleged there is an error in any order, requirement or decision made by the *Administrator* in the implementation of this Chapter.

#### SECTION 23-13. ADMINISTRATOR.

The *Administrator* shall have the following authorities and responsibilities.

- (a) To accomplish all administrative actions required by this Chapter, including issuance of proper notice; receipt and review of applications; issuance of *tree and vegetation removal permits*; receipt and processing of *appeals* and any *stop work orders*.
- (b) To maintain all records relating to this Chapter and its administration.
- (c) To provide written instructions to *applicants* related to the required process for applications as required by this Chapter.
- (d) To receive, process and make administrative determinations on all applications for *tree and vegetation removal permits* as set forth in Section 23-23.
- (e) To refer applications for *tree and vegetation removal* to other departments and agencies for comment, as set forth in Section 23-23, as may be needed.
- (f) To conduct field inspections as needed to make determinations related to *tree and vegetation* protection or *removal*.

- (g) To review preliminary *development* plans, applications for certain building *permits*, including *site* and lot plans, with appropriate *City staff* to determine whether proposed construction, alterations, repair or enlargement of a structure is in compliance with the provisions of this Chapter.
- (h) To recommend to the *City Commission* projects consistent with the purpose and intent of this Chapter, with a written statement outlining the costs and benefits of such projects.
- (i) To recommend to the *City Commission* amendments consistent with the implementation of the purpose and intent of this Chapter, with a written statement outlining the need for such changes.

**SECTION 23-14. TREE CONSERVATION TRUST FUND.**

- (a) **Establishment of Trust Fund.** The *City Commission* hereby recognizes and reaffirms the prior establishment of the *Tree Conservation Trust Fund* for the purposes of accepting and disbursing monies paid to the *City* as part of *tree mitigation* and any other funds deposited with the *City* for the purpose of *tree* and *vegetation* conservation and protection. This fund shall be used solely for the planting of *trees*, the protection and conservation of existing *trees* where appropriate, or the re-establishment of *vegetative* resources in the *City*, and any other ancillary costs associated with such activities, provided that such ancillary costs shall not exceed twenty (20) percent of the cost of the particular project.
- (b) **Terms of existence.** The *Tree Fund* shall be self-perpetuating from year to year unless specifically terminated by the *City Commission*.
- (c) **Trust Fund assets.** All funds shall be placed in trust for and inure to the public use and environmental benefit of the *City*. Said funds shall be used and distributed as designated by the *City Commission*.
- (d) **Trust Fund administration.**
  - (1) Trust funds shall be used only for the purposes designated by the *City* in accordance with the intent of this Chapter and the applicable Goals, Objectives and Policies as set forth within the *Comprehensive Plan*.
  - (2) All funds collected pursuant to this Chapter shall be deposited in the *Tree Fund*, which shall be a separate account established and maintained apart from the general revenue fund of the *City*.
- (e) **Disbursal of Tree Conservation Trust Fund assets.**
  - (1) Expenditures for projects funded by the *Tree Conservation Trust Fund* shall be made in accordance with the established purchasing procedures of the *City*.
  - (2) Priority shall be given to the use of funds for projects that plant or replace *trees* or *vegetation* along public right-of-ways or on properties and lands in public use that will provide needed *shade*, aesthetic enhancement or the re-establishment of *tree canopy* in neighborhoods and along public roadways.

Secondarily, funds may be used for purchase of *landscape materials* or equipment necessary and proper for the preservation, maintenance, relocation or restoration of

*trees* and ecosystems on any public land in the *City*, or for the funding of community educational programs which promote, enhance or implement the goals and objectives established in this Chapter.

**SECTION 23-15 THROUGH 23-20. RESERVED.**

**DIVISION 3. PERMITS**

**SECTION 23-21. PERMITS REQUIRED BY THIS CHAPTER.**

Unless specifically exempted within following Section 23-22, *permits* are required for *removal of trees* on all lands and in connection with all *development*, construction or clearing activities within the *City of Atlantic Beach*, which shall include the following.

- (a) New *development* on any previously *undeveloped* lands, or *redevelopment* on any vacant land where structures may have been fully or partially cleared.
- (b) Major *development* on all existing *developed sites* having any structure or vehicle use areas where additions, renovations, upgrades or *site* changes are intended or anticipated within a one (1) year period of time when any such activity is valued at ten thousand dollars (\$10,000.00) or more. Where value is in question, such determination shall be made by the *Building Official*.
- (c) Clearing, *excavation*, *grading*, *grubbing* or trenching of previously *undeveloped* land, regardless of whether any future *development* is intended or anticipated; it being the intent of the *City* that no parcel, *site* or land be indiscriminately or unnecessarily cleared of *regulated trees* or *regulated vegetation* unless *mitigation* or replacement as required by this Chapter is provided.

**SECTION 23-22. EXEMPTIONS FROM THE REQUIREMENT FOR A PERMIT.**

The following activities shall be exempt from the requirements to apply for and receive a *tree or vegetation removal permit*, except that none of these exemptions shall be construed to apply to any *coastal dune vegetation* seaward of the CCCL or to *heritage trees*. Such *vegetation* and *trees* shall be fully subject to the provisions of this Chapter and any State *permitting* requirements applying to the coastal zone. All other *development activity* as described in preceding Section 23-21 involving the *removal of regulated trees* and *regulated vegetation* shall require issuance of a *permit*.

The *person(s)* claiming any exemption shall have the burden of proving entitlement to such exemption. The *Administrator* may require consultation with or documentation from a *Certified Arborist* or other *qualified professional* to verify certain conditions.

- (a) **Previously developed sites with no development activity or with minor development activity.** Minor *development activity* involves any new construction, exterior additions, renovations or upgrades that are valued at less than ten thousand dollars (\$10,000.00). For the purpose of determining whether this exemption does or does not apply, the *Administrator* shall consider the cumulative valuation of all *permits* issued six (6) prior and six (6) months subsequent to the *tree removal*. If such *permits* collectively exceed the stated threshold, an *after-the-fact permit* and *mitigation* shall be required.
- (b) **Emergency situation.** The *removal of trees* destroyed or severely damaged during or immediately following an emergency (i.e., hurricane, tropical storm, tornado, flood or any

other act of nature) shall be granted an exemption when the *Administrator* determines that *permitting* requirements will hamper private or public work to restore order to the *City*.

- (c) **Safety hazard.** The *removal of trees* that pose imminent danger to the public health, safety and general welfare shall be granted an exemption upon inspection and determination by the *Administrator* that immediate *removal* without delay is required.
- (d) **Diseased or pest-infested trees.** The *removal of diseased* or *pest-infested trees* shall be granted an exemption upon inspection and determination by the *Administrator* that *removal* is needed for the purpose of preventing the spread of disease or *pests*.
- (e) **Noxious invasive trees.** The *removal of invasive or nuisance trees*, as currently listed by the **Florida Department of Agriculture and Consumer Services (FDACS)**, **Florida Department of Environmental Protection (FDEP)**, the **Florida Exotic Pest Plant Council (FLEPPC)** or some other recognized authority, shall be granted an exemption upon inspection and verification by the *Administrator*.
- (f) **Utility operations.** The *pruning and/or removal of trees* or *understory vegetation* by duly authorized communication, water, sewer, electrical or other utility companies or Federal, State, County or *City* agencies, or engineers or surveyors working under a contract with such utility companies or agencies, shall be exempt, provided the *removal* is limited to those areas necessary for the maintenance of existing lines or facilities or for the construction of new lines or facilities in furtherance of providing utility service to its customers, and provided further that the activity is conducted so as to avoid unnecessary *removal* and, in the case of aerial electrical utility lines, is not greater than that specified by the **National Electrical Safety Codes** as necessary to achieve safe electrical clearances. Notwithstanding this exemption, any such entity shall provide adequate prior notice to the *City* before commencing such work.
- (g) **Surveyors/Engineers.** The *pruning of trees* and/or *removal of understory vegetation* by a Florida licensed land surveyor or engineer in order to provide physical access or view necessary to conduct a survey or *site* examination for the performance of professional duties related to land surveying, soil percolation and/or soil bore tests shall be exempt provided that such alteration is limited to a swath of ten (10) feet or less in width. However, land clearing for surveys shall not authorize the *removal or regulated trees or regulated vegetation*.
- (h) **City crews.** The *City* shall have the right to plant, *prune*, maintain and *remove trees*, plants and *shrubs* within public rights-of-way, within any utility or drainage easements or the illumination areas of *street* lights, and public lands as may be necessary, and shall not be subject to *mitigation* assessment. The *City* shall not have the responsibility to maintain, *prune* or *remove* any damaged, dead or *diseased trees* on any private property within the *City*.

#### SECTION 23-23. PERMIT PROCEDURES.

- (a) **Application required.** The *applicant* for a *tree removal permit* shall submit the established fee along with the application form as created and provided by the *City* to the designated administrative department. The application shall contain all required narrative and graphical information necessary to determine compliance with this Chapter. If the *applicant* is not the property owner, proper owner's authorization shall also be required.

- (1) **Existing lots or parcels.** When a *tree or vegetation removal permit* is required, applications for *tree or vegetation removal* shall be made prior to *removal* and prior to any *site* disturbance or *grading* on a lot or parcel.
  - (2) **New or re-platted subdivisions.** Applications for *tree or vegetation removal* that will be part of a new subdivision or a re-plat shall be submitted along with the preliminary subdivision plat application so that due consideration may be given to the protection of *regulated trees and regulated vegetation* during the *site* planning and subdivision process. *Trees* to be protected shall be noted on the final subdivision plat, and subsequent applications for individual lots or parcels shall be consistent with the approved final subdivision plat, or application for a new *tree removal permit* shall be required.
  - (3) **After-the-fact permits.** Any *person(s)* engaging in the *removal of regulated trees or regulated vegetation* prior to obtaining a *permit* shall be required to apply for and obtain an *after-the-fact permit*, and meet *mitigation* requirements as assessed.
- (b) **Sufficiency review of applications.** Upon receipt of the application and appropriate fee, the *Administrator* shall conduct a preliminary review within five (5) business days to determine that all required information has been submitted and is sufficient for review purposes. The *Administrator* may refer the application to other *City* department(s) or a *qualified professional* consultant during preliminary review. The *applicant* shall be notified if extended review by other departments and/or professionals is required. The *applicant* shall be notified of any deficient items. Upon submittal of deficient or missing information, the *Administrator* shall again review the application. If the requested information has not been provided or is insufficient, the *applicant* shall be notified in writing that no further review will be performed until the requested information is provided and found to be sufficient.
- However, an application shall be deemed abandoned thirty (30) days after the date the *Administrator* notifies the *applicant* of any deficiencies contained in the application if the *applicant* has failed to submit the deficient or missing information. The *Administrator* may, upon written request and justification by the *applicant*, grant not more than one thirty (30) day extension. At the expiration of the extension, the application shall automatically become null and void.
- (c) **Review by other agencies.** At the discretion of the *Administrator*, relative to the environmental sensitivity of the *site*, appropriate written sign-offs, *permits* or consents from the agencies listed below which have jurisdiction may be required prior to *regulated tree or regulated vegetation removal* from *sites* contiguous to or containing *Environmentally Sensitive Areas* or lands. The *applicant* shall obtain this information and submit the agencies written verification to the *City*.

(1) **Army Corp of Engineers** (ACOE)

(2) **Saint Johns River Water Management District** (SJRWMD)

(3) **Florida Department of Environmental Protection** (FDEP)

- (4) Any other applicable governmental agencies extending jurisdictional controls over the site.
- (d) **Compliance review and approval of applications.** Applications will be reviewed and *tree or vegetation removal permits* will be issued in accordance with the following.
- (1) **Time for review.** Once an application has been deemed sufficient, the *Administrator* shall conduct a full compliance review of the application and approve, approve with conditions or deny the application within seven (7) business days.
- (2) **Standards for review.** The *Administrator* shall consider the following in making a determination of compliance with the provisions of this Chapter.
- i. Necessity to *remove trees* which pose a safety *hazard*, as determined by the *Director of Public Works*, to pedestrian or vehicular traffic or threaten to cause a disruption to public services or a significant obstacle to accessing and utilizing public easements and rights-of-way.
  - ii. Necessity to *remove trees* which pose a threat to buildings and other improvements on a lot or parcel of land. Ordinary small cracks or uplifts in pavement, sidewalks, and non-occupied structures that are typically caused by settling and small roots shall not be considered a safety *hazard*.
  - iii. Necessity to *remove diseased trees* or *trees* weakened by age, storm, fire or other injury or *trees* with severe structural defects that pose a safety *hazard* to people, buildings or other improvements on a lot or parcel of land.
  - iv. Necessity to *remove trees* in order to construct approved and *permitted* improvements to allow reasonable economic enjoyment of the property.
  - v. Existence of any *adverse conditions* which may affect the implementation of the provisions of this Chapter.
- (e) **Expiration of permits.** Upon *approval* of the application by the *Administrator*, the *tree or vegetation removal permit* shall be issued. Work pursuant to the *permit* shall commence within twelve (12) months of the date of issuance, or the *permit* shall expire.
- (f) **Content of permits.** The *permit* shall be issued in such form as may be prescribed by the *Administrator* and shall set forth in detail the conditions upon which the *permit* is granted and specifically identify which land areas shall be cleared and/or which *trees* shall be *permitted* to be *removed*. One *permit* may cover several *trees* or groups of *trees* as long as the *trees* or groups of *trees* can be clearly identified thereon; provided, however, no *permit* may be issued for more than one lot, parcel or area of land unless such lots, parcels or areas of land shall be contiguous to one another and considered as one parcel for the purpose of *development*.
- (g) **Posting of permits.** The *permit* shall be posted in a conspicuous and visible place at the front of the property by the *applicant* promptly after issuance. The *permit* shall remain posted on the property during all applicable *tree and vegetation removal* activity and until final inspection by the *City*. It is the responsibility of the *applicant* to maintain the *permit* in a clearly visible manner at all times.

- (h) **Amendment to permits.** Requests for minor changes to approved *plans* shall be made as an amendment to the applicable *permit*, and shall require payment of an administrative processing fee. Additional information submitted with a request for *permit* amendment shall be adequate to fully document the nature of the proposed change and the effect it will have on all aspects *regulated* by this Article. All *plans*, reports, calculations, and other information affected by the proposed amendment shall be updated so as to maintain an accurate record of the *development activity*. Review time for any changes to *plans* approved for a *permitted site* shall be the same as specified for the review of a new application. An amendment to a *permit* shall not automatically extend the expiration date.

Substantial changes, including significant increases in the number of *trees* to be *removed* or land to be cleared, increases in impervious surface area, changes to intended land use, modification of stormwater management systems, or any other change that constitutes a major modification to a *site plan* or subdivision, new phases of *development* or other additions, shall not be treated as amendments, but shall require a new *permit* application and fee.

- (i) **Revocation of permits.**

(1) **By Administrator.** The *Administrator* may revoke any *permit* issued pursuant to this Chapter, following notice in writing to the *permittee* and after providing the *permittee* the opportunity to respond to the notice, in either the following circumstances:

- i. The *Administrator* finds that the *permittee* has continued with any *development activity* for which a *permit* has been issued, while the *site* is under a *stop work order* which has not been reversed, cancelled or suspended pursuant to this Chapter, except for specified remedial work required to bring the *development* into compliance with the approved *permit*; or
- ii. The *Administrator* finds that the *approval* of the *permit* was based on incorrect information furnished by the *applicant* for the *permit*. Based upon such finding, however, the *Administrator* may make reasonably necessary accommodations to the conditions of a *permit* in lieu of revoking it.

(2) **Discontinuance of Work.** Revocation of a *permit* may also result in a *stop work order* in accordance with Section 23-48.

#### SECTION 23-24. INSPECTIONS AND SITE PREPARATION.

- (a) **Inspections.** The following inspections shall be conducted in conjunction with all *development activities* subject to the requirement for a *tree or vegetation removal permit*.

(1) **Initial Inspection.** The *Administrator* shall conduct an initial inspection of the *site* prior to *approval* of any application.

(2) **Protective barricade inspection.** A protective barricade inspection shall ensure proper installation of measures prior to the initiation of any other *development activity* where required as a condition of the *permit*, and periodic and regular *site* visits as necessary to ensure adequate and effective protection of *trees*, *vegetation* and other components of the *permit*.

- (3) **Final inspection and notice of completion.** A final inspection and notice of completion shall occur when all *development activities permitted* for the *site* have been completed. No certificate of occupancy shall be issued, nor any building or premises occupied, unless and until the *Administrator* has determined after final inspection that all work, including land clearing, *regulated tree or regulated vegetation removal*, *tree protection* and *tree replacement*, has been done in accordance with the approved *permit* and *plan*.
- (4) **Maintenance inspections.** The *Administrator* shall have the authority to conduct *on-site* maintenance inspections subsequent to final inspection and notice of completion, and to require correction of all deficiencies and violations in accordance with this Chapter.
- (b) **Site preparation.** Prior to requesting initial and/or protective barricade inspection, the *applicant* shall prepare the *site* with proper staking and taping as necessary to allow the *Administrator* to locate and identify the lot or parcel to be inspected; to determine the building *site*; to locate the proposed buildings or other proposed structures or improvements that will disturb *vegetation*; and to ensure clear understanding between the property owner, contractor, *Administrator* and other inspectors that may be involved.
- (1) The address or legal description of the property shall be displayed in a conspicuous manner.
- (2) The property corners shall be marked according to survey with wooden stakes. Each stake shall be flagged with surveyor's tape or with bright colored paint. Any property crossed by the Coastal Construction Control Line shall have that line marked on the ground with conspicuous wooden stakes and surveyor's tape or durable waterproof string and shall be clearly labeled "CCCL".
- (3) All *trees* to be preserved during *development activities* shall be barricaded according to a *tree protection plan* consistent with the guidelines in the ***Tree Protection Guide for Builders and Developers***, published by the ***Florida Division of Forestry*** and/or any other reasonable requirements deemed appropriate by the *Administrator* to implement this part.
- (4) All *trees* proposed for *removal* shall be identified with red or orange surveyor's tape or paint.
- (5) All *trees* proposed for protection as *mitigation* for *removed trees* shall be identified with blue or green surveyor's tape or paint.

#### SECTION 23-25. APPEALS.

- (a) **Procedure to file an appeal.** *Appeals* of final actions or decisions by the *Administrator* made under the authority of this Chapter may be made by adversely affected *person(s)* to the *City Commission* in accordance with the following provisions.
- (1) Such *appeal* shall be filed in writing with the *City Clerk* within thirty (30) days after rendition of the decision or final order being *appealed*.

- (2) *Appeals* shall be heard at a public hearing within a reasonable period of time with proper public notice, as well as due notice to interested parties.
- (3) It shall be the responsibility of the appellant to demonstrate that the final action or decision being *appealed* was improper or not in accordance with the provisions of this Chapter.
- (4) In the case that the *City Commission* finds the *appeal* to have merit, the *City Commission* shall have the authority to rescind or modify the original final action or decision, and/or remand the matter to the *Administrator* for reconsideration.

(b) **Stay of work.** Such *appeal* to the *City Commission* shall stay all work on the premises and all proceedings in furtherance of the action *appealed*, unless the appropriate designated administrative official shall certify to the *City Commission* that a stay would cause imminent peril to life or property.

**SECTION 23-26. FEES.**

(a) **Application fees.** The *City Commission* hereby establishes the following fees related to the administrative costs of carrying out the requirements of this Chapter. These fees shall be payable to the *City* at any time an application is submitted for *approval*, amendment, or extension of a *permit* required by this Chapter, or when a final action or decision of the *Administrator* is *appealed*. Applications for *tree and vegetation removal* related requests shall not be considered as complete applications until such time as required fees have been paid in full.

(1) **Tree and vegetation removal permit application.** The *tree and vegetation removal permit* application fee shall cover the processing and review of the application as well as one (1) initial inspection, one (1) protective barricade inspection, one (1) final inspection, and one (1) maintenance inspection per year. Any additional inspections required due to inadequate *site* preparation or reports of violations of the provisions of this Chapter will be charged a re-inspection fee as provided below.

- i. Single or two-family residential uses (per lot) \$125.00
- ii. Multi-family residential uses \$250.00
- iii. Commercial or industrial uses \$250.00
- iv. Institutional and any other uses \$250.00

(2) **Minor amendments.** \$50.00

(3) **Extensions.** \$50.00

(4) **Appeals.** \$125.00

(b) **Re-inspection fees.** \$50.00

(c) **Research or extensive time fees (per hour).** \$50.00

**SECTION 23-27 THROUGH 23-29. RESERVED.**

## DIVISION 4. GENERAL PROVISIONS

### SECTION 23-30. MINIMUM TREE REQUIREMENTS.

These minimum *tree* requirements shall apply to all property within the *City* that is subject to the provisions of this Chapter. Credit will be given for *trees* on the ***Atlantic Beach Recommended Species List***, but none will be given for *trees* on the ***Atlantic Beach Prohibited Species List***. Section 24-177 of this ***Municipal Code*** also provides additional landscaping requirements for non-residential uses.

- (a) **Residential uses.** For each parcel upon which a single-family, two-family or multi-family use, or associated residential accessory unit is proposed, or where the primary activity is residential in nature:

One (1) four-inch *caliper tree* shall be planted and/or preserved for every two thousand five hundred (2, 500) square feet of *development* parcel area or portion thereof, excluding therefrom preserve areas and water bodies. Of the minimum required *trees*, one (1) *tree* shall be provided or preserved within the required front yard.

- (b) **Commercial uses.** For each parcel upon which a commercial structure or associated accessory use is proposed, or where the primary activity is commercial in nature:

One (1) four-inch *caliper tree* shall be planted and/or preserved for every eight thousand (8,000) square feet of parcel area or portion thereof, excluding therefrom preserve areas and water bodies.

- (c) **Industrial uses.** For each parcel upon which an industrial structure or associated accessory use is proposed, or where the primary activity is industrial in nature:

One (1) four-inch *caliper tree* shall be planted and/or preserved for every ten thousand (10,000) square feet of parcel area or portion thereof, excluding therefrom preserve areas and water bodies.

- (d) **Public/semi-public (governmental or institutional) uses.** For each parcel upon which a government structure or associated accessory use is proposed, or where the primary activity is public/semi-public in nature:

One (1) four-inch *caliper tree* shall be planted and/or preserved for every ten thousand (10,000) square feet of parcel area or portion thereof, excluding therefrom preserve areas and water bodies.

### SECTION 23-31. GENERAL PROHIBITIONS.

- (a) **Excessive or improper pruning.** It shall be unlawful to engage in *excessive* or improper *pruning* techniques on *trees* intended for *shade* purposes where such *trees* are required pursuant to an approved *tree protection plan*. *Trees* intended for *shade* purposes shall be allowed to reach their mature *canopy* spread. This limitation shall not be construed to prohibit the trimming or *pruning* of *trees* that create a clear risk of danger to *person(s)* or property during flood, high wind or hurricane events.

- (b) **Pruning or removal of City trees.** It shall be unlawful to trim, *prune*, or *remove* any *tree* which is within the *City's* right-of-ways or upon any other *City* property without the permission of the *City* as evidenced by the appropriate *permit*.
- (c) **Tree spiking.** It shall be unlawful to introduce any type of poison or reactive material to a *tree* for the purpose of causing the *tree* to die or become *diseased*.
- (d) **Attachments.** It shall be unlawful to attach anything, including signs, *permits*, nails or spikes that may be injurious or cause damage, to a *tree* having a diameter of four (4) or more inches *caliper*. Exceptions are protective wires, braces or other devices used to support a *tree*.
- (e) **Unauthorized clearing of undeveloped lots.** It shall be unlawful to clear any *undeveloped* lot, parcel or lands such that the land is substantially denuded of *regulated trees* and *regulated vegetation* in any manner or for any purpose unless a proper *tree removal permit* has been issued. The extent to which *removal* constitutes substantial denuding shall be determined by the *Administrator* based upon the number, type and condition of existing *on-site regulated trees and regulated vegetation* in comparison to that proposed to be *removed*. If clearing is authorized, the minimum requirements of Section 23-30 shall be met.
- (f) **Unauthorized clearing of developed lots.** It shall be unlawful to clear the *trees* from any *developed* lot such that the minimum requirements of Section 23-30 are not maintained.

#### SECTION 23-32. TREE PROTECTION DURING DEVELOPMENT AND CONSTRUCTION.

(a) **Restrictions during construction.**

- (1) **Placement of materials, machinery, or temporary soils.** It shall be unlawful for any *person(s)* to cause or allow the storage of construction materials, the use of heavy equipment or machinery, or the temporary storage of soil deposits within the *tree protection zone* of any *tree* or group of *trees* to be retained.
  - (2) **Disposal of waste materials.** It shall be unlawful for any *person(s)* to cause or allow the disposal of waste materials such as paint, oil, solvents, asphalt, concrete, mortar or any other material harmful to the life of a *tree* within the *tree protection zone* of any *tree* or group of *trees*, or where planting beds are to be situated.
- (b) **Burden of tree protection on property owner.** The property owner(s) and their agent(s) shall ensure that any *tree* shown on the *vegetation inventory* for which a *tree removal permit* has not been obtained is to be protected. The property owner shall guarantee survival of retained *trees* and replacement *trees* for three (3) years from the date the *City* accepts the *trees* and landscaping as complete, unless a greater time period is required by a *development order*. If a retained *tree* or replacement *tree* dies during that time period, the property owner shall replace the *tree* in accordance with a remedial action as required by this Chapter.
- (c) **Protective barriers and signage required.** Protective barriers and signage shall be installed around every *tree* or group of *trees* to be preserved prior to commencement of construction, in compliance with the guidelines in the ***Tree Protection Guide for Builders and Developers***, published by the ***Florida Division of Forestry*** and/or any other reasonable requirements deemed appropriate by the *Administrator* to implement this part.

- (1) Temporary protective barriers shall be placed at least six (6) feet from the base of any *tree* and shall encompass at least fifty (50) percent of the area under the *dripline* of any *tree* or *trees* to be preserved or retained for *mitigation* credit, unless otherwise approved by the *Administrator*.
- (2) Temporary protective barriers shall be at least three (3) feet high, and shall consist of either a wood fence with two-by-four posts placed a maximum of eight (8) feet apart with a two-by-four minimum top rail, or a mesh fence, or other similar barrier which will limit access to the protected area, unless otherwise approved by the *Administrator*.
- (3) Waterproof, rigid sign(s) shall be affixed to each individual barricade, such that there is one (1) sign every fifteen (15) feet along the length of the barricade. The signs shall contain the following words, and will be made available by the *City* at the time of *permit* issuance:

**FIGURE 1. TREE PROTECTION ZONE SIGNAGE.**



- (d) **Adjacent properties.** The property owner(s) or their agent(s) shall ensure protective barricading of all *trees* located on adjacent properties that have root or branch systems that encroach upon the subject property, and that may potentially be impacted by *development activities*.

**SECTION 23-33. MITIGATION TO BE ASSESSED.**

- (a) **Mitigation required.** Unless *mitigation* in the form of payment into the *Tree Conservation Trust Fund* has been approved in accordance with Section 23-37, *mitigation* in the form of *tree* replacement, relocation or preservation shall be required to offset any impacts resulting from the *removal of regulated trees* as a condition of the *tree removal permit*. Replacement or relocation shall be the preferred methods of *mitigation*.

- (b) **Mitigation assessment.** In general, *mitigation* shall be assessed according to the ratios given in the following table, such that the number of inches required to be replaced, relocated or preserved (first number) are proportional to the number of inches *removed* (second number):

**TABLE 1. STANDARD MITIGATION ASSESSMENT.**

CLASSIFICATION OF PROPERTY	CLASSIFICATION OF REGULATED TREE		
	Interior	Exterior	Heritage
Private Parcels	1:2	1:2	1:1
Public Parcels	1:1	1:1	2:1
Public Right-of-Ways, Easements, etc	1:1	2:1	3:1
Environmentally Sensitive Areas	2:1	2:1	3:1
Historic Corridor	2:1	2:1	3:1

- (c) **General conditions.** *Mitigation* shall be in the form of preservation of existing *trees*, relocation of existing *trees* that would otherwise be *removed*, or replacement with new *trees*, and shall occur within thirty (30) days or prior to issuance of a Certificate of Occupancy or other final *approval*, whichever time is shorter, unless a greater period is provided for good cause by the *tree removal permit*. The *applicant* assumes all duties and costs associated with *mitigation*.
- (d) **Tree preservation.** Existing *on-site trees* that are three (3) inches *DBH* or greater, and which are neither protected nor transplanted, may be utilized as credit towards the assessed *mitigation*, subject to the other conditions stated in this Section, if preserved *on-site*.
- (e) **Tree relocation.** Existing *on-site trees* that would otherwise be *removed* from the *site* because of *development* may be utilized as credit towards the assessed *mitigation*, subject to the other conditions stated in this Section, if relocated *on-site*.
- (f) **Tree replacement.**
- (1) **Replacement size.** New replacement *trees* shall be a minimum of “Florida Number One”, as defined in the most current edition of the *Grades and Standards for Nursery Plants*, published by the *Florida Department of Agriculture and Consumer Services, Division of Plant Industry*.
- i. Oaks shall have a minimum four (4) inch *caliper* and twelve (12) foot height at time of installation.
  - ii. All other new replacement *trees* shall have a minimum two (2) inch *caliper* and ten (10) foot height at time of installation.

- iii. Palms shall have a minimum *clear trunk* height of eight (8) feet at time of installation.
- iv. New replacement *shade trees* shall be of a species typically yielding an average mature *crown* spread of no less than thirty (30) feet in Northeast Florida and shall be chosen from the ***Atlantic Beach Recommended Species List***, maintained and published by the *City*. Upon *approval* of the *Administrator*, alternate species not appearing on the recommended list may be utilized, but in no case shall *trees* from the ***Atlantic Beach Prohibited Species List***, also maintained and published by the *City*, be utilized for *mitigation* credit.

(2) **Selection criteria.**

- i. New oaks shall be used to replace *removed* oaks. Upon *approval* of the *Administrator*, *hardwood* species yielding similar *canopy* may be used to mitigate *removed* oaks.
- ii. New palms may be used only to replace *removed* palms. Upon *approval* of the *Administrator*, a cluster of three (3) palms, subject to the other conditions of this Section, may be used to meet the requirements of a single *shade tree*.

(3) **Placement criteria.**

- i. **Avoidance of underground utilities.** No *trees* except those with a normal mature height of less than thirty (30) feet may be planted within five (5) feet of the centerline of any utility easement.
- ii. **Avoidance of aboveground utilities and public facilities.** No *trees* may be planted closer to any curb, curb lines, sidewalks or aboveground utilities than the following, except for *plans* demonstrating no conflict with existing aboveground utilities or public facilities, and approved by the *Administrator*.
  - a. Small *trees* or palms with normal mature height of fifteen (15) to thirty (30) feet shall have a minimum setback of three (3) feet.
  - b. Medium *trees* or palms with normal mature height of thirty (30) to fifty (50) feet shall have a minimum setback of six (6) feet.
  - c. Large *trees* with normal mature height of fifty (50) feet or more shall have a minimum setback of ten (10) feet.
- iii. **Spacing.** The following spacing requirements shall serve as general guidelines for the optimal growth and *viability* of *trees*, though *trees* may be planted closer together upon *approval* of the *Administrator*.
  - a. Small *trees* or palms with normal mature height of fifteen (15) to thirty (30) feet shall be spaced at least ten (10) feet.
  - b. Medium *trees* or palms with normal mature height of thirty (30) to fifty (50) feet shall be spaced at least twenty (20) feet.

- c. Large *trees* with normal mature height of fifty (50) feet or more shall be spaced at least thirty (30) feet.
- d. Spacing of two or more *trees* of differing sizes shall be based upon the spacing requirements of the largest *tree*.

#### SECTION 23-34. MAINTENANCE AND MONITORING REQUIREMENTS.

The *applicant* shall be responsible for maintaining the health of any replacement or relocation *trees* for three (3) years from planting.

- (a) **Determination of success.** The *applicant* shall determine the condition of each *tree* three (3) years after the *tree* was relocated or planted. This determination shall be submitted to the *City* for *approval* within thirty (30) days of being made.

Should any *tree* die or be in a state of decline within three (3) years of being planted or relocated, the *applicant* shall be required to replace the *tree* within sixty (60) days of that determination. The three (3) year monitoring and *approval* period shall begin anew whenever a *tree* is replaced. If that replacement *tree* is found not to be *viable* at the end of the second monitoring period, the *applicant* may pay the appropriate amount into the *Tree Fund* in lieu of planting a third replacement *tree*. If the *applicant* fails to replace the *tree* or pay the appropriate amount into the *Tree Fund* within sixty (60) days, the *applicant* shall be found in violation of this Chapter.

- (b) **Large-scale projects.** If a *tree removal permit* includes the relocation of ten (10) or more *trees*, or the planting of one hundred (100) or more replacement *trees*, the determination of success for the overall *mitigation* effort shall be based upon a percent survival rate. A successful project shall be one in which ninety (90) percent or more of the newly planted or relocated *trees* are determined to be *viable* after a period of three (3) years. If a large scale project is determined to be successful on this basis, additional replacement *trees* will not be required.

#### SECTION 23-35. ELIMINATION OF UNDESIRABLE SPECIES.

The natural *vegetative* communities existing within the *City* shall be protected by the control and elimination of *non-native invasive species*. To that end, the following guidelines shall apply.

- (a) Planting of species on the ***Atlantic Beach Prohibited Species List*** shall not be accepted for *mitigation* credit.
- (b) *Removal of non-native invasive species* from nonresidential properties (excluding jurisdictional wetlands) shall be completed, whenever practicable, as a requirement for *approval* of any *development permit* issued by the *City* or the issuance of a Certificate of Occupancy, if applicable.
- (c) Procedures for the control and elimination of *non-native invasive species* shall in no way promote the proliferation of the species through the dispersal of seed or other means.
- (d) Procedures for the control and elimination of *non-native invasive species* shall in no way harm or cause the decline of desirable species that are to be preserved, planted or relocated.

**SECTION 23-36. ELIMINATION OF CONTAGIOUS DISEASED AND PEST-INFESTED TREES.**

The natural and cultivated *vegetative* communities existing within the *City* shall be protected by the control and elimination of *trees* afflicted with rapid-spreading contagious diseases and *pests*. Upon identification and/or confirmation of such infection or infestation by a *Certified Arborist* or other *qualified professional*, the *City* shall give notice to the property owner to *remove* the afflicted *tree*. Such *tree removal* shall be exempt from the *tree removal permit* application requirements, as set forth in Section 23-22. Further, *mitigation* shall not be required, provided however, the subject property is in compliance with minimum *tree* requirements as set forth in Section 23-30.

**SECTION 23-37. PAYMENT IN LIEU OF REPLACEMENT/RELOCATION.**

It is the intent of this Chapter that all reasonable methods be used to replace or relocate *trees on-site*. Payment to the *Tree Fund* in lieu of replacement or relocation shall not be construed as a routine *mitigation* option. Rather, it shall be reserved for cases where the ability to replace or relocate *trees on-site* is restricted by circumstances related to Federal, State or Local regulations and requirements, including but not limited to, conflicts with right-of-ways, utilities, stormwater facilities, septic fields and *Environmentally Sensitive Areas*. The value to be paid into the *Tree Fund* shall be established and adopted by resolution of the *City Commission*, and payments to the *Tree Fund* may be approved in accordance with the following provisions.

- (a) **For single- and two-family residential uses.** If an *applicant*, at the time of application, demonstrates a successful *plan* to accomplish at least fifty (50) percent of the required *mitigation on-site*, the *Administrator* shall approve the application and issue a *permit* in accordance with Section 23-23(f)(1). The remaining balance of the required *mitigation* shall be payable to the *Tree Fund* within seven (7) days of such determination.
- (b) **For Commercial, Industrial and all other uses.** Applications for *tree or vegetation removal permits* for all uses and *development*, other than single- and two-family residential uses, shall replace or relocate required *mitigation on-site*, except in cases where the *Administrator* finds, based upon the above-stated conditions, that *on-site mitigation* is not possible. Upon *approval* of a *mitigation plan* by the *Administrator*, a *permit* shall be issued by the *Administrator*, and the remaining balance of the required *mitigation* shall be payable to the *Tree Fund* within seven (7) days of such determination.
- (c) Where payment in lieu of replacement or relocation is approved, as set forth in preceding paragraphs (a) or (b), the *applicant* shall pay the *equivalent value* of the portion not planted or relocated, to the *City's Tree Fund*. The approved *mitigation* payment shall be payable to the *Tree Conservation Trust Fund* within seven (7) calendar days of the approved *mitigation* order. *Mitigation* payments not received within the prescribed time period shall result in the filing of a lien on the subject property.

**SECTION 23-38 THROUGH 23-39. RESERVED.**

## DIVISION 5. AREAS OF SPECIAL CONCERN

### SECTION 23-40. APPLICABILITY.

There exist within the *City* certain areas which contain *trees* or *vegetation* of special value or concern, or areas of such great social, cultural, historical, ecological, environmental or economic significance that they may warrant added measures of protection.

### SECTION 23-41. HISTORIC CORRIDORS AND HERITAGE TREES.

- (a) **Designation.** The *City Commission* may by resolution designate *historic tree corridors* or individual *heritage trees*. In doing so, the *City Commission* shall specifically identify those *streets*, or portions thereof, or *trees*, which shall be so designated.
- (b) **Criteria.** In considering whether roadways or portions thereof shall be designated as *historic tree corridors*, the *City Commission* may consider the following criteria:
  - (1) The presence of historically significant *tree* coverage or landscaping, as individual plants or in groupings.
  - (2) The presence of culturally significant *tree* coverage or landscaping.
  - (3) The presence of significant architectural structures with associated *tree* coverage or landscaping.
- (c) **Documentation.** The *Administrator* shall maintain a record of all *historic corridors* so designated and their locations shall be reflected on *City* maps as such.
- (d) **Mitigation.** *Mitigation* required for the *removal* of designated *heritage trees* and *trees* designated as part of *historic corridors* shall be at a higher rate than non-designated *tree removal mitigation*, as set forth in Section 23-33, as a measure to encourage protection of such *trees*.

### SECTION 23-42 THROUGH 23-45. RESERVED.

## DIVISION 6. VIOLATIONS, ENFORCEMENT AND PENALTIES

### SECTION 23-46. VIOLATIONS.

Violations, including failure to make proper application for a *tree or vegetation removal permit* as required by these provisions, or failure to implement any requirements or conditions of a *tree or vegetation removal permit*, shall be deemed a violation of this Chapter and shall be subject to *Code Enforcement* procedures as set forth in Chapter 2, Article V, Division 2 of this **Municipal Code of Ordinances** and any other remedies available under applicable law.

- (a) **Development activity.** It shall be a violation of this Chapter for any *person(s)* to engage in *development* or other *activity* which has the potential to damage, destroy or *remove*, or cause the destruction or *removal* of any *tree* or *vegetation regulated* herein, without complying with all applicable provisions of this Chapter.
- (b) **Compliance with approved permit.** It shall be a violation of this Chapter for any *person(s)* who has obtained a *permit* from the *City* pursuant to the requirements of this Chapter to fail to comply with the requirements of the approved *permit* and any conditions attached thereto.
- (c) **Compliance with general conditions of permit.** The following minimum conditions shall apply to every *permit* pursuant to this Chapter, and violation of or failure to comply with any such condition shall be a violation of this Chapter.
  - (1) **Permit and plans on-site.** Approved *permits* and *plans* shall be available *on-site* at all times during *development activity*.
  - (2) **Responsible individual.** Whenever *site* work is ongoing, there shall be an individual at the *site* who shall be responsible for the ongoing work and who shall have the familiarity with the project to ensure work is proceeding according to approved *plans*. This provision is not intended to require that a single individual remain *on-site* during all operations, only that at all times there shall be a designated *person* in responsible charge.
- (d) **Maintenance requirements.** It shall be a violation of this Chapter for any *person(s)* who is engaged in *development activity* on property located within the *City* or in accordance with a *permit* issued by the *City* pursuant to this Chapter, or who has obtained title to property upon which such activities have taken place, to fail to comply with the minimum standards and maintenance requirements set forth herein.

### SECTION 23-47. NOTICE OF VIOLATION.

Whenever the *Administrator* determines that a violation of this Chapter has occurred, the *Administrator* shall immediately issue written notice to the *person(s)* in violation, identifying the nature and location of the violation and specifying that remedial action is necessary to bring the violation into compliance. The *person(s)* in violation shall immediately, conditions *permitting*, commence remedial action and shall have seven (7) calendar days after receipt of notice, or such longer time as may be specified in the notice, to complete the remedial actions required to bring the property into compliance with this Chapter.

**SECTION 23-48. STOP WORK ORDER.**

- (a) **Authority to stop work.** The *City Manager* or designee of the *City Manager* shall have the authority to immediately issue a *stop work order* in any of the following circumstances.
- (1) Whenever land is being cleared without an approved *permit* or in a manner inconsistent with the approved *permit*;
  - (2) Upon the failure of the *permittee*, or failure of the property owner if no *permit* exists, to take immediate corrective action when there is an apparent danger to life or property;
  - (3) Whenever ongoing non-compliant work is not immediately and permanently stopped upon receipt of written or oral notice of violation;
  - (4) Whenever *tree or vegetation* protection measures have not been implemented or maintained, and danger to *regulated trees or regulated vegetation* exists or appears imminent;
  - (5) Whenever remedial work required by notice of violation pursuant to subsection (a) of this Section is not completed in the time period specified; or
  - (6) Upon failure to post or have the approved *permit* and *plans* available *on-site*.
- (b) **Content and scope of stop work order.** The *stop work order* shall specify the circumstances that have resulted in issuance of the order. It shall also direct that all work be stopped other than such remedial work as is deemed necessary to bring the project into compliance, or it may specify the cessation of specific work by functional nature, such as land clearing, *regulated tree or regulated vegetation removal*, *grading*, roadway construction, building erection or utility construction. The order may apply to the entire project or to geographical portions of the project that may be individually specified.
- (c) **Failure to comply after notice of violation and stop work order.** If the *person(s)* in violation fails to complete the required remedial action within the prescribed time, or continues any *development activity* in violation of the *stop work order*, the *Administrator* may refer such matter to the *Code Enforcement Board* or may initiate any other enforcement action or remedies as authorized by law.

**SECTION 23-49. REQUIREMENT FOR EMERGENCY OR IMMEDIATE CORRECTIVE ACTION.**

Where it is determined by the *City* that failure to maintain stormwater management facilities, erosion, sediment or *tree/vegetation protection* controls, or failure to conform to the provisions of this Chapter or *permit* conditions, is resulting in danger or damage to life or property, the *City* may require immediate corrective action. Protection controls which are breached due to *development activity*, wind, rain or other factors shall be repaired within twenty-four (24) hours of breach. Failure to take such immediate corrective action when notified of the need for such action shall constitute a violation of this Chapter. If immediate corrective measures are not taken by the *permittee* or property owner and the conditions of the *site* are such that there is a danger or hardship to the public, the *City* may enter upon lands, take corrective actions, and place a lien on the real property of such *person(s)* to recover the cost of the corrective measures. In addition, the *Administrator* may revoke any *permit* issued pursuant to this Chapter.

**SECTION 23-50. CODE ENFORCEMENT ACTION.**

Failure to complete remedial actions required to bring the violating activity into compliance with this Chapter shall result in *Code Enforcement* action pursuant to Chapter 2, Article V, Division 2 of the ***Municipal Code of Ordinances***, as well as other remedies available under applicable law.

**SECTION 23-51. PENALTIES.**

(a) **General provisions.** Any *person(s)* violating a provision of this Chapter shall be punishable according to the law or in accordance with the findings of a duly appointed *Code Enforcement Board*.

(1) Violations of this Chapter are considered irreparable and irreversible in nature.

(2) Each day any violation continues shall constitute a separate offense.

(3) Each *regulated tree removed* from a *site* in violation of these regulations shall constitute a separate offense.

(4) Each acre or fraction thereof, of land cleared in violation of these regulations shall constitute a separate offense.

(5) *Person(s)* charged with violations of this Chapter may include:

- i. The owner, agent, lessor, lessee, contractor or any other *person(s)* using the land, building or premises where such violation exists.
- ii. Any *person(s)* who maintains any land, building or premises upon which a violation exists.
- iii. Any *person(s)* who knowingly commits, takes part, or assists in such violation.

(b) **Building permits.** No building *permit* shall be issued for a *site* unless and until a required *tree or vegetation removal permit* has been issued, or while any violation of this Chapter exists on the subject *site*.

(c) **Injunction.** Any affected *person(s)* may seek an injunction against any violation of the provisions of this Chapter and recover from the violator such damages as he or she may suffer, including but not limited to damage to property as a result of *development* or failure to maintain, in violation of the terms of this Chapter.

(d) **Sanctions for failure to obtain a permit.**

(1) *Regulated trees or regulated vegetation removed* in violation of this Chapter shall require an *after-the-fact permit*, the fee for which shall be two (2) times the normal established application fee specified in Section 23-26. In addition, as a condition of the *permit*, the *applicant* shall immediately complete all remedial work as necessary to stabilize the *site* and mitigate all damage to the *site* and adjacent properties.

- (2) *Regulated trees or regulated vegetation removed* in violation of this Chapter shall be assessed at two (2) times the normal established rate of *mitigation* specified in Section 23-33.
- (3) If a lot, parcel, *site* or portion thereof, has been cleared such that the *Administrator* is unable to determine with reasonable certainty the number and size of *regulated trees and/or vegetation removed* in violation of this Chapter, analysis of aerial photography or other such accepted scientific methodology shall be used to make a determination as to the loss of *canopy* and/or land cover for the purpose of assessing *mitigation*. A civil fine of five dollars (\$5.00) per square foot of *canopy* or land cover lost shall be assessed by the *Administrator*, and shall be payable to the *Tree Fund* within seven (7) days of such assessment. No further work or *development* shall proceed until the *City* is in receipt of any such assessed fine.
- (4) Any *person(s)* exhibiting a documented history of chronic or repeated violations of this Chapter shall, upon third offense, be reported to the **Florida Department of Business and Professional Regulation (FDBPR)**, as well as any other authority governing licensing, registration or certification of individuals or businesses.

**SECTION 23-52 THROUGH 23-60. RESERVED.**