

Chapter 106 - VEGETATION

ARTICLE I. - IN GENERAL

Secs. 106-1—106-25. - Reserved.

ARTICLE II. - TREE CONSERVATION AND REPLACEMENT

Sec. 106-26. - Purpose and intent.

The intention of this article is to promote the awareness of the benefits of trees as an integral part of the land development and construction process and to establish mechanisms which result in long term community viability. This article shall be known and may be cited as "The Smyrna Tree Ordinance."

Community forests are recognized for their important role in providing economic vitality and ecological viability for all real property. Trees contribute toward quality of life, visual quality of the City, and improved property values. ~~The contribution of trees to the general well being and quality of life of the citizens of Smyrna is recognized and valued.~~ Therefore:

The City deems it necessary and desirable in the interest of public health, safety and welfare to enact an ordinance for the conservation, planting and replacement of trees and to manage and grow the community forest. It is the City's intent to prevent the indiscriminate removal of trees without denying the reasonable use and enjoyment of real property. It is also the intent of these regulations that all applicable sites within the City maintain or obtain minimum tree density, as defined herein. Consistent with the expressed purpose of these regulations, all persons shall make reasonable efforts to protect and retain certain existing, self-supporting trees as defined herein. Each person shall be responsible for the normal care of trees located on its premises.

The purpose of this article is to:

- (1) Provide standards for the conservation and replacement of trees ~~as part of the land development process;~~
- (2) Provide standards for the protection of trees during construction whenever possible in order to enhance ~~within~~ the City; and
- (3) Provide education to the community about the value and best management practices for community forest management.

(Ord. No. 2008-5, 4-21-08)

Sec. 106-27. - Applicability.

- (a) The terms and provisions of the Smyrna Tree Ordinance and these standards shall apply to any activity which requires the issuance of a development permit or removal of specimen tree(s). ~~No development permit, or grading permit, or tree removal permit shall be issued until it is determined that the proposed development activity is in conformance with the provisions of the~~ this article.

(Ord. No. 2008-5, 4-21-08)

Sec. 106-28. - Exemptions.

- (a) The following shall be exempt from the provisions of this article:
- (1) The removal of trees less than 24 inches in diameter breast height from single-family or duplex lots ~~where less than 50 percent of the site is affected by development activity.~~
 - (2) Single family or duplex lots where a development permit has been issued for an accessory structure or building addition. Residential lots where a development permit has been issued for a new single-family home shall not be exempt from the provisions of this ordinance.
 - (3) The removal of trees from horticultural properties such as farms, nurseries or orchards. This exception shall not be interpreted to include timber harvesting incidental to development of the land.
 - (4) The necessary removal of trees by a utility company within dedicated utility easements.
 - (5) The removal of trees on public rights-of-way conducted by, on behalf of, or for any activity to be dedicated to a federal, state, county, municipal or other government agency in pursuit of its lawful activities or functions in the construction or improvement of public rights-of-way.
 - (6) The removal of trees, other than specimen trees, from detention ponds and drainage easements and other publicly dedicated easements.
 - (7) The removal of any tree which has become or threatens to become a danger to human life or property.
 - (8) The removal of trees from public recreation areas such as playgrounds, ball fields, golf courses and other such uses.
- (b) Notwithstanding the foregoing, all reasonable efforts shall be made to save specimen trees.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2003-35, 11-17-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-29. - Definitions.

~~For purposes of this article, the following definitions shall apply:~~ The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Arborist means the Community Development Director or his/her designee responsible for administering the provisions of this article.

Boundary tree means a tree ~~24 inches (dbh) or larger~~ that meets the specimen tree requirements as defined in Sec. 106.30 and is located on a property adjacent to a permitting property whose critical root zone or canopy extends more than ten percent into the permitting property. ~~Boundary trees must be in good health and meet the minimum requirements of section 106-30(2).~~

Buffer means a landscaped open space area and/or screen for buffering incompatible uses, as defined in section 503 of the Zoning Ordinance.

Buildable area means the portion of a lot which is not located within any minimum required yard, landscape ~~strip easement~~/area or buffer; that portion of a lot wherein a building or structure may be located.

Caliper means a forest standard of tree trunk measurement for replacement trees. Caliper of the trunk shall be taken at six inches above the ground for trees up to and including four-inch caliper size, and 12 inches above the ground for trees larger than four-inch caliper.

Community forest means a collection of all publicly and privately owned trees located on all rights-of-way, open green spaces, undeveloped forests, parks, and residential and commercial lands which function as a system to provide a wide range of economic and environmental benefits to all the members of the community.

Conifer tree means any coniferous (cone bearing) tree, such as pine, fir, hemlock, cedar, etc. This definition is based on the colloquialism and does not necessarily reflect any true qualities of the tree.

Critical root zone (CRZ) means the minimum area beneath a tree which must be left undisturbed in order to preserve a sufficient root mass to give a tree a reasonable chance of survival. The CRZ will typically be represented by a concentric circle centering on the tree's trunk with a radius equal in feet to ~~one and one-half times~~ the number of inches of the trunk diameter (dbh). Example: The CRZ radius of a 20-inch diameter tree is ~~thirty (30)~~ twenty (20) feet.

~~*DBH (Diameter Breast Height)* means the standard measure of tree size for those trees existing on a site. that have a caliper of at least two inches at a height of 4½ feet above the ground. If a tree splits into multiple trunks below four and one-half feet, then the trunk is measured at its most narrow point beneath the split.~~

Dead tree means any tree which is no longer alive or has the ability to sustain itself through natural processes as determined by a Qualified Professional.

~~*Density factor* means a unit of measure used to prescribe the calculated tree coverage on a site. Site density factor for areas within the corporate limits of the City of Smyrna is 100 inches per acre.~~

~~*Development activity* means any alteration of the natural environment which requires the approval of a development or site plan and issuance of a land development permit. Development activity shall also include the "thinning" or removal of trees from any undeveloped land, including that carried out in conjunction with a forest management program, and the removal or destruction of trees incidental to the development of land or to the marketing of land for development, and the removal or destruction of trees in conjunction with any grading activity, including the removal or filling (stockpiling) of soil. Nothing in this definition shall be deemed to require or authorize the issuance of a permit for any activity described herein.~~

Development permit means an official authorization issued by the Community Development Director or his/her designee.

Diameter Breast Height (DBH) means the standard measure of tree size for those trees existing on a site. The tree trunk is measured at a height of 4½ feet above the ground. If a tree splits into multiple trunks below 4½ feet, the trunk is measured at its most narrow point beneath the split. An alternative calculation can be used for multiple trunks by using a multi-trunk calculation established by the ASCA Plant Appraisal Guide.

Hardwood tree means any leaf bearing (not needle-bearing) tree that is not coniferous (cone bearing). This definition is based on the colloquialism and does not reflect any true qualities of the tree.

Hazard tree means a tree which has a major structural defect or damage that could lead to catastrophic loss of the tree or a portion of the tree and which has an identifiable target and may result in property damage or personal injury. Hazard trees are standing trees, either live or dead, that have defects in the roots, trunk, or limbs, which predispose them to mechanical failure in whole, or in part.

International Society of Arboriculture (ISA) means a worldwide professional organization dedicated to fostering a greater appreciation for trees and to promoting research, technology and the professional practice of arboriculture. This organization administers certification programs of arborists, tree workers, utility arborists, and municipal arborists.

Landscape easement means a portion of a lot required to be reserved for, installed with, and maintained with vegetation. Such easement may or may not be required to be of a linear form. No utilities or parking shall be allowed within a required landscape easement.

Mulch means an organic material spread around the base of a tree to enrich and insulate the soil. Types of mulch include Pine Straw, Shredded Hardwood, Wood Chips, and Bark Chips. Mulch should be free of disease and pests. Synthetic or artificial mulches are not acceptable for use in the City of Smyrna.

Overstory trees means those trees that compose the top layer or canopy of vegetation and will generally reach a mature height of greater than 40 feet. provide canopy coverage of greater than or equal to 900 square feet of ground surface area.

Plantable area means the pervious surface area available for the preservation or planting of trees. Plantable area shall not include that portion of the lot that is covered by buildings and structures permitted pursuant to the maximum lot coverage standards of this Ordinance.

Pruning (Tree pruning) means to cut away dead, overgrown, or undesirable branches or stems. Trees shall be pruned in compliance with standard arboricultural practices as outlined in the Technical Standards.

Public tree means a tree located on eCity property including, but not limited to, eCity street rights-of-way, buildings, parks and cemeteries.

Qualified Professional means an International Society of Arboriculture (ISA) Certified Arborist, an American Society of Consulting Arborists (ASCA) Registered Consulting Arborist, or a Registered Forester.

Reasonable effort means ~~includes~~, including but not be limited to; alteration of building design, alternate location of building, parking area, water retention, drainage pipes, or relocation of utilities in an effort to conserve specimen trees.

Recompense means the replacement of trees or payment into the City-held tree bank for the removal of Specimen Trees or to meet minimum tree density requirements.

Revegetation Replacement planting means the replacement of trees and landscape materials into the ~~minimum~~ required landscape areas, as determined by the Zoning Ordinance Code, conditions of zoning approval, or the provisions of this article.

Responsible party means any individual, firm, principal, or other entity who is a signatory to a tree removal permit application or a land disturbance permit for development activity or any person or company caught in the act of tree removal without a City-issued permit, or who violates any other provision of this Ordinance.

Root plate means the area of the root zone comprised of pedestal roots, the zone of rapid taper and roots under compression, and the directional radius of which based upon the tree trunk diameter at 4.5 feet above the ground. The root plate will typically be represented by a concentric circle centering on the tree's trunk with a radius equal in feet to ½ times the number of inches of the trunk diameter. Catastrophic failure of the tree could result if roots in this area are damaged or destroyed. Example: The root plate radius of a 20-inch diameter tree is ten feet.

~~Softwood trees~~ means any coniferous (cone bearing) tree, such as pine, fir, hemlock, cedar, etc. This definition is based on the colloquialism, and does not necessarily reflect any true qualities of the tree.

Specimen tree or stand of trees means any tree or collective group of trees which qualifies for special consideration for preservation due to size, type, and condition, location or historical significance. See section 106-30 for general criteria regarding specimen trees or stands. of trees.

~~Street/Streetscape tree~~ means any overstory tree planted within the public easement, which is a planted three feet from the back edge of the sidewalk, running parallel to the street. overstory tree located or proposed to be located along a public right-of-way or private street. The actual location will be determined by the specific zoning district or overlay. In situations where there is limited planting space in the right-of-way and/or safety concerns, street trees may be located at the back of the sidewalk or within the landscape easement on private property at the discretion of the Community Development Director. An understory tree shall may be planted as a street tree with the presence of overhead utilities by approval of the Community Development Director.

Technical Standards means the Technical Standards and Best Management Practices for Smyrna's Community Forest prepared in conjunction with this Ordinance and which, as they exist and may be amended from time to time shall be incorporated herein, and a copy of which shall be maintained in the office of the City Clerk of the City of Smyrna, Georgia. If any term of the Technical Standards is deemed to conflict with the terms of this Ordinance, the terms of this Ordinance shall be controlling.

Tree means any living, self-supporting, woody perennial or fibrous plant, usually having a single trunk, which normally obtains a diameter breast height of at least three inches, and typically has one main stem or trunk and many branches.

Tree bank means an account, maintained by the Finance Department of the City of Smyrna, of funds contributed from developers as a form of alternative compliance to the Smyrna Tree Ordinance. Funds from the tree bank are to be used solely for maintenance, education and the purchase and planting of trees on public sites within the City as authorized by the Community Development Director.

Tree care prescription means a plan developed by a Qualified Professional to provide impacted tree(s) during the development process the best possible chance of survival and should conform to the requirements of the Technical Standards.

Tree density factor means a unit of measurement used to prescribe the calculated tree coverage on a site, expressed as inches per acre. For existing trees, density is calculated based

on dbh. For planted trees, tree density is calculated based on the caliper inches of the planted tree. Site density factor for areas within the corporate limits of the City of Smyrna is 100 inches per acre.

Tree removal means any act which causes a tree to die, including but not limited to damage inflicted upon the root system or trunk as a result of:

- (a) The improper use of machinery on the trees;
- (b) The storage of materials in or around the trees;
- (c) Soil compaction;
- (d) Altering the natural grade to expose the roots or to cover the tree's root system with more than four inches of soil;
- (e) Causing the infection or infestation of the tree by pests, fungus or harmful bacteria;
- (f) Pruning judged to be excessive by the Community Development Director or not in accordance with the standards set forth by the International Society of Arboriculture (ISA) Best Management Practices and Technical Standards;
- (g) Paving with concrete, asphalt or other impervious surfaces within such proximity as to be harmful to the tree or its root system; and
- (h) Application of herbicides or defoliant to any tree without first obtaining a permit; and
- (i) Pruning of roots within the structural root plate of a tree.

Tree planting list means a list of preferred tree species for use in the City of Smyrna. Species not included on this list may be approved at the discretion of the Community Development Director. The tree planting list is included in the Technical Standards.

Tree protection zone area means all lands that fall outside the buildable area of a parcel required to remain in open space, or all areas required as landscaping strips or buffers according to the Smyrna Zoning Ordinance Code, conditions of zoning approval or provisions of this article. These areas are designated for the purpose of meeting tree density requirements, saving natural trees, and/or preserving natural buffers that shall remain in a previous state.

Tree removal permit means a formal letter or permit issued by the Community Development Director allowing for the removal of said tree(s) on a property.

Tree save area means an area designated for the purpose of meeting tree density requirements, saving existing trees, preserving the root system of existing trees and/or preserving existing buffers that shall remain undisturbed.

Undesirable and invasive tree species list means a list of tree species that shall be prohibited when complying with the shading and landscaping provisions of this article. See the Technical Standards of the Smyrna Tree Ordinance for this list.

Understory tree means those trees that grow beneath the overstory trees, and will generally reach a mature height of under 40 feet provide canopy coverage of less than 900 square feet of ground surface area.

All other words or phrases as appropriate to the context of their uses shall be interpreted as defined in the Zoning Ordinance of the City of Smyrna, Georgia.

(Ord. No. 2008-5, 4-21-08)

Sec. 106-30. - General criteria for the determination of specimen trees or stands of trees.

(a) *Specimen tree:*

- (1) Any tree which equals or exceeds the following diameter sizes:
 - a. 10 inch dbh – Small trees or other ecologically similar trees of the following Genus: Cherry, Dogwood, Fringe, Magnolia other than Southern Magnolia, Ornamental Maple, Persimmon, Redbud and Sourwood ~~24 inch dbh—Overstory trees of the following Genus: Oak and Beech.~~
 - b. 20 inch dbh – Coniferous trees or other ecologically similar trees of the following Genus: Aborvitae, Baldcypress, Cedar, China Fir, Eastern Hemlock and Eastern Red Cedar ~~30 inch dbh—Overstory trees of the following Genus: Ash, Blackgum, Cedar, Fir, Hickory, Maple, Pecan, Persimmon and Spruce.~~
 - c. 24 inch dbh – Overstory trees or other ecologically similar trees of the following Genus: Ash, Beech, Birch, Blackgum, Elm, Gingko, Hickory, Oak, Pecan, Poplar, Red and Sugar Maple, Southern Magnolia, Spruce and Sweetgum ~~36 inch dbh—Overstory trees of the following Genus: Pine, Poplar and Sweetgum.~~
 - d. 36 inch dbh – Overstory trees or other ecologically similar trees of the following Genus: Pine ~~10 inch dbh—Small trees such as dogwoods, redbuds, sourwoods, etc.~~
 - (2) ~~A specimen tree must meet the following minimum standards: Any tree determined to be hazardous, dead, dying, or diseased according to ISA Standards shall not be considered a specimen tree.~~
 - a. ~~A life expectancy of greater than 15 years.~~
 - b. ~~A structurally sound trunk, not hollow and having no extensive decay, and less than ten percent radial trunk dieback.~~
 - c. ~~No more than two major and several minor dead limbs (hardwoods only).~~
 - d. ~~No major insect or pathological problem.~~
 - e. ~~Relatively uniform crown distribution or correctable crown distribution with no more than 70 percent of all branches on one side of tree.~~
 - (3) A lesser sized tree can be considered a specimen tree if it is a rare or unusual species, or of exceptional or unique quality, or of historical significance. Requires approval from the Director of Community Development Director.
 - (4) A lesser size tree can be considered a specimen tree if it is specifically used by a builder, developer, or design professional as a prominent feature in a landscape project. Requires approval from the Director of Community Development Director.
- (b) *Specimen tree stands:* A contiguous grouping of four or more trees which has been determined to be of high value in the opinion of the Community Development Director. Determination is based upon the following criteria:
- (1) A relatively mature, even-aged stand;
 - (2) A stand with uniform species composition or of a rare or unusual nature; or

- (3) A stand of historical significance. Requires approval from the ~~Director of Community Development~~ Director.
- (c) All surveyed trees will be inspected by ~~an ISA-certified arborist~~ a Qualified Professional and those that qualify as Specimen Trees or Specimen Tree Stands will be noted, located on the Tree Survey and the Tree Protection Plan, and certified in writing as being of specimen quality prior to the issuance of any permit.
- (d) Existing specimen trees may count toward the minimum tree density requirements if no disturbance occurs within the specimen tree's root plate. A developer may encroach into the critical root zone of a specimen tree and have it count towards the minimum tree density requirements at the discretion of the Community Development Director. The developer must provide the following information to the Department of Community Development prior to seeking approval to encroach into the critical root zone:
- (1) A tree protection plan showing the type of encroachment, the amount of critical root zone disturbance and any other potential impacts;
 - (2). A letter from a Qualified Professional reporting on the current health and structure of the tree; and
 - (3) A pre-paid tree prescription plan developed by a Qualified Professional shall be provided by the developer in order to remedy the encroachment into the critical root zone of the tree. This plan may include, but not be limited to: root pruning, canopy pruning, support systems, soil amendments, soil aeration, soil fertility, insect treatments, disease treatments, monitoring, root irrigation, lightning protection and vine removal. The tree prescription plan shall be pre-paid in full prior to the issuance of a development permit. Proof of payment shall be submitted with the application for a development permit.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2004-24, 6-21-04; Ord. No. 2008-5, 4-21-08)

Sec. 106-31. - Minimum tree density requirements.

- (a) A basic condition of The Smyrna Tree Ordinance is that all applicable sites maintain a minimum tree density of 100 inches per acre. The density requirement must be met whether or not a site had trees prior to development for the issuance of a development permit or any tree removal. The intent and goal of these regulations is to ensure that a minimum density of trees is maintained on all developed sites and that a significant amount of tree canopy coverage and pervious soil area is maintained throughout the City of Smyrna.

Notwithstanding any other provisions of this article, all trees designated for replacement meeting the definition of specimen trees shall be replaced on an inch-for-inch basis with a maximum recompense of ~~400 inches~~ 50 inches per acre. All trees used to replace specimen trees shall have a minimum caliper of four inches for overstory trees, and three inches for understory trees. Any trees planted on site to recompense specimen trees shall not be counted towards the required tree density for the site. However, any street tree and/or parking lot tree planted after the minimum density for the site has been satisfied can be counted to recompense specimen trees.

The density may be achieved by counting existing trees to be conserved, by planting new trees according to the minimum standards in this article, or by a combination of the two. All conserved specimen trees on-site will receive density credit of three times the

dbh of the tree. All conserved specimen trees must be protected in accordance to section 106-40 of the Smyrna Tree Ordinance to receive density credit.

Minimum tree density shall be calculated and established pursuant to the formula and analysis set forth in the Technical Standards ~~to~~ of this chapter. The property owner shall be subject to the minimum tree density requirement set forth in this section. The property owner shall base the density calculation on the net site area, excluding the infrastructure improvements (roads, utility lines, detention ponds, etc.) and buffer zones. In no event shall a parking lot be considered an infrastructure improvement.

- (b) All single-family and/or duplex residential lots shall provide the following a minimum of one tree at time of certificate of occupancy: a minimum of 12 inches per lot with a ratio of not less than one overstory tree per three understory trees.

- (c) Trees listed on the Undesirable and Invasive Tree Species List found in the Technical Standards shall not be used to achieve density, recompense and/or screening requirements.

In addition, replanting shall be at the ratio of not less than one overstory tree for every three understory trees. Density credit may be met by planting all overstory trees, but not by planting only understory trees.

No more than 30 percent of any one genus may be included in any replanting plan. Exceptions to this requirement may be authorized by the Community Development Director where in their opinion an exception is justified.

- (d) Notwithstanding the foregoing, it is required that all reasonable efforts be made to save specimen trees. Reasonable efforts shall include, but not be limited to: alteration of building design; alternate location of building, parking area, water retention, drainage pipes, or relocation of utilities.

- (e) Streetscape trees shall be required as part of the streetscape on either side of the front lot line in accordance with the provisions of this article. The developer must still meet the streetscape requirements if the minimum density for the site has been met. Streetscape tree establishment shall be done in accordance with the Technical Standards of this article. Tree canopy cover must meet the following minimum requirements:

- (1) All developments shall have one overstory tree planted every 40 feet along all subdivision roads and culs-de-sac, inclusive of driveways and easements;
- (2) Where overhead utility lines exist, the developer shall plant one understory tree every 30 feet; and
- (3) Where feasible, existing healthy trees greater than six inches dbh on the site or lot shall be incorporated into the required streetscape.

- (4) Streetscape ~~T~~rees may be spaced at variable distances to conform to the site standards and minimum distances set forth in the Technical Standards of the Smyrna Tree Ordinance, however they must be more or less evenly distributed across the front lot line.

- (5) Streetscape trees shall be planted in the right-of-way, ~~three feet behind the edge of the sidewalk. If a street tree is to be planted on private property a landscape easement must be provided. Maintenance of the street tree is the responsibility of the property owner. as determined by the specific zoning district or overlay districts. In situations where there is limited planting space in the right-of-way or for safety concerns, streetscape trees may be located at the back of the sidewalk or within the landscape~~

easement on private property at the discretion of the Community Development Director. An understory tree may be planted as a streetscape tree with the presence of overhead utilities by approval of the Community Development Director.

- (6) Streetscape trees shall not be allowed in traffic vision clearance zones according to Technical Standards or as designated by the ~~Director~~ of Community Development Director.
 - (7) Streetscape trees shall be horticulturally appropriate for use in road frontage areas. Other species may be used as street trees with approval from the Community Development Director.
 - (8) Streetscape trees can be counted as part of the required density, but they may be an additional requirement if the 100 inches per acre is met elsewhere on site. Specimen ~~tree~~ tree recompense may be used to fulfill this requirement after the overall density for the site is satisfied.
- (f) Parking lot trees shall be required as part of the commercial developments within the City in accordance with the provisions of this article. The developer must ~~still~~ meet the parking lot requirements if the minimum tree density for the site has been met. Parking lot tree establishment shall be done in accordance with the Technical Standards of this article. Tree canopy cover must meet the following minimum requirements:
- (1) A sufficient number of trees must be planted in interior portions of parking lots so that every parking space must be within 50 feet of the trunk of a tree to assure uniform distribution of trees throughout the parking area.
 - (2) Any redevelopment project that results in the removal and replacement of 25 percent or more of an existing parking lot (other than routine maintenance of the parking surface) must retrofit the entire parking lot to meet the tree planting standards set forth in this section.
 - (3) Light poles are not permitted in parking lot islands, peninsulas and medians unless a lighting plan is submitted for review and approval by the ~~Director~~ of Community Development Director.
 - (4) All ~~street yards~~ landscape easements between parking lots and public rights-of-ways shall be planted with one tree for each 40 linear feet exclusive of driveways, access ways and sight distance triangles.
 - (5) Trees planted to meet the parking lot and street yard requirements must meet or exceed the minimum standards specified in the Technical Standards of Smyrna Tree Ordinance.
 - (6) Parking lot or ~~street yard~~ landscape easement trees can be counted as part of the required density, but they may be an additional requirement if the 100 inches per acre is met elsewhere on site. Specimen tree recompense may be used to fulfill this requirement only after minimum tree density for the site has been satisfied. A tree may be planted to satisfy both parking lot and landscape easement requirements.
- (g) Boundary trees are offsite trees and shall not be used to achieve density, recompense and/or screening requirements.
- (h) Existing non-specimen trees may not be counted toward the minimum tree density requirements if land disturbance occurs within the tree's root plate. These trees shall be considered hazard trees and shall be removed from the site prior to the issuance of

a certificate of occupancy, including the removal of any portion of the tree stump above the original natural grade or elevation of land.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2004-37, 12-20-04; Ord. No. 2008-5, 4-21-08)

Sec. 106-32. - Alternative compliance to tree density requirements.

- (a) The intent of this article is to ensure that a minimum density of trees is maintained on all developed sites. Occasionally, this intent cannot be met because a site will not bear the required density of trees. To provide some alternatives in such case, two methods of compliance, at the discretion of the Community Development Director, may be acceptable:
- (1) Planting at a location remote from the project site; or
 - (2) Making donations to the Smyrna Tree Bank.
- (b) The following standards have been established for administering these alternative compliance methods. The Community Development Director must review and approve all requests for alternative compliance. In no instance shall 100 percent of the required site density be met through alternative compliance. As many trees as can reasonably be expected to survive must be planted on the site in question.
- (c) No development permit shall be issued until the Community Development Director has approved the request and received the necessary documentation and/or funds. If trees are to be planted at another location, a tree replacement plan, meeting all applicable standards, must be reviewed and approved. The following note must be shown on the approved plan:
- "A tree replacement plan addendum for this project shall be submitted to the Community Development Director at least 30 days prior to requesting a final inspection. This plan shall include the species, size and location of trees to be planted off-site to meet the tree density deficit shown. Release of this project is subject to approval of this plan, as well as verification of the installation of the trees."
- (d) *Smyrna Tree Bank.* As another method of alternative compliance, the eCity will accept donations to the Smyrna Tree Bank. These donations will be used for the sole purpose of maintenance, education, and planting trees on public property within the eCity (See section 106-50).
- (e) *Fund Administration.* The Smyrna Tree Bank will be administered by the Community Development Director. A quarterly report shall be submitted to the eCity Administrator showing amounts collected, amounts spent, and the type and location of trees planted.
- ~~(g) Existing specimen trees may count toward the minimum tree density requirements if land disturbance occurs within no more than 20 percent of the CRZ and no disturbance occurs within the specimen tree's root plate. The developer shall provide a tree bond, letter of credit or another form of fiscal surety approved by the city for a period of five years. The developer shall establish a two-year tree bond or letter of credit, which shall be automatically renewed for a period of five years. This bond/letter of credit shall be equal to the inch per inch replacement cost of the specimen tree, in addition to the removal cost of the same tree. The project landscape architect will take a photographic record of the condition of the specimen tree within 30 days after the Tree Preservation and Tree Replacement Plan have been approved for construction. The tree bond/letter of credit and the photographic record of the condition of the specimen tree must be submitted to the department of community development prior to the issuance of a development permit.~~

~~When the bond/letter of credit is requested to be released, the city will review the photographic record of the tree five years prior and compare it to the current condition of the tree to determine the release of the bond/letter of credit.~~

- ~~(1) A developer may encroach in more than 20 percent of the critical root zone of a specimen tree at the discretion of the community development director. The developer must provide following information to the department of community development prior to seeking approval to encroach more than 20 percent into the critical root zone of a specimen tree:~~
- ~~a. A tree protection plan showing the type of encroachment, the amount of critical root zone disturbance and any other potential impacts.~~
 - ~~b. A letter from a certified arborist reporting on the current health of the tree.~~
 - ~~c. An implementation plan. The developer shall provide an implementation plan to remedy the encroachment into the critical root zone. The implementation plan may include, but not limited to prescribed treatments by professional tree workers (i.e. aeration, root pruning, provision of supplemental nutrients and pruning the crown), alternative construction methods and alternative building footprints. The implementation plan must provide details pertaining to the services provided, the date and time each service will be provide and etc.~~
 - ~~d. A tree bond, letter of credit or other forms of fiscal surety approved by the city is required for a period of five years. The developer shall establish a two-year tree bond or letter of credit, which shall be automatically renewed for a period of five years. This bond/letter of credit shall be equal to the inch per inch replacement cost of the specimen tree, in addition to the removal cost of the same tree.~~

(Ord. No. 2003-8, 1-21-03; Ord. No. 2004-37, 12-20-04; Ord. No. 2008-5, 4-21-08)

Sec. 106-33. - Application requirements.

When a person applies for a development permit, such person shall provide the following information:

- (1) A complete tree survey and inventory plan, as specified in section 106-34.;
- (2) A complete tree protection plan, as specified in section 106-36. This plan shall be an integrated site plan showing specimen trees with their root plates and critical root zones, boundary trees, and trees counting toward density, with their root plates and critical root zones, the tree protection areas, those trees to be saved and those to be removed, utilities to be installed, grading, limits of disturbance, erosion control fencing, the approximate location of all structures, driveways and curb cuts.;
- (3) A complete tree replacement plan as specified in section 106-37. Replacement trees used in density calculation must be ecologically compatible with the intended growing site. A list of unacceptable replacement trees is provided in the Technical Standards of the Smyrna Tree Ordinance Undesirable Tree Species List.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-33.1. - Grading for future site development requirements.

Land disturbance and demolition activities for future site development shall not be permitted unless accompanied by site development plans and all requirements of the Smyrna Tree Ordinance are met. Activities associated with future development shall include (but not be limited to): tree cutting, land clearing, grading and/or grubbing.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-34. - Tree survey plan and inventory.

- (a) The tree survey plan shall be in the form of a to-scale map or a site plan prepared and sealed by a Georgia ~~Registered~~ Surveyor or a Georgia ~~Registered~~ Landscape Architect noting the location of all specimen trees, boundary trees and all other trees which will be conserved and counted toward meeting site density requirements.
- (b) All specimen trees and boundary trees with their root plate and critical root zones are to be ~~labeled~~ field tagged with aluminum tags and verified by a ~~ISA certified arborist~~ Qualified Professional and must be shown on the survey and inventoried by size and species. This includes those specimen trees that are to be conserved as well as those proposed for removal. Specimen-sized trees must be assessed by a ~~ISA certified arborist~~ Qualified Professional for specimen condition. A copy of the arborist's report detailing the specimen condition of each specimen-sized tree must be included on the plan; letter-sized reports stapled to the plan will not be accepted.
- (c) All other trees that are to be counted toward meeting density requirements must be shown on the survey and inventoried by size and species. Only trees with a dbh measurement of six inches or greater are to be identified as eligible for density compliance purposes.
- (d) ~~Trees other than specimen trees~~ All trees six inches or less that are proposed for removal, and thus cannot be counted toward density requirements, are not required to be counted and shown individually on the plan.
- (e) Sampling methods may be used to determine tree densities for forested areas over five acres. The minimum sampling area shall be one acre. The sampling method must be approved by the Community Development Director.
- (f) ~~All tree protection zones and tree save areas must be delineated on the tree survey plan. All buffers with existing trees must be delineated on plans as tree save areas. Land disturbance within any buffer is subject to approval by the Community Development Director.~~
- (g) ~~The tree survey plan shall provide an accurate list of those trees to be saved and a total value of the existing density factor for the entire property.~~

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-35. - Tree survey inspection.

Following the receipt of the completed tree removal application, tree survey plan, tree protection plan, tree replacement plan, or required tree care prescription, and supporting data, the Department of Community Development shall schedule and conduct an inspection of the proposed development site within ten working business days. Upon request, the applicant or his designee may be given an opportunity to participate in the site inspection. Following site inspection, the Community Development Director, consistent with the purposes of this article,

shall advise the applicant of any recommended changes in the applicant's proposed tree removal, protection or replacement plans.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-36. - Tree protection plan—Documents required.

- (a) Before the acceptance of a rezoning application and before the commencement of any alteration, defoliation or land disturbing activity, including the demolition of structures or the removal of impervious surfaces which requires the issuance of a development permit or a demolition permit, a tree protection plan is required unless otherwise exempted under section 106-28 of this ordinance.
- (b) The tree protection plan shall be a detailed plan designed to protect and conserve trees before, during and for a period of two years after construction or one year after construction with an automatic irrigation system.
- (c) The tree protection plan shall be submitted as a separate drawing from the tree replacement plan.
- (d) The tree protection plan shall be submitted on a current survey of the proposed site, drawn to scale, and showing clearly all required information as outlined by this section.
- (e) The tree protection plan shall be prepared by a Georgia ~~Registered~~ Landscape Architect. Required specifications for a tree protection plan include, but are not limited to, the following:
 - (1) The identity of the tract of land upon which tree(s) sought to be removed are located-;
 - (2) The name, address and phone number of the owner of the land and the name, address and phone number of any tenant of the property-;
 - (3) The ~~tree survey plan~~ tree protection plan shall provide an accurate list of those trees to be saved and a total value of the existing density factor for the entire property-;
 - (4) The type, location and size as measured at the diameter breast height of the tree(s) constituting those to be protected. Only trees six inches dbh or larger designated on the tree protection plan will be counted toward density requirements-;
 - (5) Locations of all specimen trees and boundary trees with their root plates and critical root zones (CRZ's). Indicate those specimen trees proposed for removal or for conservation. Removal of specimen trees is subject to approval by the Community Development Director. Any specimen tree proposed for removal is to be identified in terms of exact location, size, species and condition-;
 - (6) The locations of all tree protection zones, natural areas, landscaped areas, buffers and areas of revegetation. Include detailed locations and specifications for active protection measures. Methods of tree protection shall be indicated for all tree protection zones, including tree fencing, erosion control, retaining walls, tunneling for utilities, aeration systems, transplanting, staking, signage, etc-;
 - (7) Limits of clearing and land disturbance such as grading, trenching, etc. where these disturbances may affect tree protection zones-;
 - (8) The locations of all existing and proposed utility lines or easements. Include the location for any boring sites for underground utilities-;

- (9) Indication of staging areas for parking, material storage, concrete washout, debris burn and burial holes and other areas where tree protection may be affected-;
- (10) A delineation of tree save areas in which trees have been inventoried for density calculations. A radius line from the saved tree to the tree protection fence shall indicate a length in feet to aid in accurate tree fence locations-;
- (11) Calculations showing compliance with the required site density factor using existing trees, replacement trees, and/or alternative compliance methods. Site density compliance shall be demonstrated on the tree protection and tree replacement plans. Existing trees or stands of trees used in the density calculation must be indicated on the drawing. Only existing trees with a dbh of six inches or greater shall be counted toward the minimum tree density requirements. Tree protection plans submitted prior to rezoning applications shall indicate thereon how the minimum site density factor shall be maintained-;
- (12) All tree care prescriptions shall be provided on the tree protection plan-;
- (13) All trees outside tree protection areas and zones shall be shown to be removed-;
- (14) Site area (roads, utility lines, detention ponds, etc.)-;
- (15) The locations of existing and proposed structures, paving, driveways, cut and fill areas, detention areas, etc-;
- (16) Phase lines or limits of construction-;
- (17) Location and details for all permanent tree protection measures (tree wells, aeration systems, permeable paving, retaining walls, bollards, etc.)-; and
- (18) Additional information as required on a case-by-case basis or as requested by the Community Development Director.
- a. Prior to approval of the tree protection plan, the Community Development Director may require relocation or replacement of trees as uniformly as possible throughout the site, so that the entire property site meets the density requirements as outlined in section 106-31.
 - b. Prior to approval of the tree protection plan, the Community Development Director may require the use of active tree protection fencing for any or all tree protection zones.
- (19) The following notes shall be indicated on both tree protection plans and grading plans in capital letters:
- “Contact the Community Development Department (770-319-5387) to arrange a preconstruction conference prior to any land disturbance. No permit shall be issued until plans are approved and an on-site inspection with City representatives occurs.”
- “All tree protection measures shall be installed prior to grading or the removal of impervious surfaces or structures.”
- “Buffers shall be replanted subject to Community Development Department approval.”

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-37. - Tree replacement plan—Standards and revegetation.

- (a) A separate tree replacement plan in the form of a to-scale plan prepared and sealed by a Georgia ~~Registered Landscape~~ Architect which indicates the location of all proposed trees for revegetation is required. This required plan ~~may be included as a part of the tree protection plan or may~~ shall be submitted as a separate drawing.
- (b) The tree replacement plan is to include planting schedules with proposed tree names (botanical and common), quantity, size, minimum on-center spacing, percent genus and any special planting notes.
- (c) Unless otherwise approved by the Community Development Director, trees selected for replanting must not be on the Undesirable and Invasive Tree Species List found in the Technical Standards of the Smyrna Tree Ordinance. Trees selected for replanting must be free from injury, pests, disease, nutritional disorders or root defects, ~~and~~ must be in good vigor, must have radially symmetrical branching with a dominant leader, and must have no less than four feet between planted grade and lowest branch on the trunk for a two inch caliper tree in order to assure a reasonable expectation of survivability. Standards for transplanting shall be in keeping with those established in the International Society of Arboriculture Publication Best Management Practices and Technical Standards Tree and Shrub Planting Manual or similar publication.
- (d) It is desirable that replanted trees be ecologically compatible with the site and neighboring sites. Accordingly, the replanted trees shall be of the same or similar species as those removed when practical.
- (e) All replanted overstory trees shall have a trunk of not less than ~~three~~ four caliper inches. All replaced understory trees shall have a trunk of not less than ~~two~~ three inches. All planting area must have a minimum width of eight feet to provide adequate growing area. In order to provide sufficient growing area for planted trees, the following minimum criteria must be observed unless otherwise approved by the Community Development Director:
- Overstory trees* — 400 square feet of pervious root zone.
- Understory trees* — 200 square feet of pervious root zone.
- (f) Planting and staking details are to be provided on the plan.
- (g) Trees must be relocated or replaced on site in accordance with the provisions of this article.
- ~~(h) Debris removed. All debris from trees cut or substantially damaged shall be removed from the site prior to the issuance of a certificate of occupancy. This includes the removal of any portion of the tree stump above the original natural grade or elevation of land.~~
- (~~h~~) (h) All existing trees and planted trees must maintain a minimum spacing between trees. There must be a minimum spacing of 25 feet between overstory trees and any other tree. There must be a minimum spacing of 15 feet between understory trees. There must be a minimum spacing of ten feet between evergreen screening trees. These spacing requirements may be adjusted upon approval from the Community Development Director.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-38. - Permit procedures.

- (a) Prior to the issuance of a development permit, a tree survey plan, a tree protection plan and tree replacement plan must be submitted to the ~~department of~~ Community Development Department for review and approval.
- (b) All tree protection and tree replacement plans and related documentation shall be reviewed by the ~~department of~~ Community Development Department for conformance to the provisions of this article and either approved or denied. If denied, the reasons for denial shall be annotated on the tree protection plan or otherwise stated in writing.
- (c) After the tree protection plan is approved, the Community Development Department will be charged with the responsibility of inspecting the site to ensure that trees are adequately protected during any grading of the property for infrastructure installation. To adequately protect the site, tree save areas shall be delineated in the field with tree protection fencing.
- (d) All tree protection measures shall be installed prior to any ~~land disturbance~~ development activity, including the installation of erosion control devices, removal of structures or impervious surfaces, and the Community Development Director shall be contacted for a pre-construction conference prior to land disturbance. Land disturbance may proceed only after a permit is obtained and tree protection measures have been inspected and approved by the City.
- (e) After completion of a development, the Community Development Director (or his/her designee) will conduct an inspection of the site to ensure compliance with the tree protection and/or replacement plans.
- (f) The ~~Department of~~ Community Development Department may make unscheduled inspections before and during development to ensure protection of existing and newly planted trees, critical root zones and buffer zones.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-39. - Removal of trees—Conditions and exceptions.

- (a) Tree removal shall be ~~disallowed~~ prohibited in the following circumstances:
 - (1) Soil erosion or runoff problems will result due to topography, soil type, or proximity to flood plain or river protection areas, and the removal will substantially alter the existing soils adversely with regard to runoff and erosion. Information submitted by the City Engineer or other environmental specialist may be used by the Community Development Director in their evaluation.
 - (2) Specimen trees that are located on site and are not adequately protected or replaced. Additionally, removal may be ~~disallowed~~ prohibited if alternative site designs can be utilized to save specimen trees (without decreasing building area) and have not been made.
- (b) Exceptions. Tree removal from a site may be ~~allowed~~ permitted if:
 - (1) The tree is located in an area where a structure or improvement will be placed and the tree cannot be relocated on the site because of age, type or size of tree-;
 - (2) ~~The tree is diseased or structurally unsound.~~ The tree is designated as a hazardous tree;

- (3) ~~The tree is injured and/or poses an imminent danger. The tree is causing or posing identifiable damage to public or private property;~~
- (4) ~~The tree interferes with existing utility service; and~~
- (5) ~~The tree creates an unsafe vision clearance for vehicular movement.~~
- (c) ~~Trees~~ Any tree(s) removed must be relocated or replaced on site in accordance with the provisions of this article.
- (d) A permit is required to remove any living tree with a dbh of 24 inches or greater on property with no development activity.
1. Replacement is required either with a minimum two inch caliper tree of comparable species or genus or by paying recompense in the amount of \$400.00 to the tree bank.
 2. Replacement tree must be planted within 60 days of removal, unless otherwise approved by the Community Development Director.
 3. Removal without a permit requires double the recompense by either planting two two-inch trees, or paying \$800.00 into the tree bank.
- (e) ~~Existing trees. Any existing trees of not less than six inches dbh left in good growing condition on the property shall be counted toward the minimum density required. All replacement trees will be maintained properly to ensure their survivability.~~
- (e) Debris removed. All debris from trees cut or substantially damaged, dead, dying, diseased, or hazardous trees, shall be removed from the site prior to the issuance of a certificate of occupancy, including the removal of any portion of the tree stump above the original natural grade or elevation of land.
- (f) It is required that all reasonable efforts (see definition) be made to save specimen trees.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-40. - Tree protection during construction.

- (a) No person in the construction of any structure(s) or improvement(s) or any activity shall encroach or place solvents, material, construction machinery or temporary soil deposits within six feet of the area outside the critical root zone, as defined herein, of any specimen tree or any tree within a tree protection zone.
- (b) Before development, land clearing, filling or any land alteration; (including removal of impervious surfaces or structures), the developer shall be required to erect and maintain suitable protective barriers as required by the ~~Department of~~ Community Development Department, including tree fences, tree protection signs, and erosion barriers until completion of site landscaping. Inspection of tree protection barriers is required prior to any land disturbance or development activity. The Community Development Director Department shall be contacted to schedule an inspection time. Materials for active tree protection shall consist of chain link, orange laminated plastic, wooden post and rail fencing or other equivalent restraining material. Authorization to remove the protective devices shall be in writing by the Community Development Director or by the issuance of a final certificate of occupancy. ~~Inspection of tree protection barriers is required prior to any land~~

~~disturbance or development. The Community Development Director shall be contacted to schedule an inspection time.~~

- (1) All specimen trees to be conserved on-site and receiving a density credit of three times the dbh toward the minimum required tree density will be required to provide the following tree protection measures during construction:
 - a. A six-foot chain link fence around the critical root zone with the support posts for the fencing spaced six feet on center. ~~No gates, doors or openings shall be permitted as part of the fencing.~~
 - b. ~~Four inches to six inches~~ Two to three inches of organic mulch over the critical root zone within the tree protection zone. The mulch is to be spread by hand within the critical root zone. No machinery is allowed within the critical root zone of the specimen tree.
 - c. ~~An automatic above ground irrigation system.~~ Supplemental irrigation in accordance with the Technical Standards. There shall be no underground irrigation system installed within the tree protection zone; and
 - d. Signage must be placed every 50 feet on the tree protection fencing that reads, "Tree Save Area: Do Not Enter" in both English and Spanish.
- (2) All boundary trees will be required to provide the following items prior to the issuance of a development permit:
 - a. Prior to the issuance of a development permit pursuant to this section, the applicant shall provide a tree bond, letter of credit or other forms of surety approved by the City in an amount to be sufficient to offset the removal cost of the tree and the inch per inch replacement cost of the ~~boundary~~ tree. The developer shall establish a two-year tree bond or letter of credit, which shall be automatically renewed for a period of five years.
 - b. In establishing the bond or letter of credit amount required pursuant to section (a) above, the proposed replacement trees upon which payment shall be computed shall be a comparable species and size potential to the boundary tree, shall be ecologically compatible with the intended growing site, and at maturity shall fully mitigate the loss of the entire canopy area of the boundary tree.
 - i. If all the replacement trees cannot be planted on-site, the developer shall pay the remaining balance to the Smyrna Tree Bank.
 - c. The developer or project landscape architect shall also submit a photographic record and an assessment completed by ~~an ISA-certified arborist~~ a Qualified Professional of the boundary tree to the ~~Department of~~ Community Development Department prior to the issuance of a development permit. This documentation will serve as a baseline for the determination as to whether the boundary tree has failed to survive or is in a state of irreversible decline due to the permitted activity.
 - d. Prior to the issuance of a development permit, the developer will be required to provide the tree protection measures required for specimen trees in section 106-40(b)(1) during construction. These tree protection measures shall only be limited to the property to which the development permit was issued; and
 - e. Notice shall be provided to the property owner whose property contains the boundary tree. ~~which,~~ The notice shall include notice of the bond or letter of credit and a copy of the boundary tree provisions of this ordinance.

- f. At any time prior to a determination authorizing the release of the bond or letter of credit to the applicant pursuant to subsection (g) below, if the property owner whose property contains the boundary tree ("Petitioner") contends that the permitted activity has caused the boundary tree to fail to survive or be in a state of irreversible decline, the petitioner may petition the Community Development Director for the bond or letter of credit to be utilized for the removal and replacement of the boundary tree. Upon receipt of such petition, notice of the petition shall be provided to the applicant ~~here-under~~ hereunder at the address provided at the time of the development permit application, or at any alternative address subsequently designated by the applicant to the Community Development Director in writing, via first class and certified mail. Within 30 days of mailing of the notice, the Community Development Director shall make a determination as to whether the boundary tree has failed to survive or is in a state of irreversible decline due to the permitted activity. Notice of the decision shall be provided to the petitioner and the applicant by certified and first class mail as set forth above. Either party may appeal the Community Development Director's determination pursuant to section 106-44 of this article. Should the Community Development Director determine that the boundary tree failed to survive or is in a state of irreversible decline due to the permitted activity, and no appeal has been ~~timely~~ filed in a timely manner, or the applicant has fully exhausted his or her appellate rights, the bond or letter of credit shall be released to the petitioner to offset any costs incurred in removal and replacement of the boundary tree. The petitioner's rights pursuant to this section may not be exercised more than one time in any 18 month period.
- g. After five years from the date of the establishment of the bond or letter of credit, unless otherwise disbursed pursuant to ~~s~~Section (f) above, the applicant shall have the right to petition the Community Development Director for the release of all bonds or letter of credit held by the ~~Department of~~ Community Development Department for the boundary tree. Should an applicant file a petition here under, notice of the applicant's petition shall be provided to the property owner whose property contains the boundary tree by first class and certified mail at the address of the property containing the boundary tree, and at the address set forth in the tax digest regarding the property. Within 30 days of mailing of the notice, the Community Development Director shall make a determination as to whether the boundary tree has failed to survive or is in a state of irreversible decline due to the permitted activity. Notice of the decision shall be provided to the applicant and the property owner by certified and first class mail as set forth above. Either party may appeal the Community Development Director's determination pursuant to section 106-44 of this article. Should the Community Development Director determine that the boundary tree has not failed to survive or is not in a state of irreversible decline due to the permitted activity, and no appeal has been timely filed, or the property owner has fully exhausted his or her appellate rights, the bond or letter of credit shall be released to the applicant.
- (c) In addition to fencing (where active tree protection is required), each tree to be saved shall be marked at the diameter breast height (dbh) with surveyor's flagging ribbon with a permanent marker indicating the size and species of tree, or number of the tree which is cross-referenced by tree size and species on a chart on the tree survey plan. The flagging ribbon shall encompass the tree; slashing the tree bark and wedging the flagging ribbon into the bark damages the tree and is not acceptable and will incur a penalty as described herein.

- (d) All tree protection devices must remain in functioning condition until the certificate of occupancy is issued. Maintenance of tree protection devices are the responsibility of the developer or property owner.
- (e) All required tree care prescriptions issued by the Qualified Professional shall be implemented during development activity.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2004-37, 12-20-04; Ord. No. 2008-5, 4-12-08)

Sec. 106-40.1. - Protection and care for public trees.

- (a) The Ceity shall have the right to plant, maintain, prune, and remove trees, shrubs, and plants within the rights-of-way of all Ceity streets, roads, and highways, in parks, around Ceity facilities, and on other Ceity grounds, as may be necessary or desirable to ensure public safety, to preserve tree health, and to maintain and increase tree canopy cover.
- (b) All trees growing on Ceity property shall be protected from damage to the crown, trunk, and roots. It shall be unlawful for any person to engage in any activity on private property that directly or indirectly adversely affects the health, safety, or condition of a tree on Ceity property. Furthermore, active tree protection measures, as described in this chapter, shall be undertaken by the person engaging in any such activity to protect each affected tree's roots, trunk, crown, and critical root zone, from damage. If a person damages, destroys, or fails to protect a Ceity tree, the person(s) ~~city may require the person~~ responsible for the damage ~~to pay a fine equal to the appraised value of the tree~~ may be subject to the penalty established in section 106-49, the cost of repairing the damage, replacing the tree, and/or the cost of restoring the site to its original condition or as near as possible to its original condition.
- ~~(c) The value of a city tree shall be equal to the inch per inch value.~~
- (c) The Ceity may prune, remove or cause to be pruned or removed, any Ceity tree or part thereof which is in an unsafe condition or which by reason of its location or condition is or may be injurious to sewers, water lines, electric power lines, gas lines, or other public improvements, or is infested with any injurious fungus, insect, or other pest.

(Ord. No. 2003-35, 11-17-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-41. - Tree damage.

Any tree, designated in the plan to be saved which is damaged during construction or as a result of construction as determined by the Community Development Director, shall be treated according to ~~accepted National Arborists Association Standards~~ the Technical Standards, or replaced with a six inch caliper tree. If the Community Development Director deems the damaged tree to be a hazardous tree, he or she shall require removal of the tree. In the event that a damaged tree must be removed, the location occupied by the tree's critical root zone must remain in a pervious state with no structures or buildings placed in this area and violations shall be subject to the applicable penalties as described herein.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-42. - Emergencies.

In case of emergencies, such as hurricane, tornado, windstorm, flood, freeze, earthquake or other disasters, the requirements of these regulations may be waived by the Community Development Director or other designated official, upon a finding that such waiver is necessary so that public or private work to restore order in the Ccity will not be impeded.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-43. - Variances and waivers of article requirements.

The ~~m~~Mayor and ~~e~~Council may, upon appropriate application in writing, vary or waive the terms and provisions of this article due to a hardship in the use of the land upon which a tree is located. A hardship shall be limited to factors associated with the topography of the land, size/configuration of the parcel or uniqueness of the development plan (including buildings).

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-44. - Appeal.

Any person adversely affected by a decision of the Community Development Director in the enforcement or interpretation of any of the terms or provisions of this article may appeal such decision to the ~~m~~Mayor and ~~e~~Council. Such appeal shall be taken by filing written notice thereof with the ~~Department of~~ Community Development Department within ten days after the decision of the Community Development Director or their designee.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-45. - Withholding of certificate of occupancy.

The Community Development Director may withhold the issuance of the required certificate of occupancy, ~~or~~ permits ~~and~~ or inspections, for any development as required until the provisions of ~~the~~ this article have been fully met.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-46. - Tree removal and construction companies.

All provisions of this article shall apply to any person removing trees on behalf of any other person, including all tree removal companies, utility companies or ~~persons in the business of removing trees or~~ construction companies. It shall be unlawful for any person or company to remove or cause to be removed any tree or undertake any work for which a development permit is required pursuant to this article, unless a valid permit thereof is in effect and is displayed in accordance with the provisions of section ~~160-47~~ 106-47. If any such work or removal is performed without the permit being displayed as required in section ~~160-47~~ 106-47, such removal or work shall constitute a violation of this article and shall subject the person or company violating this article to all penalties provided herein. However, utility companies may provide emergency work without formal approval; provided, however, that emergency actions are reported in writing to the Community Development Director within three working days after completion of all emergency services. Further, the permit taken by any person, company or

utility under this section may include defined areas of tree cutting and trimming under one permit.

All tree removal companies, utility companies or ~~persons in the business of removing trees or construction~~ companies shall remove from the site any trees, stumps, limbs or debris caused by activities allowed by the issuance of a permit under this article.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-47. - Display of permit and inspections.

The applicant shall prominently display ~~on the site the permit issued~~ the permit issued on-site. Such permit shall be displayed continuously while trees are being removed or replaced or work done as authorized on the permit. As a condition for the issuance of a permit, the applicant shall agree in writing to entry onto his/her premises by representatives of the City as designated by the Community Development Director to inspect the permit and activities at any time, and such entry shall be lawful. Failure to allow such entry shall be unlawful and shall constitute failure to display the permit as required under this section.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-48. - Fees.

Each applicant requesting a permit under the provisions of the Smyrna Tree Ordinance shall deposit ~~a~~ with the city a fee of \$500.00, which fee shall be nonrefundable fee, as referred to in the Smyrna fee schedule.

~~Provided, however, no fees shall be charged on any application filed solely within a public right-of-way or for a single-family residence.~~

~~Provided, further, that a nominal fee shall be charged on any application where the Community Development Director, or their designee, needs to review the plan to determine that the tree(s) meet the exception criteria contained in section 106-28.~~

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-49. - Penalty.

~~Any person, firm or corporation violating any provisions of this article shall be punished as described herein and in addition thereto may be enjoined from continuing the violation.~~

~~(a) A violation of this article shall be punishable by a fine of \$1,000.00 per occurrence. Each tree cut, damaged or poisoned shall constitute a separate offense.~~

~~(b) In the event that a tree is damaged or removed in violation of this article, the violator(s) shall make a donation in the amount of \$100.00 an inch per damaged or removed tree to the Smyrna Tree Bank.~~

~~(c) In the event that a tree must be removed in violation of this article, violator(s) shall be subject to replace the tree with a six inch caliper tree. Furthermore, the location and extent of the tree's critical root zone shall permanently remain in a pervious state with no structures or buildings placed on it.~~

~~(d) In addition to (a), (b) and (c), upon notice from the Community Development Director, work on any development that is being done contrary to the provisions of this article shall immediately cease. The stop work notice shall be in writing and go to the owner of the property, or to their agent, or to the person doing the work, and shall state the conditions under which work may be resumed. When an emergency exists, the Community Development Director shall not be required to give written notice prior to stopping the work. Further, in the event that work on any development is being done contrary to the provisions of this article, the Community Development Director may revoke any permit pertaining to the development activity for which the land disturbance permit has been issued and may refuse to issue any further permit until, at the discretion of the Community Development Director, the work on the development is brought into compliance with the provisions of this article or all penalties have been paid.~~

(a) Whenever in this ordinance any act is prohibited or is made or declared to be unlawful or a misdemeanor or an offense, or whenever in such ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, such violation of any such provision of this ordinance shall be punishable by a fine not exceeding \$1,000.00; by sentence of imprisonment in the city jail not exceeding six months; probation, with or without conditions, not exceeding six months; community service not exceeding 30 days or by one or more of these punishments as the judge may in his discretion see fit to impose.

(b) Any violation of this ordinance shall continue shall constitute a separate offense.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-50. - Tree replacement fund. bank.

~~On January 4, 1993 the Smyrna City Council adopted the Tree Preservation and Protection Ordinance. The tree replacement fund bank for alternative compliance shall be set in the amount described in the Technical Standards of the Smyrna Tree Ordinance for each caliper inch, that the property is deficient. This alternative compliance method may only be used when the Community Development Department determines that a property has a justifiable hardship in meeting the density requirements set forth herein.~~

(Ord. No. 2003-8, 1-21-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-51. - Tree maintenance.

Any tree designated for preservation or added to a site as a result of a tree replacement plan shall be maintained properly for a period of two years from the ~~date of installation~~ issuance of certificate of occupancy. Any tree not ~~property~~ properly maintained during this two-year period shall be replaced. This maintenance period can be reduced to one year if an irrigation system is installed ~~per a set of plans to cover all planted trees per an irrigation plan~~ approved by the eCity. If any tree, shrub or plant installed for the purposes of meeting the eCity's Code requirements is removed after installation, it must be replaced on an inch per inch basis with the same species of tree, shrub or plant. This can be accomplished using more than one tree provided the total caliper equals the size of tree removed.

A tree bond with a value equivalent to the restoration cost associated with all replaced trees shall be furnished to the eCity. This bond may be released by the eCity within two years after the final certificate of occupancy is issued for the development (one year for developments with

irrigation systems) provided the trees are certified to be in good condition by the Community Development Director or their designee.

A two-year tree maintenance bond shall also be required for any work within public rights-of-way or utility easements. This bond shall be equivalent to the restoration cost associated with all existing trees and shall be furnished to the eCity. This bond may be released by the eCity within two years after the work is completed provided trees are certified to be in good condition by the Community Development Director or their designee.

(Ord. No. 2003-8, 1-21-03; Ord. No. 2003-35, 11-17-03; Ord. No. 2008-5, 4-21-08)

Sec. 106-52. - Tree board.

- (a) The Smyrna Tree Board (hereinafter referred to as the "board") is hereby established to advise the Mayor and Council on matters pertaining to the conservation of trees and the conservation of tree canopy cover within the eCity and to take instruction from the Mayor and Council regarding such issues.
- (b) The board shall consist of eight members who shall be appointed by the Mayor and Council. They shall serve without compensation.
- (c) A chairman and vice-chairman shall be elected by the board from among the board members. Nominations for these positions shall be submitted to the board annually at least ten working days and not more than 30 working days prior to the first meeting of each calendar year. Elections shall be held at the first meeting of each calendar year, at which time the term of office shall begin.
- (d) A secretary elected by the board from among the board members shall maintain records of the board's proceedings and assist the City Clerk with dissemination of information, public awareness, and such other administrative duties as may be assigned by the board.
- (e) The term of office for each member of the Smyrna Tree Board shall be four years.
- (f) In the event that a vacancy occurs during the term of any member, his or her successor shall be appointed by the ~~m~~eMayor and eCouncil. The chairman of the Smyrna Tree Board shall recommend to the ~~m~~eMayor and eCouncil that a replacement be appointed for any member who fails to perform his/her duties.
- (g) A majority of the members of the board shall constitute a quorum.
- (h) The Smyrna Tree Board shall meet not less frequently than quarterly and shall establish rules and regulations for its operation consistent with the provisions of this ~~chapter~~ Ordinance.

(Ord. No. 2003-35, 11-17-03; Ord. No. 2008-5, 4-21-08)