

AGENDA ITEM SUMMARY SHEET
VILLAGE COUNCIL MEETING
June 27, 2018

Agenda Item:

First Reading of Ordinance 2018-07 – Tree Protection

Description:

The Land Development Code (Chapter 14) addresses tree protection and criteria for removing certain trees. The Code has an exception for single family lots, 5 acres or less in size. The proposed ordinance would remove this exception and require a permit, similar to that for multiple family development and common areas of single family development. This would eliminate confusion regarding what properties need permits, and would establish criteria that if a tree is removed, it would be replaced by a similar tree.

Recommended Action:

Pass first reading of Ordinance 2018-07.

Financial Impacts:

Minor financial impact. Tree removal permits cost \$30 for the first tree plus \$1 per additional tree.

Attachment:

1. Ordinance 2018-07

ATTACHMENT 1

ORDINANCE NO. 2018 - 07

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2
3 **AN ORDINANCE OF THE VILLAGE COUNCIL OF**
4 **THE VILLAGE OF ESTERO, FLORIDA,**
5 **AMENDING CERTAIN PROVISIONS OF THE**
6 **TRANSITIONAL LAND DEVELOPMENT CODE**
7 **CHAPTER 14, ARTICLE V, TREE PROTECTION**
8 **TO REMOVE THE PERMIT EXEMPTION FOR**
9 **THE REMOVAL OF PROTECTED TREES FROM**
10 **LOTS ZONED FOR SINGLE-FAMILY**
11 **RESIDENTIAL USE AND TO ADD CERTAIN**
12 **PERMIT REQUIREMENTS REGARDING THE**
13 **SAME; PROVIDING A SEVERABILITY CLAUSE;**
14 **PROVIDING FOR CONFLICTS; AND PROVIDING**
15 **AN EFFECTIVE DATE.**
16

17 **WHEREAS**, the Village of Estero Charter provides that the Lee County land
18 development regulations, as they exist on the date of the Village incorporation, shall be the
19 Village of Estero Transitional Land Development Regulations until such time as they are
20 amended or modified by the Village; and
21

22 **WHEREAS**, the Village of Estero desires to amend certain portions of the Transitional
23 Land Development Regulations to provide further protections against the unwarranted
24 removal of trees from single-family residential lots and to enact reasonable regulations
25 governing permits for such tree removals; and
26

27 **WHEREAS**, the Village of Estero Planning and Zoning Board, pursuant to its
28 delegated powers as the Local Planning Agency, has conducted a duly advertised public
29 hearing to hear public input and to discuss these proposed amendments to the Transitional
30 Land Development Regulations, including the recommendations of the Village Staff and
31 comments of the public; and
32

33 **WHEREAS**, the Village Council conducted a duly advertised first reading on
34 _____ to consider the proposed amendments to the Transitional Land
35 Development Regulations; and
36

37 **WHEREAS**, the Village Council conducted a duly advertised second reading and
38 public hearing on _____ to consider the proposed amendments to the
39 Transitional Land Development Regulations; and
40

41 **WHEREAS**, the Village Council finds that it is in the best interests and welfare of the
42 Village and its residents to further amend the Transitional Land Development Regulations.
43

44 **NOW, THEREFORE**, be it ordained by the Village Council of the Village of Estero,
45 Florida:

46 **Section 1. Recitals Adopted.**

47
48 That each of the above stated recitals is hereby adopted and confirmed as being true,
49 and the same are hereby incorporated as a part of this Ordinance.
50

51 **Section 2. Amendments to Chapter 14, Section 14-377.**

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53 Section 14-377 of Chapter 14 of the Transitional Land Development Regulations is
54 amended by deleting Subsection (7) thereof, and renumbering Subsection 8 to
55 Subsection 7, as follows:
56

57 “Sec. 14-377. Exemptions from article.

58
59 (a) This article does not apply to the following:

60 (Subsections (1) through (6) remain the same)

61
62
63 ~~(7) The removal of protected trees on a lot zoned for single family~~
64 ~~residential use or being used lawfully as a single family residence or mobile home~~
65 ~~where the residence or proposed residence is located on a lot no greater than five acres~~
66 ~~in area. However this exemption does not apply on the coastal islands listed in~~
67 ~~subsection (e) below.~~

68
69 ~~(8)~~ (7) The removal of protected trees, other than a tree worthy of
70 preservation, on the premises of a licensed plant or tree nursery or tree farm where such
71 trees are intended for sale in the ordinary course of the licensee’s business.”
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73 **Section 3. Amendment to Section 14-411 of Chapter 14 of the Transitional**
74 **Land Use Regulations.**

75
76 Section 14-411 of Chapter 14 of the Transitional Land Development Regulations is
77 hereby amended, as follows:
78

79 “Section 14-411. – Permit Required.

80
81 No person, organization, society, association, corporation or any agent or
82 representative thereof, shall deliberately cut down, remove, relocate, defoliate through
83 the use of chemicals or other methods, or otherwise damage any tree that is protected
84 under this article and located in the ~~unincorporated areas of the county~~ Village of
85 Estero, without first obtaining a permit as provided in this article. For all purposes of
86 this Article, the term administrator as used in this article shall mean the Director of
87 Community Development of the Village of Estero or his or her designee.”
88
89
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92 **Section 4.** **Amendments to Section 14-412 of Chapter 14 of the Transitional**
93 **Land Use Regulations.**
94

95 Section 14-412 is amended to modify subsection (g) and add a new subsection (i), as
96 follows:
97

98 “(g) *Approval or denial.* Based on the information contained in the application,
99 and after investigation of the application, the administrator shall approve or deny the
100 application, and, if approved, the administrator is the party so designated by ~~the Board~~
101 ~~of County Commissioners~~ the Village of Estero Council to issue the permit for a period
102 not to exceed ~~one year~~ 180 days and to collect the permit fee.”
103

104 * * *

105
106 (i) *Tree Removal from Single-Family Lots.* In addition to the foregoing
107 requirements set forth in Subsections (a) through (h) of this Section 14-412, as
108 amended, and notwithstanding anything to the contrary in such subsections, the
109 following provisions apply to the removal of protected trees on a lot zoned for single-
110 family residential use or being lawfully used as a single-family residence or mobile
111 home where the residence is located on a lot no greater than five acres in area:
112

113 (1) In addition to the application required under subsection (c) above,
114 the owner of the single-family residence shall provide evidence, satisfactory to the
115 administrator, of the ownership of the tree(s) to be removed based on their location
116 on the site plan to be filed therewith, which site plan shall be required regardless of
117 the number of trees to be removed. Where there is uncertainty as to the ownership
118 of the tree(s) to be removed, the owner and all abutting owners that might claim
119 ownership of such tree(s) shall provide written permission for such removal as a
120 part of the application;
121

122 (2) Any protected tree that is removed from the street-facing side of a
123 single-family residential lot shall be replaced by another protected tree meeting the
124 size and height requirements of this Code. To the extent reasonably possible, the
125 replacement tree(s) shall be planted on the same street-facing side as those tree(s)
126 removed. If such location for replacement is not physically possible due to the
127 configuration of the lot and the inability to replant at or near the location of the
128 removed tree(s), the application shall be conditioned on replacement on either (a)
129 another side of the same lot or (b) on other nearby land with the written permission
130 of the owner(s) of such nearby land. For purposes hereof, the term “nearby land”
131 shall mean land within a ¼ mile of the nearest boundary of the lot from which the
132 tree(s) are to be removed.
133

134 (3) With respect to the criteria for granting approval for a tree removal
135 permit as set forth in subsection (d), whenever reasonably possible, the applicant
136 must have taken all reasonable efforts, prior to applying for such application for
137 removal, to mitigate any conflict that exists between the tree(s) and the nearby

138 streets, sidewalks, driveways, public utilities, or similar improvements. Such
139 efforts shall include root pruning and other reasonable means to prevent or mitigate
140 such conflicts. Where mitigation efforts have been attempted or if mitigation is
141 unlikely to result in a favorable outcome, then the applicant shall provide a written
142 certification from an ISA certified arborist to the administrator stating that
143 mitigation efforts have been tried unsuccessfully, or mitigation efforts will not be
144 reasonably available to save such tree(s) from removal, and in the opinion of such
145 arborist, removal is the only reasonable means for such tree(s) under such
146 circumstances, and therefor fully meets the criteria for the granting of such a permit.
147 For purposes of such criteria the safety of the public and existing buildings and
148 structures shall be of paramount importance, while the economic impact to the
149 applicant of possible disruption of public utility services or the necessity to re-route
150 such public utility services, while important, shall be of secondary concern to the
151 administrator in making a decision to grant such a removal permit. In such cases,
152 reasonable relocation of the public utilities may be required by the administrator as
153 an alternative to removal, so long as the public safety is not impacted.

154
155 (4) Whenever a tree removal permit shall be granted, the applicant shall
156 be required as a condition thereof to grind the stump of the tree(s) removed to the
157 surrounding ground level, and to provide the administrator with an acceptable re-
158 beautification plan for the area surrounding the stump showing the landscaping and
159 plantings to be planted in place of such tree(s)."

160
161 **Section 5. Severability.**

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163 If any section, subsection, clause or provision of this Ordinance is declared invalid or
164 unconstitutional by a court of competent jurisdiction, the remainder shall not be
165 affected by such invalidity.

166
167 **Section 6. Conflicts.**

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169 All sections or parts of sections of the Village ordinances in conflict herewith are
170 intended to be rescinded and repealed to the extent of such conflict.

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172 **Section 7. Effective Date.**

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174 This Ordinance shall be effective immediately upon adoption at its passage on second
175 reading.

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177 **PASSED** on first reading this 27th day of June, 2018.

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179 **PASSED AND ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero,
180 Florida this ____ day of ____, 2018.

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Attest:

VILLAGE OF ESTERO, FLORIDA

By: _____
Kathy Hall, MMC, Village Clerk

By: _____
James R. Boesch, Mayor

Reviewed for legal sufficiency:

By: _____
Nancy Stroud, Esq., Village Land Use Attorney

Vote:	AYE	NAY
Mayor Boesch	_____	_____
Vice Mayor Ribble	_____	_____
Councilmember Batos	_____	_____
Councilmember Errington	_____	_____
Councilmember Levitan	_____	_____
Councilmember McLain	_____	_____
Councilmember Wilson	_____	_____