

AGENDA ITEM SUMMARY SHEET
VILLAGE COUNCIL MEETING
July 11, 2018

Agenda Item:

Second Reading and Public Hearing of Ordinance 2018-07 – Tree Protection

Description:

Trees provide important benefits to a community. These benefits are outlined in the Land Development Code, along with criteria for tree protection, and standards for removal and replanting of trees in certain circumstances.

The Code currently requires a permit to remove a “protected” tree from most properties. A protected tree includes trees such as oak, pine, certain palms, black olive, gumbo limbo, cypress, magnolia, etc., but not exotics such as melaleuca and Brazilian pepper.

Currently, a permit is needed on property that is zoned or used for multiple-family development (condominiums, apartments, etc.) and “common” areas of such properties (typically through a homeowners association or Community Development District). Commercial and other non-residential properties are addressed through their development orders. A tree removal permit is required for removal in these developments, or a Limited Development Order, depending on the number of trees to be removed.

There are exemptions in the ordinance for: bona fide agricultural purposes; tree nurseries; public rights-of-way of federal, state and local government agencies; and trees on lots zoned or used for single-family (or mobile home) residential use, 5 acres or less in size.

The proposed ordinance would remove the single-family lot exemption and would require a permit, similar to all other developments, including multiple-family developments and common areas of residential subdivisions. If a “protected” tree is removed, it would need to be replaced by a similar tree. The criteria are listed in the ordinance.

Planning and Zoning Board – June 19, 2018

The Planning and Zoning Board stated that it supported tree protection but had several questions, and indicated in its recommendation to Council that the ordinance needs some revisions and there should be communication to the public.

Council First Reading – June 28, 2018

The Council discussed the item, had several questions, suggested they would like to hear from the public at the second reading, and passed the first reading. Staff indicated that there may be some revisions to the ordinance by the second reading.

Recommended Action:

Motion to adopt Ordinance 2018-07.

Financial Impacts:

Minor financial impact. Tree removal permits for single-family development cost \$30 for the first tree plus \$1 per additional tree. Removal of 10 trees or more requires a limited development order at a cost of \$800.

Attachments:

1. Existing "Tree Protection" section of Land Development Code
2. Ordinance 2018-07 – Proposed changes to Land Development Code

ATTACHMENT 1

- LAND DEVELOPMENT CODE

Chapter 14 ENVIRONMENT AND NATURAL RESOURCES

(Ord. No. 96-17, § 3, 9-18-96)

Secs. 14-296—14-370. Reserved.

FOOTNOTE(S):

--- (6) ---

Editor's note— Ordinance No. 96-17, § 3, adopted September 18, 1996, repealed §§ 14-291—14-300, 14-331—14-335 and added in lieu thereof §§ 14-291—14-295. Formerly, such sections pertained to similar provisions and derived from Ord. No. 86-31, § 1, 3—15, 10-29-86; Ord. No. 88-33, § 5, 7-20-88; Ord. No. 91-05, § 1, 2, 1-30-91; Ord. No. 93-03, § 1, 1-6-93. ([Back](#))

Cross reference— Transfer of development rights, § 2-141 et seq. ([Back](#))

ARTICLE V. TREE PROTECTION ^{IV}

DIVISION 1. - GENERALLY

DIVISION 2. - ADMINISTRATION AND ENFORCEMENT

FOOTNOTE(S):

--- (7) ---

Editor's note— Ord. No. 94-14, adopted May 18, 1994, amended and restated in their entirety the tree protection provisions of this chapter, which provisions were formerly derived from Ord. No. 86-34, § 1, 3—11 and 13—20, adopted Nov. 19, 1986; Ord. No. 88-33, § 7, adopted July 20, 1988; Ord. No. 90-41, §§ 4—6, adopted Aug. 15, 1990; and Ord. No. 91-04, §§ 2, 3, adopted Jan. 30, 1991. ([Back](#))

Cross reference— Open space, buffering and landscaping, § 10-411 et seq. ([Back](#))

DIVISION 1. GENERALLY

Sec. 14-371. Short title.

Sec. 14-372. Findings of fact.

Sec. 14-373. Intent and purpose of article.

Sec. 14-374. Definitions.

Sec. 14-375. Penalty for violation of article.

Sec. 14-376. Prosecution of violations.

Chapter 14 ENVIRONMENT AND NATURAL RESOURCES

Sec. 14-377. Exemptions from article.

Sec. 14-378. Suspension of article during emergency conditions.

Sec. 14-379. Nonliability of county.

Sec. 14-380. List of protected trees.

Sec. 14-381. Unlawful injury of trees.

Sec. 14-382. Removal of trees.

Sec. 14-383. Tree protection during development of land.

Sec. 14-384. Restoration standards.

Secs. 14-385—14-410. Reserved.

Sec. 14-371. Short title.

This article shall be known and may be cited as the "Lee County Tree Protection Ordinance."

(Ord. No. 94-14, § 2, 5-18-94)

Sec. 14-372. Findings of fact.

The Board of County Commissioners hereby finds and determines that trees promote the health and general welfare of the citizens of the county, specifically:

- (1) Trees transpire considerable amounts of water each day and assist in purifying the air;
- (2) Trees precipitate dust and other particulate airborne pollutants from the air;
- (3) Trees, through their root systems, stabilize soil and play an important and effective part in countywide soil conservation, erosion control and flood control;
- (4) Trees are an invaluable amenity to the county, providing shade and cooling the air and land, and reducing noise levels and glare;
- (5) The protection of trees within the county is not only desirable, but essential to the health, safety and welfare of all the citizens, present and future, of the county; and
- (6) Some trees are more beneficial than others as necessary contributions to the county's environment and it is not necessary to protect each and every tree in order to attain the publicly beneficial result of a tree protection ordinance.

(Ord. No. 94-14, § 4, 5-18-94)

Sec. 14-373. Intent and purpose of article.

- (a) The intent of this article is to provide protection of trees through the preservation, protection and planting of trees in order to aid in the stabilization of soil by the prevention of erosion and sedimentation; reduce stormwater runoff and costs associated therewith and maintain permeable land areas for aquifer recharge and surface water filtration; aid in the removal of carbon dioxide and generation of oxygen in the atmosphere; provide a buffer and screen against noise pollution; promote energy conservation through the creation of shade, reducing heat gain in or on buildings or paved

Chapter 14 ENVIRONMENT AND NATURAL RESOURCES

areas, and reducing the temperature of the microclimate through evapotranspiration; provide protection against severe weather; aid in the control of drainage and restoration of denuded soil subsequent to construction or grading; provide a haven for birds which in turn assist in the control of insects; protect and increase property values; conserve and enhance the county's physical and aesthetic environment; and generally protect and enhance the quality of life and the general welfare of the county.

- (b) The purpose of this article is to provide protection of trees from abuse and/or mutilation, and to regulate the removal and planting of trees in the unincorporated areas of the county in order to enhance and protect the environmental quality of the county.

(Ord. No. 94-14, § 3, 5-18-94)

Sec. 14-374. Definitions.

- (a) The following words, terms and phrases, and their derivations, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Administrator means the administrative director of the department of community development or his or her designee, who is the person responsible for administering the provisions of this article.

Bona fide agricultural purposes means good faith commercial or domestic agricultural use of the land. In determining whether the proposed agricultural use of land is bona fide, the following factors shall be taken into consideration by the administrator:

- (1) Whether the property could qualify as a bona fide agricultural purpose within the meaning of F.S. § 193.461(3)(b);
- (2) The relationship of the property to the Lee Plan; and
- (3) The zoning of the property. The current zoning of the property shall be agricultural.

Commission means the Board of County Commissioners.

County means Lee County, Florida.

Critical areas for surface water management means the Six Mile Cypress Watershed Basin, as defined in chapter 10, article III, division 9, and the density reduction/groundwater resource land use category, as defined in the county comprehensive plan adopted by Ordinance No. 90-43 and subsequently readopted by Ordinance No. 90-44. A map of the critical areas for surface water management is attached as appendix B to Ordinance No. 91-14, and is incorporated as part of this article by reference.

Diameter at breast height (dbh) means the diameter, in inches, of a tree measured 54 inches above natural grade.

Dripline means an imaginary vertical line running from the outermost branches or portion of the tree crown to the ground.

Greater Pine Island means the area that is affected by Lee Plan Goal 14 as depicted on the Future Land Use Map and as described in section 33-1002.

Indigenous vegetation means those plants which are characteristic of the major plant communities of the county, as listed in section 10-701.

Massing of trees means to cluster trees in a random fashion.

Notice of clearing means the permit issued by the administrator after it has been recorded by the clerk's office.

Chapter 14 ENVIRONMENT AND NATURAL RESOURCES

Person means any public or private individual, group, company, partnership, association, society or other combination of human beings whether legal or natural.

Protective barrier means a physical structure not less than three feet in height composed of lumber no less than one inch by one inch in size for shielding protected trees from the movement of equipment or the storage of equipment, material, debris or fill. Equivalent materials may be used to provide a protective barrier if first approved by the administrator.

Removal means the deliberate removal of a tree or causing the effective removal of a tree through damaging, poisoning or other direct or indirect actions resulting in the death of the tree.

Tree means a living, woody, self-supporting plant, ten feet or more in height, having one or more well-defined main stems or trunks, and any one stem or trunk four inches in diameter at breast height, and as listed in appendix E. For the purpose of this article, those palms listed on appendix E are declared to be a tree and are protected by the provisions of this article.

Tree protection map means a drawing or aerial photograph which provides the following information: location of all trees protected under the provisions of this article, plotted by ground truthing or any other accurate scientific techniques; common or scientific name of all trees; and diameter at breast height. Groups of trees in close proximity (five feet spacing or closer) may be designated as a clump of trees, with the predominant species, estimated number and average size listed.

Tree worthy of preservation means any tree listed in the Florida Champion Tree Records as compiled by the state.

Upland means land other than wetlands.

- (b) Unless specifically defined in this article, the words or phrases used in this article and not defined in subsection (a) of this section shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

(Ord. No. 94-14, § 5, 5-18-94; Ord. No. 96-17, § 3, 9-18-96; Ord. No. 07-19, § 3, 5-29-07)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 14-375. Penalty for violation of article.

- (a) Any person, organization, society, association or corporation, or any agent or representative thereof, who violates any provision of this article will, upon conviction, be subject to the following penalties:
- (1) *Criminal penalties.* Such person shall be punishable as provided in section 1-5
 - (2) *Civil penalties.* The following are applicable:
 - a. Injunctive relief to enjoin and restrain any person from violating the provisions of the article;
 - b. A fine not to exceed \$500.00 per violation;
 - c. Revocation, suspension or amendment of any land development permit granted pursuant to this article;
 - d. Restoration pursuant to the standards contained in section 14-384; and
 - e. Any other relief available pursuant to law.
- (b) Any equitable, legal or leasehold owner of property who knew, or should have known, that illegal removal of trees was occurring on property in which that individual has any equitable, legal or leasehold interest, and who permitted that activity to occur without notifying the administrator of the person, organization, society, association or corporation, or any agency or representative thereof, of the

Chapter 14 ENVIRONMENT AND NATURAL RESOURCES

improper or illegal removal of the trees, shall be equally subject to any civil or criminal penalty set forth in this article.

- (c) In any prosecution under this article for the removal of a tree without a permit, each tree so removed will constitute a separate offense.

(Ord. No. 94-14, § 18, 5-18-94; Ord. No. 99-05, § 5, 6-29-99)

Sec. 14-376. Prosecution of violations.

Prosecution of violations of this article shall be before the court, the county code enforcement board or the hearing examiner.

(Ord. No. 94-14, § 20, 5-18-94)

Sec. 14-377. Exemptions from article.

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

(1) Removal of trees on the following lands as specified in this subsection:

- a. This article does not apply to the removal of trees, other than trees worthy of preservation, on lands classified as agricultural land for ad valorem taxation purposes pursuant to F.S. § 193.461(3)(b), except as provided for proposed agricultural activities in Greater Pine Island in section 33-1031. Trees, other than trees worthy of preservation, may be removed from agriculturally zoned lands only after the owner or his agent procures a notice of clearing from the administrator. However, if an application to rezone the subject lands is filed within three years from the date when the most recent notice of clearing was issued, and the rezoning is granted, the applicable minimum open space requirements of chapter 10 may be satisfied in the following manner:
 1. A sufficient number of trees listed in appendix E shall be placed, planted and maintained consistent with section 14-384(a)(1)—(4) to the extent that such minimum open space requirements cannot be satisfied by then-existing natural forest.
 2. Such reforestation as required in subsection (a)(1)a.1 of this section shall be satisfied by imposing the necessary conditions to any final development order issued at any time within eight years after the land in question is rezoned.
 3. If, subsequent to the issuance of the notice of clearing, the owner or agent of the land obtains an agricultural lands classification for ad valorem taxation purposes pursuant to F.S. § 193.461(3)(b), then the restrictions and requirements contained in subsections (a)(1)a.1 and 2 of this section shall not apply. These same lands shall then be regulated pursuant to subsection (a)(1)a. of this section.
- b. Land used for bonafide agricultural purposes that meets the criteria of or has been designated as wetlands.
- c. If the property is located in the critical areas for surface water management, and is not used for bona fide agricultural purposes, indigenous vegetation shall not be cleared in areas that serve as listed species occupied habitat as defined in chapter 10, article III, division 8. The following shall apply:
 1. The administrator shall determine the location of protected species to be preserved based on the criteria set forth in chapter 10, article III, division 8. This review shall not be substituted for surveys required under chapter 10, article III, division 8.

- LAND DEVELOPMENT CODE

Chapter 14 ENVIRONMENT AND NATURAL RESOURCES

2. The administrator, or the property owner with the administrator's approval, shall develop a management plan based on the criteria set forth in section 10-474. Preparation and review criteria for the plan shall be subject to the provisions of an appropriate administrative code. Up to ten percent of the upland acreage shall be preserved in areas where listed species are present. No more than two separate areas shall be set aside on any given parcel. Any state-mandated upland listed species preserves shall be included within the referenced ten percent preservation area. Bald eagles (*Haliaeetus leucocephalus*) shall be protected pursuant to article II, division 3, of this chapter.
 - d. If the property is located in the critical areas for surface water management, indigenous vegetation shall not be cleared within 25 feet of the mean high-water line or ordinary high-water line, whichever is applicable, of any natural waterway listed in appendix F. Indigenous vegetation may be cleared selectively to allow the placement of docks, pipes, pumps and other similar structures pursuant to applicable county ordinances.
 - (2) The removal of trees on public rights-of-way conducted by or on behalf of a federal, state, county, municipal or other governmental agency in pursuance of its lawful activities or functions in the construction or improvement of public rights-of-way or in the performance of its official duties.
 - (3) The removal of a protected tree that is dead or which has been destroyed or damaged by natural causes beyond saving or which is a hazard as the result of an act of God and constitutes an immediate peril to life and property.
 - (4) The removal of trees by duly constituted communication, water, sewer or electrical utility companies or federal, state or county agency, engineer or surveyor, working under a contract with such federal, state or county agency or when such tree removal is done as a governmental function of such agency.
 - (5) The removal of trees by duly constituted communication, water, sewer or electrical utility companies in or adjacent to a public easement or right-of-way, provided such removal is limited to those areas necessary for maintenance of existing lines or facilities or for construction of new lines or facilities in furtherance of providing utility service to its customers, and provided further that such removal is conducted so as to avoid any unnecessary damage or removal of trees.
 - (6) The removal of trees protected by this article, other than a tree worthy of preservation, by a state-licensed land surveyor in the performance of his duties. The removal of trees protected by this article in a manner which requires clearing a swath of greater than three feet in width shall require approval of the administrator prior to such a removal and clearance.
 - (7) The removal of protected trees on a lot zoned for single-family residential use or being used lawfully as a single-family residence or mobile home where the residence or proposed residence is located on a lot no greater than five acres in area. However, this exemption does not apply on the coastal islands listed in subsection (c) below.
 - (8) The removal of protected trees, other than a tree worthy of preservation, on the premises of a licensed plant or tree nursery or tree farm where such trees are intended for sale in the ordinary course of the licensee's business.
- (b) Any final development order or other final approval issued by the county which was granted after January 27, 1983, but before the effective date of the ordinance from which this article is derived may, at the discretion of the administrator, be exempted from compliance with this article, to the extent that the restrictions imposed by this article conflict with the approvals given in the final development order or other final approval, in which case the final development order or other final approval shall supersede this article as to those areas in conflict.
 - (c) The exemptions for single-family residential use in subsection (a)(7) above do not apply to land located on the following coastal islands: Gasparilla Island, Cayo Costa Island, North Captiva Island, Captive Island, Buck Key, Greater Pine Island, Lover's Key Group of Islands, Black Island, Big Hickory Island, and Little Hickory Island (Bonita Beach).

Chapter 14 ENVIRONMENT AND NATURAL RESOURCES

- (1) The tree permit will be incorporated into the building permit for the site. Review of the tree removal will follow the criteria listed in sections 14-411 and 14-412. For clearing prior to building permit issuance, as a separate tree permit application must be submitted for review and compliance with sections 14-411 and 14-412. No tree permit is required for the annual removal of five trees or less from any single-family residential lot that contains an existing single-family dwelling unit.
- (2) As part of the tree permit site inspections, department of community development staff will also review understory or subcanopy plants and protected species for retention or relocation within the site.
- (3) For Greater Pine Island only, a tree removal permit will be required only on parcels or lots zoned or used for residential purposes that are two acres in size or greater.

(Ord. No. 94-14, § 7, 5-18-94; Ord. No. 96-17, § 3, 9-18-96; Ord. No. 97-10, § 4, 6-10-97; Ord. No. 98-03, § 3, 1-13-98; Ord. No. 98-28, § 3, 12-8-98; Ord. No. 07-19, § 3, 5-29-07)

Sec. 14-378. Suspension of article during emergency conditions.

Upon the declaration of a state of emergency pursuant to F.S. ch. 252, the administrator may suspend the enforcement of the requirements of this article for a period of 30 days in order to expedite the removal of damaged and destroyed trees in the interest of public safety, health and general welfare.

(Ord. No. 94-14, § 14, 5-18-94)

Sec. 14-379. Nonliability of county.

Nothing in this article shall be deemed to impose any liability upon the county or upon any of its officers or employees, nor to relieve the owner and/or occupant of any duty to keep trees and shrubs upon private property or under his control in a safe condition.

(Ord. No. 94-14, § 15, 5-18-94)

Sec. 14-380. List of protected trees.

- (a) Any tree delineated in appendix E shall henceforth be a protected tree and shall thereby come under the provisions of this article, except those trees exempted pursuant to section 14-378
- (b) All other species of trees not named in appendix E may be removed without a permit, but only in such a manner so as not to disturb or destroy surrounding protected trees.

(Ord. No. 94-14, § 8, 5-18-94)

Sec. 14-381. Unlawful injury of trees.

It shall be a violation of this article for any person to remove, injure, disfigure or destroy a tree in preparation for, in connection with, or in anticipation of development of land, except in accordance with the provisions of this article.

(Ord. No. 94-14, § 9, 5-18-94)

Chapter 14 ENVIRONMENT AND NATURAL RESOURCES

Sec. 14-382. Removal of trees.

- (a) *Permit required.* Any tree, as defined and protected by this article, may be lawfully removed only after a permit therefor has been secured from the administrator. Failure to comply with the requirements of a tree removal permit shall be a violation of this article.
- (b) *Relocation to public property.* Where a tree is to be removed under the provisions of this article, the county may, with the owner's permission, relocate the tree (not being relocated within the property) at the county's expense to county-owned property for replanting, either for permanent utilization at a new location or for future use at other county-owned property. If the county does not elect to relocate any such tree, it may give any city within the county the ability to acquire such tree at the city's expense for relocation within the city's incorporated area for public use. The relocation shall be accomplished within 15 working days of the issuance of a permit, unless it is necessary to root prune the tree to ensure its survival, in which case the relocation shall be accomplished within 30 working days of the issuance of a permit or on another suitable schedule as agreed to by all parties.

(Ord. No. 94-14, § 10, 5-18-94)

Sec. 14-383. Tree protection during development of land.

- (a) Prior to the land clearing stage of development, the owner or developer shall clearly mark all protected trees for which a tree removal permit has not been issued and shall erect barriers for the protection of the trees according to the following:
 - (1) Around an area at or greater than a six-foot radius of all species of mangroves and protected cabbage palms;
 - (2) Around an area at or greater than the full dripline of all protected native pines;
 - (3) Around an area at or greater than two-thirds of the dripline of all other protected species.
- (b) No person shall attach any sign, notice or other object to any protected tree or fasten any wires, cables, nails or screws to any protected tree in any manner that could prove harmful to the protected tree, except as necessary in conjunction with activities in the public interest.
- (c) During the construction stage of development, the owner or developer shall not cause or permit the cleaning of equipment or material within the outside perimeter of the crown (dripline) or on the nearby ground of any tree or group of trees which is to be preserved. Within the outside perimeter of the crown (dripline) of any tree or on nearby ground, the owner or developer shall not cause or permit storage of building material and/or equipment, or disposal of waste material such as paints, oil, solvents, asphalt, concrete, mortar or any other material harmful to the life of the tree.
- (d) No person shall permit any unnecessary fire or burning within 30 feet of the dripline of a protected tree.
- (e) Any landscaping activities within the barrier area shall be accomplished with hand labor.
- (f) Prior to the administrator issuing a certificate of occupancy or compliance for any development, building or structure, all trees designated to be preserved that were destroyed during construction shall be replaced by trees of equivalent diameter at breast height tree caliper and of the same species as specified by the administrator, before occupancy or use, unless approval for their removal has been granted under permit.
- (g) The administrator may conduct periodic inspections of the site during land clearance and construction.
- (h) If, in the opinion of the administrator, development activities will so severely stress slash pines or any other protected tree such that they are made susceptible to insect attack, preventative spraying of these trees may be required.

(Ord. No. 94-14, § 13, 5-18-94)

Chapter 14 ENVIRONMENT AND NATURAL RESOURCES

Sec. 14-384. Restoration standards.

- (a) If a violation of this article has occurred and upon agreement of the administrator and the violator, or, if they cannot agree, then upon conviction by the court, the code enforcement board or the hearing examiner, a restoration plan must be ordered in accordance with the following standards:
- (1) The restoration plan must include the following minimum planting standards:
 - a. The plan must include a planting plan for all protected trees. Replacement stock must be computed on a three for one basis according to the total number of unlawfully removed trees. The phrase "three for one" in this section refers to the requirement of replacing an illegally removed tree with three live trees according to the provisions of this article. Replacement trees must be nursery grown, containerized and no less than six feet in height. It is within the discretion of the administrator to allow a deviation from the ratio specified in this subsection. When such deviation is sought, the total of heights and calipers must equal or exceed that specified in the standards set out in this subsection. An example of this might be one in which trees four feet in height might be planted in a ratio of five replacement trees to one illegally removed tree. Justification for such a deviation must be provided to the administrator.
 - b. The plan must include a planting plan for understory vegetation. Understory vegetation must be restored to the area from which protected trees were unlawfully removed or mutilated. The plant selection must be based on that characteristic of the Florida Land Use, Cover and Classification System (FLUCCS) Code. Shrubs, ground cover and grasses must be restored as delineated in the Florida Land Use, Cover and Classification System Code. Up to seven species may be utilized with relative proportions characteristic of those in the Florida Land Use, Cover and Classification System Code. The exact number and type of species required must also be based upon the existing indigenous vegetation on adjacent property. Replacement stock must be no less than one-gallon-sized nursery-grown containerized stock planted at no less than three feet on center in the area from which protected trees were unlawfully removed or mutilated. This area must be defined by the dripline of the trees. The number of shrubs must not exceed, but may be less than, 25 shrubs per tree unlawfully removed or mutilated. The understory of the restored site must be protected for a period of no less than ten years, unless its removal is a provision of a development order which has been approved after the restoration of the site.
 - c. If the unlawful removal or mutilation of trees has caused any change in hydrology or surface water flows, then the hydrology or surface water flows must be restored to pre-violation condition.
 - (2) Massing of replacement stock will be subject to agreement of the parties or, if appropriate, then by approval of the court, the code enforcement board or the hearing examiner, as long as the minimum number of trees and/or seedlings are provided. Replacement stock, with the exception of palms, shall be Florida No. 1 or better grade. Replacement stock shall have a guaranteed 80 percent survivability for a period of no less than five years. A maintenance provision of no less than five years must be provided in the restoration plan to control invasion of exotic vegetation. Replacement stock may not be located on any property line, underground utility or county easement. The administrator may at his/her discretion allow the replacement stock to be planted off-site where approved development displaces areas to be restored. In these situations, off-site plantings shall be on lands under the control of a public agency. The off-site location is subject to the approval of the administrator.
 - (3) In the event of impending development on property wherein protected trees were unlawfully removed, the restoration plan shall indicate the location of the replacement stock consistent with any approved plans for subsequent development. For the purposes of this article, impending development shall mean that a developer has made application for a preliminary development order or applied for a building permit.

Chapter 14 ENVIRONMENT AND NATURAL RESOURCES

- (4) If identification of the species of trees is impossible for any reason on property wherein protected trees were unlawfully removed, then a presumption is raised that the trees illegally removed were of a similar species and mix as those found on adjacent properties.
 - (5) A monitoring report shall be submitted to the administrator on an annual basis for five years describing the conditions of the restored site. The monitoring report shall be submitted on or before each anniversary date of the effective date of the restoration plan. Mortality estimates per species planted, estimated causes for mortality, growth of the vegetation and other factors which would indicate the functional health of the restored systems shall be included in the monitoring report. Failure to submit the report in a timely manner shall constitute a violation of this article. When mitigation is required pursuant to this article, monitoring reports are necessary to ensure that the mitigation efforts have been successful. In order to verify the success of the mitigation efforts and the accuracy of the monitoring reports, periodic inspections by county staff are necessary. In order that the county be compensated by the violator for the costs of these periodic inspections of the restored site by county staff, a schedule of inspection fees shall be established by administrative code to be approved by the Board of County Commissioners.
- (b) If a violation of section 14-384 occurs, then the restoration provisions contained within section 14-384 shall govern and supersede any other restoration provisions contained within this article.
- (Ord. No. 94-14, § 19, 5-18-94; Ord. No. 01-18, § 3, 11-13-01)

Secs. 14-385—14-410. Reserved.

DIVISION 2. ADMINISTRATION AND ENFORCEMENT

Sec. 14-411. Permit required.

Sec. 14-412. Issuance of permit.

Sec. 14-413. Variances.

Sec. 14-414. Inspections; notice of violation.

Sec. 14-415. Stop work orders.

Secs. 14-416—14-450. Reserved.

Sec. 14-411. Permit required.

No person, organization, society, association, corporation, or any agent or representative thereof, shall deliberately cut down, destroy, remove, relocate, defoliate through the use of chemicals or other methods, or otherwise damage any tree that is protected under this article and located in the unincorporated areas of the county, without first obtaining a permit as provided in this article.

(Ord. No. 94-14, § 6, 5-18-94)

Sec. 14-412. Issuance of permit.

- (a) *Submission of application.* Application for a permit to remove any protected tree defined in this article shall be submitted to the administrator, in writing, on a form provided by the administrator, accompanied by a written statement indicating the reasons for removal.

Chapter 14 ENVIRONMENT AND NATURAL RESOURCES

- (b) *Authority of administrator.* The administrator shall have the authority to issue the permit and to inspect all work performed under any permit issued under this article.
- (c) *Required information.* All applications to remove any protected tree defined in this article shall be on forms provided by the administrator. Where an application has been submitted to the administrator for the removal of more than five trees, no tree removal permit shall be issued by the administrator until a site plan for the lot or parcel has been reviewed and approved by the administrator, which shall include the following minimum information:
 - (1) The shape and dimensions of the lot or parcel, together with the existing and proposed locations of the structures and improvements, if any.
 - (2) A tree location map for the lot or parcel, in a form acceptable to the administrator. For the removal of five trees or less, an on-site examination by the administrator's designee shall be made in lieu of the tree location map requirement.
 - (3) Any proposed grade changes that might adversely affect or endanger any trees on the lot or parcel, together with specifications reflecting how the trees can be safely maintained.
 - (4) Any proposed tree replacement plan.
- (d) *Criteria for granting.* The administrator shall approve a permit for issuance for the removal of any protected tree if the administrator finds one or more of the following conditions is present:
 - (1) Trees which pose a safety hazard to pedestrian or vehicular traffic or threaten to cause disruption to public utility services.
 - (2) Trees which pose a safety hazard to existing buildings or structures.
 - (3) Trees which prevent reasonable access to a lot or parcel so long as the proposed access point complies with all other county regulations.
 - (4) Diseased trees which are a hazard to people, buildings or other improvements on a lot or parcel or to other trees.
 - (5) Trees so weakened by age, storm, fire or other injury as to, in the opinion of the administrator, jeopardize the life and limb of persons or cause a hazard to property.
 - (6) Trees which prevent the lawful development of a lot or parcel or the physical use thereof.
 - (7) The administrator may require that a tree protected by this article be relocated on the same lot or parcel in lieu of removal.
- (e) *Submission of site plan when building permit not required.* Where a building permit issuance is not required because no structures are to be constructed and no other development of the lot is to occur, any person seeking to remove a tree protected under this article shall first file a site plan with the administrator meeting the requirements of subsection (c) of this section prior to receiving a tree removal permit from the administrator.
- (f) *Inspection of site.* The administrator may conduct an on-site inspection to determine if any proposed tree removal conforms to the requirements of this article and what effect, if any, removal of the trees will have upon the natural resources, as identified in the Lee Plan, of the affected area prior to the granting or denying of the application. A permit fee will be required for the removal or relocation of any tree protected under the provisions of this article and shall be paid at the time of issuance of the permit. The fees established will be set in accordance with the county administrative code and paid to the administrator. Such fees are hereby declared to be necessary for the purpose of processing the application and making the necessary inspection for the administration and enforcement of this article.
- (g) *Approval or denial.* Based upon the information contained in the application and after investigation of the application, the administrator shall approve or deny the application, and, if approved, the administrator is the party so designated by the Board of County Commissioners to issue the permit for a period not to exceed one year and to collect the permit fee.

- LAND DEVELOPMENT CODE

Chapter 14 ENVIRONMENT AND NATURAL RESOURCES

- (h) *Conditions.* The administrator may attach conditions to the permit relating to the method of identifying, designating and protecting those trees which are not to be removed in accordance with subsection (g) of this section. A violation of these conditions shall automatically invalidate the permit. Special conditions which may be attached to the permit may include a requirement for successful replacement of trees permitted to be removed with trees of the same size, compatible species and same number.

(Ord. No. 94-14, § 11, 5-18-94)

Sec. 14-413. Variances.

Requests for variances from the terms of this article shall be administered and decided in conformance with the requirements for variances which are set forth in chapter 34.

(Ord. No. 94-14, § 12, 5-18-94)

Sec. 14-414. Inspections; notice of violation.

- (a) The county may conduct on-site inspections to determine if a violation of this article has occurred.
- (b) Whenever it is determined that there is a violation of this article, a notice of violation shall be issued and delivered. A notice shall be sent by certified mail, return receipt requested, or, when mail would not be effective, by hand delivery. The notice shall be delivered to the owner of the property, or to his agent, or to the person doing the work. When mail or hand delivery prove ineffective, the notice may be provided by any other statutorily prescribed method. The notice of violation issued shall:
- (1) Be in writing;
 - (2) Be dated and signed by the authorized county agent issuing the notice;
 - (3) Specify the violation or violations;
 - (4) State that the violation shall be corrected within a specified period of time;
 - (5) State that, if the required corrective action is not taken within the time specified by the notice of violation, the county may use any available means of enforcement to secure compliance.

(Ord. No. 94-14, § 16, 5-18-94)

Sec. 14-415. Stop work orders.

Upon notice from the administrator, work being done contrary to the provisions of this article or in a dangerous or unsafe manner shall be immediately stopped. Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, or shall be posted on the property, and shall state the conditions under which work may be resumed. Where an emergency exists, written notice shall not be required to be given by the administrator.

(Ord. No. 94-14, § 17, 5-18-94)

Secs. 14-416—14-450. Reserved.

ARTICLE VI. MANGROVE PROTECTION ^(B)

Sec. 14-451. Purpose and intent of article.

Sec. 14-452. Definitions.

Sec. 14-453. Enforcement of article; penalties.

Chapter 14 ENVIRONMENT AND NATURAL RESOURCES

Sec. 14-454. Restoration standards.

Sec. 14-455. Permit required.

Sec. 14-456. Conflicting provisions.

Sec. 14-457. Repealer; applicability of previous ordinance.

Secs. 14-458—14-470. Reserved.

Sec. 14-451. Purpose and intent of article.

The purpose of this article is to establish enforcement procedures and restoration standards for violations of the state department of environmental protection mangrove protection rules, to supplement and enhance department of environmental protection enforcement mechanisms. The intent of this article is to discourage the illegal alteration of mangrove trees by improving enforcement of department of environmental protection mangrove protection regulations and to ensure that adequate restoration is provided within the unincorporated areas of the county. It is not the intent of this article to diminish any mangrove protection requirements set forth in section 26-41 et seq. and articles IV and V of this chapter.

(Ord. No. 86-32, § 2, 10-29-86; Ord. No. 93-31, § 2, 10-20-93)

Sec. 14-452. Definitions.

- (a) 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:

Administrator means the county administrator or his designee, who is the person responsible for administering the provisions of this article.

Development means any improvement to land including but not limited to building construction; road and driveway construction or widening; utility installation; dock and shoreline activities; and the installation of swimming pools, irrigation systems, fences, or other accessory structures.

Invasive exotic vegetation means Australian pine (*Casuarina* spp.), Brazilian pepper (*Schinus terebinthifolius*), paper or punk tree (*Melaleuca quinquenervia*), Earleaf Acacia (*Acacia auriculiformis*), and primrose willow (*Ludwigia peruviana*).

Mangrove shall have the same meaning as provided by the Florida Administrative Code.

Mangrove alteration shall have the same meaning as provided by the Florida Administrative Code.

ATTACHMENT 2

ORDINANCE NO. 2018 - 07

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, AMENDING CERTAIN PROVISIONS OF THE TRANSITIONAL LAND DEVELOPMENT CODE CHAPTER 14, ARTICLE V, TREE PROTECTION TO REMOVE THE PERMIT EXEMPTION FOR THE REMOVAL OF PROTECTED TREES FROM LOTS ZONED FOR SINGLE-FAMILY RESIDENTIAL USE AND TO ADD CERTAIN PERMIT REQUIREMENTS REGARDING THE SAME; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

WHEREAS, the Village Council conducted a duly advertised first reading on June 27, 2018 to consider the proposed amendments to the Transitional Land Development Regulations; and

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

42 **WHEREAS**, the Village Council finds that it is in the best interests and welfare of the
43 Village and its residents to further amend the Transitional Land Development Regulations.
44

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

47 **Section 1. Recitals Adopted.**

48
49 That each of the above stated recitals is hereby adopted and confirmed as being true,
50 and the same are hereby incorporated as a part of this Ordinance.
51

52 **Section 2. Amendments to Chapter 14, Section 14-377.** Section 14-377 of
53 Chapter 14 of the Transitional Land Development Regulations is amended by deleting
54 Subsection (7) thereof, and renumbering Subsection 8 to Subsection 7, as follows:
55

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

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

60 (Subsections (1) through (6) remain the same)
61

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

68 (8) (7) The removal of protected trees, other than a tree worthy of
69 preservation, on the premises of a licensed plant or tree nursery or tree farm where such
70 trees are intended for sale in the ordinary course of the licensee’s business.”
71

72 **Section 3. Amendment to Section 14-411 of Chapter 14 of the Transitional**
73 **Land Use Regulations.** Section 14-411 of Chapter 14 of the Transitional Land
74 Development Regulations is hereby amended, as follows:
75

76 “Section 14-411. – Permit Required.
77

78 No person, organization, society, association, corporation or any agent or
79 representative thereof, shall deliberately cut down, remove, relocate, defoliate through
80 the use of chemicals or other methods, or otherwise damage any tree that is protected
81 under this article and located in the ~~unincorporated areas of the county~~ Village of
82 Estero, without first obtaining a permit as provided in this article. For all purposes of

83 this Article, the term administrator as used in this article shall mean the Director of
84 Community Development of the Village of Estero or his or her designee.”

85
86 **Section 4. Amendments to Section 14-412 of Chapter 14 of the Transitional**
87 **Land Use Regulations.** Section 14-412 is amended to modify subsection (g) and add
88 a new subsection (i), as follows:

89
90 “(g) *Approval or denial.* Based on the information contained in the application,
91 and after investigation of the application, the administrator shall approve or deny the
92 application, and, if approved, the administrator is the party so designated by ~~the Board~~
93 ~~of County Commissioners~~ the Village of Estero Council to issue the permit for a period
94 not to exceed ~~one year~~ 180 days and to collect the permit fee.”

95
96 * * *

97
98 (i) *Tree Removal from Single-Family Lots.* In addition to the foregoing
99 requirements set forth in Subsections (a) through (h) of this Section 14-412, as
100 amended, and notwithstanding anything to the contrary in such subsections, the
101 following provisions apply to the removal of protected trees on a lot zoned for single-
102 family residential use or being lawfully used as a single-family residence or mobile
103 home where the residence is located on a lot no greater than five acres in area:

104
105 (1) In addition to the application required under subsection (c) above,
106 the owner of the single-family residence shall provide evidence, satisfactory to the
107 administrator, of the ownership of the tree(s) to be removed based on their location
108 on the site plan to be filed therewith, which site plan shall be required regardless of
109 the number of trees to be removed. Where there is uncertainty as to the ownership
110 of the tree(s) to be removed, the owner and all abutting owners that might claim
111 ownership of such tree(s) shall provide written permission for such removal as a
112 part of the application;

113
114 (2) Any protected tree that is removed from the street-facing side of a
115 single-family residential lot shall be replaced by another protected tree meeting the
116 size and height requirements of this Code. To the extent reasonably possible, the
117 replacement tree(s) shall be planted on the same street-facing side as those tree(s)
118 removed. If such location for replacement is not physically possible due to the
119 configuration of the lot and the inability to replant at or near the location of the
120 removed tree(s), the application shall be conditioned on replacement on either (a)
121 another side of the same lot or (b) on other nearby land with the written permission
122 of the owner(s) of such nearby land. For purposes hereof, the term “nearby land”
123 shall mean land within a ¼ mile of the nearest boundary of the lot from which the

124 tree(s) are to be removed.

125
126 (3) With respect to the criteria for granting approval for a tree removal
127 permit as set forth in subsection (d), whenever reasonably possible, the applicant
128 must have taken all reasonable efforts, prior to applying for such application for
129 removal, to mitigate any conflict that exists between the tree(s) and the nearby
130 streets, sidewalks, driveways, public utilities, or similar improvements. Such
131 efforts shall include root pruning and other reasonable means to prevent or mitigate
132 such conflicts. Where mitigation efforts have been attempted or if mitigation is
133 unlikely to result in a favorable outcome, then the applicant shall provide a written
134 certification from an ISA certified arborist to the administrator stating that
135 mitigation efforts have been tried unsuccessfully, or mitigation efforts will not be
136 reasonably available to save such tree(s) from removal, and in the opinion of such
137 arborist, removal is the only reasonable means for such tree(s) under such
138 circumstances, and therefor fully meets the criteria for the granting of such a permit.
139 For purposes of such criteria the safety of the public and existing buildings and
140 structures shall be of paramount importance, while the economic impact to the
141 applicant of possible disruption of public utility services or the necessity to re-route
142 such public utility services, while important, shall be of secondary concern to the
143 administrator in making a decision to grant such a removal permit. In such cases,
144 reasonable relocation of the public utilities may be required by the administrator as
145 an alternative to removal, so long as the public safety is not impacted.

146
147 (4) Whenever a tree removal permit shall be granted, the applicant shall
148 be required as a condition thereof to grind the stump of the tree(s) removed to the
149 surrounding ground level, and to provide the administrator with an acceptable re-
150 beautification plan for the area surrounding the stump showing the landscaping and
151 plantings to be planted in place of such tree(s).”

152
153 **Section 5. Severability.**

154
155 If any section, subsection, clause or provision of this Ordinance is declared invalid or
156 unconstitutional by a court of competent jurisdiction, the remainder shall not be
157 affected by such invalidity.

158
159 **Section 6. Conflicts.**

160
161 All sections or parts of sections of the Village ordinances in conflict herewith are
162 intended to be rescinded and repealed to the extent of such conflict.

165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197

Section 7. Effective Date.

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

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

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

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	_____	_____