Staff Report to the Municipal Planning Board March 19, 2019

LDC2019-10019
ITEM #10

TREE PRESERVATION UPDATES TO TO THE LAND DEVELOPMENT CODE

SUMMARY

Owner N/A **Applicant** City of Orlando **Project Planner** Jacques Coulon, Planner II	**Property Location:** Citywide **Applicant's Request:** Updates to the Land Development Code in regards to tree preservation efforts including: References in code to specific tree diameters, appeals process for tree removal/ encroachment permits; submittal requirements in regards to tree surveys and tree preservation plans; and clarifying exceptions when alternative review conditions and requirements may be applied.	**Staff's Recommendation:** Approval of the request. **Public Comment** Staff posted this item on the city's website and placed a classified ad in the Orlando Sentinel. No public comments have been received as of the date of the staff report.
Updated: March 15, 2019		

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Overview
The proposed land development code amendments seek to enhance the City's efforts to grow its tree canopy. The proposed amendments cover several sections within two chapters of the Land Development Code; all amendments seek to either clarify, standardize, or otherwise strengthen the preservation of existing trees and to provide the required trees where there are less trees than required on site or where redevelopment requires the removal of trees.

Background
Trees and the city's urban canopy have always been an important asset within the City Beautiful, in fact as part of the Green Works Orlando sustainability goals, the City plans to achieve a tree canopy coverage of 40% by 2040. The latest estimate is that the City currently has an estimated tree canopy of approximately 32% with over 100,000 trees located within public property and over 500,000 total trees throughout the city as a whole. Orlando has achieved Tree City USA status from the Arbor Day Foundation since 1976, for 42 consecutive years, and has received the Tree City USA Growth Award, recognizing higher levels of tree care for 28 consecutive years, every year since its inception. The City has also initiated multiple programs to provide trees to citizens at little or no charge to further assist in the increase of the tree canopy across the city.

Over the last year staff has reviewed the City Code, with an emphasis on the Land Development Code (LDC), to understand how the current requirements of the City affect and promote the City's goal of increasing the tree canopy. Staff has identified several code amendments within Chapters 60 and 65 to both meet this goal as well as to provide additional clarity to staff and applicants on application requirements.

Analysis
<u>Chapter 60 Subdivision and Landscaping</u>
Part 2 Landscaping and Tree Protection, provides details on the general landscaping and tree preservation processes within the City. Specifically included in this chapter are requirements for tree removal permits/process, tree protection , street tree, and landscaping requirements for new development and those projects that have been deemed to be a substantial improvement or enlargement.

Minimum Caliper—Currently the LDC uses a caliper of 4 inches dbh (diameter of a tree trunk at breast height 4.5 feet from ground level for all existing and retained trees, as a standard for when to require tree removal/encroachment per-

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mits. After analysis of eleven other municipalities within and outside of Central Florida and the State, staff is recommending that the minimum caliper be increased from 4 inches dbh to 6 inches dbh. This will ease the requirements a bit for redevelopment of properties where these smaller trees are located and will also bring the City in line with other jurisdictions.

Chapter 65 Officers Boards and Procedures
This chapter includes requirements on the processes and procedures for land development actions of certain boards and officials. Of particular importance to tree preservation are the submittal requirements for several boards as well as the requirements for Tree Removal Permits.

Conditional Use Permit—Chapter 65, Part 2D
Sec. 65.288—General Requirements
- Amend the language regarding what information must be included on the survey required as detailed in LDC Sec. 65.2288. Item revised as below:
    - A Recent Boundary Survey, including the location and species of each 6 inches and larger diameter at breast height tree within the building site.

Development Plan Review For Planned Development—Chapter 65, Part 2E.
Sec. 65.296. - General Requirements.
- Amend the language regarding submittal requirements as detailed in LDC Sec. 65.296 (f). Item revised as below:
    - (f) ~~Information about the type and location of existing vegetation, including the approximate size and location of major tree groupings and those trees with a circumference of at least eighteen (18) inches, measured four (4) feet from the ground (aerial and on-site photographs may be used to show vegetation); and~~ Specific or Special Purpose Survey, showing the location and species of all 6 inches and larger diameter at breast height tree on or within ten feet of the building site;
- Amend the language regarding submittal requirements as detailed in LDC Sec. 65.296 (i) f. Item revised as below:
    (f) All existing trees with 6 inches and larger diameter at breast height.

Modification of Development Standards for Site Plan Approval– Chapter 65, Part 2F
Sec. 65.302. - Where Modification of Standards Procedures Apply.
- Amend the language regarding when Modification of Standards may apply to certain accessory buildings as detailed in LDC Sec. 65.302 (9) iii. Item revised as below:
    - No ~~major~~ trees deemed desirable by the City arborist are to be removed, and

Site Plan review—Chapter 65, Part 2H
- Amend the language referencing which Urban Design Goals within the Growth Management Plan apply to Master Plan Reviews as detailed in LDC Sec. 65.331(a) 1. item revised as below:
    - Urban Design Goals 1, 2, 3, 4, ~~and~~ 5, and 6, in order to incorporate the positive design elements of the Traditional City into new development both inside and outside of the Traditional City;
- Amend the language regarding the required information to be submitted as part of the tree survey as detailed in LDC Sec. 65.339(j) 2. Item as revised as below:
    - ~~Medium and large size trees or groupings of such trees on the development site.~~ Location and species of each 6 inches and larger diameter at breast height tree on or within ten feet of the development site.

Site Plan review—Chapter 65, Part 2H
Sec. 65.348. - Existing Conditions
- Amend the language regarding the required information to be submitted as part of the tree survey. Item revised as below:
    - (l) A Specific or Special Purpose Survey, including surveyed topographic information, ~~the~~ and location and species of each 6 inches and larger diameter at breast height tree on or within ten feet of the building site. ~~trunk perimeter, approximate height and species of each Medium and Large size tree on the building site (see Chapter 60 for standards relating to tree size). When the drip lines of canopy trees on adjacent properties extend over the subject property, applicants shall indicate such trees and the limits of their drip lines on their submitted site plans.~~

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Sec. 65.349 - Proposed Development

- Amend the language regarding the required information to be submitted as part of the tree survey. Item revised as below:
  - Proposed: (f) A proposed tree protection plan meeting the requirements of Chapter 60, Part 2, and including the following:
  - Additionally, remove language referencing "tree points" in 65.346 (f) 2

Zoning Variance– Chapter 65, Part 2J

Sec. 65.376. - General Requirements.

- Amend the language regarding what information regarding existing trees is required as part of the application for an administrative variance application as detailed in LDC Sec. 65.376; Survey and Site Plan. Items revised as below:
  - An Accurate Up-to-Date Survey: As completed by a Florida Professional Surveyor and Mapper, in two copies. The survey must include all trees of 6 inches and larger diameter at breast height, and indicating species.
  - A Site Plan: Showing the complete property, indicating the size of the existing and proposed buildings, spacing, all setbacks, individual parking spaces, access drives, existing trees to be retained or removed, and a floor plan of the proposed improvements.

Sec. 65.377. - Additional Requirements for Tree Protection Variances.

- Amend the language regarding specific requirements for tree protection variance requests as detailed in LDC Sec. 65.377. Items revised as below:
  - A Specific or Special Purpose Survey: Including the location and species of each ~~Medium and Large size~~ 6 inches and larger diameter at breast height tree on the building site ~~(see Chapter 60, Part 2A for standards relating to tree size)~~.
  - *A Proposed Tree Protection Plan:* Including the following:
  - (a) Existing ~~Medium and Large Size Trees Locations for each such~~ trees proposed to be retained ~~and awarded tree points~~ in accordance with the requirements of Chapter 60, Part 2D, and the approximate undisturbed area which will surround each such tree or tree grouping. This information shall be shown on the site plan.
  - ~~(b) Total Number of Medium and Large Size Trees proposed to be retained and protected and the total number of tree points which the retention of these trees will yield for parking lot landscaping, bufferyards, and tree canopy requirements of Chapter 60, Part 2.~~
  - ~~(c) Any Other Trees which will be retained but not awarded tree points in accordance with Chapter 60, Part 2.~~
  - ~~(d) Medium and Large Trees to be Removed, including their locations and the reasons for removing each.~~
  - (c~~e~~) Proposed Grade Changes on the building site which may adversely affect any existing ~~Medium or Large size~~ 6 inches and larger diameter at breast height tree to be retained.
  - (d ~~f~~) Any Specimen Tree Designations being requested by the applicant (see Chapter 60, Part 2B).
  - Note: The indication of trees to be retained ~~for tree points~~ on a Site Plan indicates a commitment to attempt to protect that tree during the development process. It is recognized that some trees may die even with the best of efforts. Trees ~~points~~ credited toward meeting the landscape requirements of any section of City Code ~~Chapter 60, Part 2~~ are assessed ~~awarded~~ at the time of Certificate of Occupancy, based on trees in good ~~or fair~~ tree health at that time.

Sec. 65.385. - General Requirements.

- Amend the language regarding what information regarding existing trees is required as part of the application for an zoning variance application as detailed in LDC Sec. 65.385; General Requirements. Items revised as below:
  - An Accurate Up-to-Date Survey: As completed by a Florida Professional Surveyor and Mapper, in two copies. The survey must include all trees of 6 inches and larger diameter at breast height.
  - A Proposed Site Plan: Prepared in accordance with the requirements of Part 2H of this Chapter, where required by the Zoning or Appearance Review Official (except where the application involves only variances to the sign regulations of Chapter 64). The site plan must show existing trees to be retained or removed.

Sec. 65.387. - General Requirements.

- Amend the language regarding what information regarding existing trees is required as part of the application for a

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design variance application as detailed in LDC Sec. 65.387; General Requirements. Items revised as below:

- An Accurate Up-to-Date Survey: As completed by a Florida Professional Surveyor and Mapper, in two copies. The survey must include all trees of 6 inches and larger diameter at breast height.
- A Proposed Site Plan: Prepared in accordance with the requirements of Part 2H of this Chapter, where required by the Zoning or Appearance Review Official. The site plan must show existing trees to be retained or removed.

Minor and Major Subdivision Platting Procedures– Chapter 65, Part 3E

Sec. 65.431. - Application Submittal.

- Amend the language regarding what materials are required as part of the supporting materials for a minor or major subdivision application as detailed in LDC Sec. 65.431. Item revised as below:
  - To be considered for a Major or Minor plat, an applicant shall submit an application and such other supporting materials (i.e. construction drawings, development plan, boundary and topographic surveys, tree surveys showing all trees with 6 inches and larger diameter at breast height, sketch of description, conceptual site plan, etc., by computer disc or otherwise) as determined by the Planning Official. In addition, submittals for Minor plats shall also include all information required for a Final plat. The information shall be provided by the applicant to the City in graphic or written form, as deemed necessary by the Planning Official to satisfy the requirements herein. The number of copies to be submitted shall be determined by the Planning Official. If any of the items required to be submitted are not applicable to the proposed development, such item(s) may be omitted upon consent of the Planning Official. The applicant shall identify in writing the items missing and include a brief explanation of why the missing items are not relevant, not applicable or not submitted. The Planning Official shall be authorized to waive submittal requirements in the limited circumstance that he/she determines that a requirement is not (i) relevant or (ii) applicable to the application. No application shall be deemed accepted unless it is complete. All subdivision applications shall include contact information, including email address(es), for the owner(s) of the property to be platted. The Owner(s) shall be copied on all correspondence from City staff regarding the application. Deadlines for applications submittals shall be strictly followed.

Tree Removal Permits - Chapter 65, Part 6F

Sec. 65.640.—Tree Removal Permit

- Amend the language regarding the size of tree which requires a tree removal permit as detailed in LDC Sec. 65.640. Amended Language Below:
  - When a Tree Removal Permit is Required. Persons desirous of removing ~~a Medium or Large size tree(s)~~ any tree with 6 inches and larger diameter at breast height from any real property shall make application to and on a form prescribed by the Parks Official and pay a nonreturnable fee for the area to be inspected. Fees for tree removal permits shall be set by resolution of the City Council from time to time in accordance with Section 60.209, and are hereby declared to be necessary for the purpose of processing the application and making the necessary inspections for administration and enforcement of this Part. The requirement for a tree removal permit is a requirement separate from and in addition to the requirement for obtaining any other approvals or permits whatsoever.

Sec. 65.641– Tree Encroachment Permit

- Amend the language regarding the size of tree which requires a tree encroachment permit as detailed in LDC Sec. 65.641. Amended Language Below:
  - *When a Tree Encroachment Permit is Required.* Persons desiring to place structures or impervious paving surfaces within ~~a 6-foot radius of the trunk perimeter of any~~ ~~medium or large size~~ the minimum undisturbed area, as required by Section 60.211, of any tree with 6 inches and larger diameter at breast height shall make application to and on a form prescribed by the Parks Official and pay a nonreturnable fee for each tree to be inspected. Fees for tree encroachment permits shall be set by resolution of the City Council from time to time in accordance with Section 60.209, and are hereby declared to be necessary for the purpose of processing the application and making the necessary inspections for the administration and enforcement of this part. The requirement for a tree encroachment permit is a requirement separate from and in addition to the requirement for obtaining any other approvals or permits whatsoever, including tree removal permits on the same development site.

LDC Sec. 65.644—Appeals

- Amend the language regarding appeals of the Parks official regarding Tree Removal or Encroachment permits to

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allow an applicant to appeal directly to the Families, Parks and Recreation Director, rather than to City Council. If the applicant still has concerns over the decision of the Families, Parks and Recreation Director then may appeal to City Council. Detailed in LDC Sec 65.644. Amended Language Below:

- Any person who believes that he is adversely affected by a decision of the Parks Official in the enforcement or interpretation to this Part may appeal by filing a written notice of appeal to the ~~City Council~~ Families, Parks and Recreation Director with a copy to the City Clerk within ten days after receipt of such written decision. The City Clerk will schedule a hearing and notify the parties involved. At such hearing the applicant may present to the Families, Parks and Recreation Director facts in support of his or her position.

LDC Sec. 65.645—General Requirements

- Amend the language regarding the minimum tree caliper under which trees are protected within the city as detailed in LDC Sec 65.645. Amended Language Below:
  - In general, removal of trees 6 inches and larger diameter at breast height in caliper shall be prohibited. However, Tree Removal Permits may be approved where design modifications are not feasible (see Section 65.646 below) and one or more of the following circumstances exists:
- Amend the language referencing prohibited /invasive species to provide clarity and parity with state definitions as detailed in LDC Sec 65.645. Amended Language Below:
  - ~~*Prohibited*~~ *Invasive Exotic Species.* The tree is one of the species identified ~~on the Prohibited Plant List, Section 60.231 of this Part;~~ in Florida Statute 58.091, or the Florida Exotic Pest Plant Council (FLEPPC) as a Category I or II invasive exotic species.

Sec. 65.646. - Conditions of Tree Encroachment Permits

- Amend the language referencing "removal" to "encroachment", remove exception for tunneled utility lines and clarify language over the zoning official's role in approvals for "occasional" parking after development. prohibited /invasive species to provide clarity and parity with state definitions as detailed in LDC Sec 65.645. Amended Language Below:

  - **Sec. 65.646. - Conditions of Tree ~~Removal~~ Encroachment Permits.**
    The Parks Official shall be authorized to condition the approval of a Tree Encroachment Permit upon such measures as deemed appropriate to allow the retained tree to recuperate from shock caused by fill material or a drop in surface elevation, including but not limited to tree wells, drainage and aeration techniques, and use of specific soil types and fill materials. The crown of the tree should be pruned in proportion to the loss of roots, as directed by the Parks Official. The Parks Official shall be authorized to administratively alter the undisturbed area in order to accommodate a retained tree into a Bufferyard or Parking Lot Landscape, in coordination with a Tree Encroachment Permit.
    A Tree Encroachment Permit is required for all activities in the undisturbed area except the following:
    ~~*Tunneled Utility Lines.* Utility lines which are tunneled beneath tree roots in order to protect feeder roots, rather than trenched.~~
    Sodding and Ground Cover. Placement of sod or other ground covers, and the preparation of the ground surface for such covers.
    Occasional Parking After Development. The undisturbed area may be used for occasional parking after the issuance of a Certificate of Occupancy for the building site, when this is approved by the ~~Planning~~ Zoning Official in accordance with Section 60.213.

Sec. 65.647

- Add Sec. 65.647 "Alternative Review Conditions and Requirements" which will provide possible alternative requirements/conditions for tree removal fees and penalties that the Parks Official, in concert with the Zoning Official, may consider on a case-by-case circumstance if applicants meet certain criteria. Proposed Language Below:

  - **Sec. 65.647. – Alternative Review Conditions and Requirements**
    The Parks Official, with the approval of the Zoning Official, may approve alternative requirements or conditions, or waive or reduce fees or penalties, on a case-by-case basis for public benefit uses, affordable housing developments, and other similar circumstances, if such approval is not inconsistent with the purpose and intent of the Growth Management Plan.

FINDINGS

As per Sec. 65.483, in review of the proposed LDC amendment, it is found that:

1. The proposed Land Development Code amendment is consistent with the Growth Management Plan.
2. The proposed Land Development Code amendment is consistent with the public health, safety and welfare.
3. The proposed Land Development Code amendment would not result in incompatible land uses or result in unorderly and illogical development patterns.
4. The proposed Land Development Code amendment would not result in conflicts with applicable law or present unacceptable legal risks to the City.