



ORDINANCE NO: 2012-

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AN ORDINANCE OF THE TOWN OF WINDERMERE CODE; PROVIDING FOR THE ESTABLISHMENT OF RULES AND REGULATIONS GOVERNING THE PROTECTION OF TREES AND NATIVE VEGETATION WITHIN THE TOWN OF WINDERMERE; PROVIDING FOR APPLICABILITY; PROVIDING FOR EXCEPTIONS; PROVIDING FOR DEFINITIONS; PROVIDING FOR ESTABLISHMENT OF THE TOWN TREE BOARD; PROVIDING FOR BOARD APPOINTMENTS; PROVIDING FOR COMPENSATION; PROVIDING FOR TREE BOARD DUTIES AND RESPONSIBILITIES; PROVIDING FOR TREE BOARD OPERATION; PROVIDING FOR INTERFERENCE WITH THE TREE BOARD; PROVIDING FOR REVIEW BY TOWN COUNCIL; PROVIDING FOR TREE AND NATIVE VEGETATION PROTECTION; PROVIDING FOR PERMITS; PROVIDING FOR APPLICATION; PROVIDING FOR SITE PLAN INFORMATION; PROVIDING FOR ALTERNATE SITE PLAN INFORMATION; PROVIDING FOR APPLICATION PROCESSING AND REVIEW; PROVIDING FOR PERMITS AND REMOVAL REQUIREMENTS; PROVIDING FOR PERMITS FOR RELOCATION OR REPLACEMENT REQUIREMENTS; PROVIDING FOR DEAD OR DISEASED TREES ON PRIVATE PROPERTY; PROVIDING FOR TREES ON PUBLIC PROPERTY AND RIGHTS-OF-WAY; PROVIDING FOR OFFICIAL TREE SPECIES; DELETING SECTIONS ____ THROUGH ____ TOWN OF WINDERMERE; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Windermere, Florida, is proposing to create an ordinance to establish rules and regulations governing the protection of trees and native vegetation within the Town of Windermere, to encourage the proliferation of trees and native vegetation as well as their replacement within the Town, in recognition of their importance and their meaningful contribution to a healthy, beautiful and safer community attributable to their carbon dioxide absorption, oxygen production, dust filtration, wind and noise reduction, soil erosion protection, wildlife habitat, surface drainage improvement, beautification and aesthetic enhancement of improved and vacant lands, and the general promotion of health, safety, welfare and well-being of the community.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF WINDERMERE THAT:

Section 1. Purpose. The purpose of this ordinance is to:

- 1) Sustain the forest canopy and the urban forest of the town for future generations.
- 2) Establish rules and regulations governing the protection of trees and native vegetation within the Town of Windermere.
- 3) Encourage the proliferation of trees and native vegetation as well as their replacement within the Town, in recognition of their importance and their meaningful contribution to a healthy, beautiful and safer community attributable to their carbon dioxide absorption, oxygen production, dust filtration, wind and noise reduction, soil erosion protection, wildlife habitat, surface drainage improvement, beautification and aesthetic enhancement of improved and vacant lands, and the general promotion of the health, safety, welfare and well-being of the community.
- 4) Establish and maintain the maximum sustainable amount of tree cover on public and private lands.
- 5) Maintain public and private trees in a healthy and non-hazardous condition through good arboricultural practices.
- 6) Establish and maintain appropriate diversity in tree species and age classes to provide a stable and sustainable urban forest.
- 7) Minimize the removal of protected, heritage and historic trees.
- 8) Require compensation for the loss of protected, heritage and historic trees in all stages of maturity on public and private property.
- 9) Preserve the community's character and quality of life well into the future.

Section 2. Intent of Tree City USA Program. The Town of Windermere desires to be an active participant of the Tree City USA program as set forth by the Arbor Day Foundation. The Town shall adopt and enact administrative policies, regulations, standards and procedures necessary to ensure the Town, which has been declared a "Tree City USA," will continue to be a recognized participant in this program.

Section 3. Definitions.

Abusive Pruning. Cutting of the branches or trunk of a tree in a manner that will substantially reduce the overall size of the tree area or destroy the natural shape or appearance of the tree. Topping and removal of more than one-fourth of the crown of a tree in any twelve-month period are abusive pruning practices. Stripping, Lion's Tailing and removal of excessive numbers of branches thinned from the inside and lower part of specific limbs or a tree crown, leaving mostly terminal foliage are abusive practices.

Buildable Area. The portion of the site on which a structure or improvement may be erected.

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Deleted: **Applicability.** The terms and provisions of this ordinance shall apply to all trees and native vegetation located on real property as follows:¶
<#>All real property upon which any designated protected, specimen or historic tree is located.¶
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<#>All vacant and undeveloped property.¶
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<#>All property that is redeveloped.¶
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<#>All Commercial Property¶
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<#>All Residential Property¶
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<#>All trees and native vegetation located within any street right-of-way, parks and other public places of the Town¶
Section 4. Exceptions. ¶
<#>The following are exempt from the provisions of this ordinance:¶
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<#>Trees and native vegetation located in state-licensed, governmental and commercial plant or tree nurseries or botanical gardens in which the trees are planted for the sale or intended sale to the general public in the ordinary course of business.¶
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<#>Trees and native vegetation in active commercial operation for bona fide agricultural purposes.¶
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<#>Trees, which due to natural circumstances and reviewed by a Certified Arborist, are no longer viable and are in danger of falling.¶
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<#>Trees, which are determined to be too close to existing structures so as to endanger such structures.¶
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<#>Trees that interfere with utility services, create unsafe vision clearance or constitute a safety hazard as determined by the Town Manager.¶
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<#>Trees that occur in the location of planned or future public utility services or public roads.¶
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<#>Trees with a Diameter Breast Height (DBH) of less than six (6) inches.¶
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Caliper: Shall mean a nursery standard measurement of a tree's trunk diameter as measured at a predetermined point of measurement. Trunk caliper for trees up to four (4) inches shall be measured six (6) inches above the soil line. Trees greater than four (4) inches in caliper shall be measured twelve (12) inches above the soil line. Caliper measurements shall be used when measuring replacement trees.

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Canopy: Shall mean collective branches and foliage of a tree or group of trees' crowns. Aggregate or collective tree crowns. A canopy can be closed or partially closed as in a forest or woodland stand, or composed of both individual trees and closed canopy groups as in an urban forestry canopy.

Canopy Coverage: Shall mean the coverage of a tree, by its limbs and leaves, of the ground below. This area may include trees offsite on adjacent properties or Town public right-of-ways where limbs and portions of a trees canopy overhang onto the subject property.

Canopy Tree. A tree having an average mature spread or crown over thirty (30) feet.

Certified Arborist: Shall mean a professional who possesses the technical competence gained through experience, related training and professional certification to provide for or supervise the management of trees and other woody plants in residential, commercial, and public landscapes. These arborists must be licensed by the State of Florida and certified by the International Society of Arboriculture.

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Crown: Upper part of tree, measured from the lowest branch, including all the branches and foliage.

Dead or Beyond Recovery. Shall mean that more than fifty percent (50%) of the tree is dead, is a hazardous tree as defined herein, or in a state of irrecoverable decline.

Development. The word "development" shall mean any land disturbing activities including but not limited to: building construction, paving, landscaping, creation of drainage or water catchment areas, grading, earth filling, utility installation or any other activity which may adversely affect trees either above or below ground.

Diameter at Breast Height (DBH) The diameter of a tree as measured four-foot, six-inches (4'-6") above the soil line, and when using the Guide for Plant Appraisal (9th ed. For multi-trunked trees the DBH shall mean the cumulative diameter of the two largest trunks.

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Deteriorated Tree or Deterioration: shall mean a tree, which is degenerated or damaged by a biological pathogen, or pest to the point of death of the tree is imminent.

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Dead or Beyond Recovery: shall mean more than fifty (50) percent of the tree is dead, is a hazardous tree as defined herein, or in a state of irrevocable decline.

Drip Line. A vertical line that runs from the outermost circumference of the tree branches and extends to the ground. For trees with canopies set off center, the drip line will be projected based on the average diameter of the existing drip-line using the tree trunk as its point of origin.

Drought Tolerant. Various plant species that survive on natural rainfall without the need for supplemental irrigation after establishment.

Exempt Trees: A tree under six (6) inches in diameter and Palm trees with less than four and one half (4.5) feet of clear trunk. Trees that do not require a permit for removal. See list in Section 5.C. Exempt trees may not be used to calculate required canopy and may not be used as replacement trees.

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Hazardous Tree: A tree that is irreparably diseased or presents a danger of falling that cannot be controlled or remedied through reasonable preservation and or preventative procedures and pesticides such that the public health or safety requires its removal.

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Hazard Reduction Pruning: A type of pruning to remove dead, severely decayed, split, or other unsafe branches.

Heritage Tree: Any tree designated as a heritage tree or commemorating a person or event as designated by the Town of Windermere.

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Historic Tree. Any protected tree(s) which is thirty-six (36) inches in DBH or greater and has such unique and intrinsic value to the general public because of its size, age, historic association, or ecological value as to justify this classification. Any tree in the Town selected and duly designated a Florida State Champion, United States Champion or a World Champion by the American Forestry Association shall likewise be deemed a historic tree. Any historic tree planted on a National Register Historic Site located in the Town of Windermere.

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Indigenous. Species of plant or vegetation, which is native to the State of Florida.

Invasive Species. Any non-indigenous species that crowds out or takes over native species habitats.

Landscaping. Landscaping shall consist of any of the following or combination thereof: Living material such as but not limited to, grass, ground covers, shrubs, vines, hedges, and trees. Landscaping may include, for accent purposes, nonliving material such as, but not limited to, rocks, mulch, pebbles, decorative walls or fences, but excluding paving.

Lion tailing (Lion's Tailing or Stripping). Extremely poor pruning practice in which an excessive number of branches are thinned from the inside and lower part of specific limbs or a tree crown, leaving mostly terminal foliage. Results in poor branch taper, poor wind load distribution, and a higher risk of branch failure.

Lightning Protection Device/Rod. Protective lightning rod typically installed in specimen or historic tree so that if the tree is struck, the metal of the rod instead of water found in the trunk of the tree conducts electricity. The rod guides electricity down the tree trunk to the earth, thus saving it from injury or explosion.

Major Root. Any root that is one-fifth (1/5) or larger than the size of a tree’s trunk measured at DBH.

Native Vegetation. Self-supporting, indigenous species of plants, reasonably capable of growing and surviving in the climatological areas of the town.

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Noxious. Any non-indigenous species that crowds out or takes over native species habitats.

Park Trees. “Park Trees” are defined as trees, shrubs, bushes, and all other woody vegetation in public parks and all areas owned by the Town.

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Person. The term “person” shall include individual, partnership, corporation, association, or other legal entity, and shall include the plural as well as the singular.

Private Trees. “Private Trees” are defined as trees, shrubs, bushes, and all other woody vegetation in areas owned by private, residential or commercial property owners.

Protected Tree. Any tree, except undesirable, noxious or invasive, with a Diameter Breast Height (DBH) of six (6) inches or larger.

Pruning: shall mean removing or reducing tree limbs to benefit the overall health and safety of a tree. Pruning shall be done according to current standards established by the American National Standards Institute (ANSI) A-300 and adopted by the International Society of Agriculture (ISA), American Consulting Arborists (ASCA) and Tree Care Industry Association (TCIA) formerly the National Arborists Association (NAA).

Removal. The term “removal” shall include remove, removing, or actual displacement or effective displacement through damaging.

Removal of a Tree: shall mean either actually removing a tree from the ground which it grew, transplanting a tree, or effectively removing a tree through damage to the trunk, topping, damaging, or removing major limbs, roots, or enough canopy volume so that the tree dies, declines beyond recovery, or becomes a hazard to public safety and must be removed.

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Replacement Tree: shall mean any tree planted as a condition of approval of a tree removal permit or as may be required to meet the conditions of an approved Development Plan. Any tree planted as a requirement for tree replacement mitigation due to an illegal removal.

Right of Way: shall mean land which is owned by a governmental entity or has an easement devoted to for use as a transportation facility or street. The storm water areas associated with the transportation facility shall be included in this definition.

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Root Zone. Shall mean the area starting from a tree’s trunk to equal to a minimum distance of two and one half times (2.5) a tree’s drip line.

Shade Tree. A tree that typically reaches a height of over twenty-five feet (25) and has an

average DBH of nine (9) inches or larger.

Site. That parcel of land for which any permit from the Town is sought.

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Size: shall mean as determined by the tree’s DBH or caliper as defined in this section.

Street Trees. “Street Trees” are defined as trees, shrubs, bushes, and all other woody vegetation on rights-of-way on either side of all lanes, streets, avenues, or ways within the Town.

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Specimen Tree. Any tree, except undesirable, noxious or invasive, with a Diameter Breast Height (DBH) of eighteen (18) inches or larger.

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Stop Work Order: shall mean notice stating the reason(s) for stopping work, in writing, given to the owner of the property, or to his/her agent, or to the person doing the work, or a notice posted at the property upon which the tree work is being performed requiring that all work cease.

Stripping. (Lion’s Tailing) Extremely poor pruning practice in which an excessive number of branches are thinned from the inside and lower part of specific limbs or a tree crown, leaving mostly terminal foliage. Results in poor branch taper, poor wind load distribution, and a higher risk of branch failure.

Structural Pruning. A good pruning practice to establish a strong arrangement or system of scaffold branches. Results in good branch taper, good wind load distribution and a higher resistance of branch failure.

Tree. A woody or fibrous perennial usually having one dominant trunk which normally grows, or is capable of growing, in the central and north-central area of Florida to a mature height of a minimum of fifteen (15) feet and to a minimum DBH (Diameter Breast Height) of not less than four (4) inches as measured four feet, six inches (4’ -6”) above the existing grade.

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Topping. The severe cutting back of limbs or trunks within the crown of a tree (twenty five (25) percent or more) so as to remove the normal canopy and alter the natural growth habit of the tree. Inappropriate pruning technique to reduce tree size. Cutting back a tree to a predetermined crown limit, often at internodes.

Town: Shall mean Town of Windermere, Tree Board, Development Review Board.

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Tree Banking. Is the planting of replacement trees prior to the removal of a specific protected tree.

Tree Protection Zone/Area (TPZ): defined area within which certain activities are prohibited or restricted to prevent or minimize potential injury to designated trees, especially during construction or development. This shall mean an area surrounding a tree encompassed by a tree’s drip line or projected drip line. The minimum TPA shall be three (3) feet or TPA radius per twelve (12) inches of DBH. For example a 12” DBH Tree would have a TPA of 3 feet

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radius, a 60" DBH will have a TPA of 15 feet radius. Factor DBH in inches/4. The maximum required tree protection area shall be twenty five (25) feet radius from the trunk of the tree.

Tree Protection Zone Barrier (TPZB): various devices, including fencing, berms, or signs, installed to limit access to tree protection zones (or similarly designated areas) prior to construction, during construction, development, land clearing, site disturbance or demolition.

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Trenching: linear or curved open excavation, often used to install utilities or structural footings. Can cause tree root damage. (contrast with horizontal boring, tunneling).

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Trunk/Root Flare: transition zone from trunk to roots where the trunk expands into the buttress or structural roots. Also known as Root Flare.

Understory Tree: is a tree that typically does not reach a height above twenty five (25) feet and is shown on the list of understory or small trees.

Yard. The open space on the same lot with a principal building which is unoccupied by buildings or paving.

Section 4. Applicability. The terms and provisions of this ordinance shall apply to all trees and native vegetation located on real property as follows:

1. All real property upon which any designated protected, specimen or historic tree is located.
2. All vacant and undeveloped property.
3. All property that is redeveloped.
4. All Commercial Property
5. All Residential Property
6. All trees and native vegetation located within any street right-of-way, parks and other public places of the Town

Section 5. Exceptions.

- A. The following are exempt from the provisions of this ordinance:
 1. Trees and native vegetation located in state-licensed, governmental and

commercial plant or tree nurseries or botanical gardens in which the trees are planted for the sale or intended sale to the general public in the ordinary course of business.

2. Trees and native vegetation in active commercial operation for bona fide agricultural purposes.
 3. Trees, which due to natural circumstances and reviewed by a Certified Arborist, are no longer viable and are in danger of falling.
 4. Trees, which are determined to be too close to existing structures so as to endanger such structures.
 5. Trees that interfere with utility services, create unsafe vision clearance or constitute a safety hazard as determined by the Town Manager.
 6. Trees that occur in the location of planned or future public utility services or public roads.
 7. Trees with a Diameter Breast Height (DBH) of less than nine (9) inches.
- B. **Agricultural Uses:** Any property zoned or used for agriculture, which is effectively cleared of trees under the above exemptions, shall not be eligible for changes to a more intensive land use for a period of three (3) years after the site is cleared.
- C. **Exempt Trees.** The following types of trees are considered undesirable, noxious, invasive and shall be exempt from the provisions of this ordinance. No tree removal permit is required to remove the following species:
1. Australian Pine (*Casuarina species*)
 2. Brazilian Pepper or Christmasberry Tree (*Schinus terebinthifolius*)
 3. Cajeput Punk or Melaleuca Tree (*Melaleuca quinquenervia/leucadendra*)
 4. Chinaberry (*Melia azedarach*)
 5. Chinese Tallow Tree (*Triadica sebiferum*)
 6. Ear Tree (*Enterlobium species*)
 7. Eucalyptus (*Eucalyptus*)
 8. Mimose (*Albizzia julibrissin*)
 9. Paper Mulberry (*Broussonetia papyrifera*)
 10. Poisonwood or Florida Poison Tree (*Metopium toxiferum*)
 11. Silk Oak (*Grevillea robusta*)
 12. Any other tree defined as undesirable, noxious or invasive by the State of Florida

Section 6. Special Exceptions Due To Emergencies. During a period of an emergency such as a hurricane, tropical storm, tornado, or flood, the requirements of this ordinance may be waived by the Town Manager. The removal of all trees destroyed or harmed during such an emergency

by natural forces which are beyond saving or which are a hazard to public safety shall be exempt from the provisions of this ordinance for a period of thirty (30) days following such occurrence, provided that the Town Manager is notified of the intended removal at least twenty-four (24) hours prior to the removal. The Town will have a list of Tree Service Companies acquired through a request for qualification procedure and ensure that the selected companies have Certified Arborists on staff to determine survivability of damaged trees.

Section 7. Town Tree Board: Town Tree Board for the Town of Windermere, Florida is hereby re-established with its current members as of the date of enactment of this ordinance.

Section 8. Board Appointments: Appointments to the Tree Board will be made by majority vote of the Town Council and shall serve at their pleasure. The size of the membership of the board is not restricted and the Town Council may make replacement or additional appointments at any time. Tree Board members must be residents of the Town of Windermere.

Section 9. Compensation: Members of the Tree Board shall serve without salary/compensation.

Section 10. Tree Board Duties and Responsibilities

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1. It shall be the responsibility of the Tree Board to study, investigate, counsel, and develop and/or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets, around Town buildings and in other public areas. Such plan will be presented annually, by August 1, to the Town Manager and, upon acceptance and approval, shall constitute the official comprehensive tree plan for the Town of Windermere, Florida, for each fiscal year (October 1 to September 30 of the following year).
2. To make sure the Town responds to annual Arbor Day Foundation Tree City USA duties which include an annual Arbor Day observance, tree planting and proclamation; operation of the Tree Board; Monitoring annual budgeting for trees of \$2 dollars per capita; and keeping the tree ordinance in place and effective.
3. To jointly work with Town Management, Parks and Recreation and Development Review Board in administering the provisions of this ordinance involving but not limited to technical and advisory support.
4. To jointly work with the Town Manager on Urban Forestry Grants and fundraising for the Urban Forestry Program.
5. To jointly work with the Town Manager on RFQ's and RFP's to regulate and supervise trimming or removal of trees in the public right of ways and on Town Property.
6. To attend annual Florida Urban Forestry Conferences for

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continuing education.

Section 11. Development Review Board Duties and Responsibilities

1. To require that a tree removal permit be obtained with, building, demolition, site development, foundation work, and other construction activity permits, where removal of a protected tree is requested.
2. To evaluate development plans for precautions required for significant grade changes for protected trees. .
3. To place conditions on the issuance of construction, demolition or other land development permits when recommended as a condition of a tree removal permit approval by the Town, Permitting Department or Tree Board, especially as it relates to Specimen or Historic trees.

Section 12. Tree Board Operation: The Tree Board shall choose its own officers, make its own rules and regulations, and keep minutes of its meetings. A majority of the members present shall be a quorum for the transaction of business. Tree Board meeting agendas and minutes will be provided to Town staff one week prior to meetings. Tree Board members will be aware of State of Florida Sunshine Laws and Public Records Retention laws. The Tree Board shall elect a Chairman at the first meeting of each calendar year.

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Section 13. Interference With Tree Board: It shall be unlawful for any person to prevent, delay, or interfere with the actions of the Town Council as recommended by the Town Tree Board, or any of its agents, or servants, while engaging in and about the planting, cultivating, mulching, pruning, de-rooting, spraying or removal of any street tree, park tree, or trees on private grounds, as authorized in this ordinance.

Section 14. Review By Town Manager: The Town Manager shall have the right to review the conduct, acts, and decisions of the Tree Board. Any resident may appeal any decision or ruling in connection with the Town tree program to the Town Manager who may hear the matter and make the final decision.

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Section 15. Tree and Native Vegetation Protection:

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1. During construction and development, all reasonable steps necessary to prevent destruction or damage to trees and native vegetation shall be taken. Unless otherwise authorized by a tree removal permit, trees and native vegetation destroyed or receiving major damage must be replaced by trees and vegetation of equal environmental value, as specified by the Town Manager or his/her designee (permitting authority), before occupancy or use.
2. During construction, unless otherwise authorized by a tree removal permit, no excess soil, additional fill, equipment, liquids, or construction debris shall be placed within the

drip line of any tree that is required to be preserved in its original location.

3. No attachments or wires other than those of a protective and non-damaging nature shall be attached to any tree during construction or development.
4. Unless otherwise authorized by the tree removal permit, no soil shall be removed from within the drip line of any tree that is to remain in its original location.
5. Lighting Protection Devices/Rods for protection of specimen and historic trees must be installed by a licensed and Certified Arborist.
6. Protective barriers and measures:
 - a. All protective barriers shall be installed and maintained for the period of time beginning with the commencement of any land clearing or building operations and ending with the completion of the permitted clearing or building construction work on the site.
 - b. The applicants for a tree removal permit shall, at the time of application, designate an on-site representative for the installation and maintenance of all tree and shrub protective barriers. The representative shall be responsible for supervising the removal of all existing vegetation permitted to be removed. The representative shall be on-site at all times during the vegetation clearing operations.
 - c. The circumference of an area to be preserved shall be protected during land development and construction by placing 2-inch by 2-inch wood stakes a maximum of 20-feet apart around the tree protection zone and by tying fluorescent ribbon, survey flagging, etc., from stake to stake along the perimeter of the areas to be preserved. Deleted: perimeter
 - d. When protection of individual trees is required, a protective barrier shall be placed around the perimeter of the base at a distance not less than the drip line.
 - e. A tree protection sign(s) shall be a minimum of two (2) feet wide by three (3) feet high consisting of durable rigid, plastic or metal material with non fading lettering, legibly printed in characters a minimum of one and one half (1 ½) inches high on its face. Tree protection signs and barriers are to be maintained through job completion or to the satisfaction of the Town. A minimum of one (1) sign is required per barrier. Sign text shall be include in English and Spanish and shall read:

Tree Protection Area

Prohibited within this area:

1. Parking of use of vehicles, equipment or machinery.
2. Storage or dumping of any materials or liquids.

3. Construction, excavation or trenching.

Area de Protection de Árboles

Prohibido dentro de esta area:

1. Aparcar o uso de vehiculo, equipamiento, o maquinaria.
2. Almacenar o tirar de liquidos o materiales.
3. Construcción, excavación o zanjas.

f. Unless prior approval is granted by the Town, the following activities are prohibited within the drip-line of a protected tree or within ten (10) feet of its trunk, whichever is greater:

- (1) Parking or use of vehicles, equipment or machinery.
- (2) Storing or dumping any material of liquids or
- (3) Construction, excavation or trenching.

Section 16. Trees Requiring Tree Removal Permits: No person, directly or indirectly, shall cut down, destroy, top, abusively prune, remove, move, or effectively destroy through damaging, any protected tree, replacement tree, specimen tree, or historic tree, within the Town without prior issuance by the town of a tree removal permit, approving the act or acts without authorization by the Town. This requirement does not apply to exempt trees designated as exempt in this ordinance.

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Section 17. Criteria for Issuance of Tree Removal Permits Each application for a tree removal permit shall be reviewed and a decision rendered on approval or denial (in whole or in part) on the basis of the following criteria:

- (1) The health of the tree, i.e. whether the tree is deemed dead or beyond recovery, deteriorated or hazardous.
- (2) The topography of the land and the effect of the tree removal upon erosion, soil retention and the diversion or increased flow of surface waters.
- (3) The number, species, size, location and canopy of existing trees in the area and the effect the removal would have upon shade, sunlight, privacy, scenic beauty, wildlife, noise, air quality, wind, health, safety, prosperity, historic values and general welfare of the area and the Town as a whole.
- (4) Whether structural improvements have been designed and located to minimize the removal of protected trees.

- (5) The denial of the permit would create an unreasonable hardship on the property owner by severely limiting the use of the property in a manner not typically experienced by owners of similarly zoned and situated properties. A minor reduction of the potential number of residential units or building size due to the tree location does not represent a severe limit of the economic enjoyment of the property.
- (6) The applicant has demonstrated to the satisfaction of the Town that there are no reasonable alternatives to preserve the tree(s).
- (7) Such other criteria or factors as the Town deems to be reasonable under the circumstances.

Section 18. Tree Permit Application: Permits required by this ordinance shall be obtained by making application for the permit through the Town of Windermere Permitting Department. The application shall include a written statement specifying the location of the property, the expected land use, and indicate the reasons for the removal, relocation, or replacement of trees thereon. The application shall be accompanied by 2 copies of a legible site plan drawn to a minimum scale of 1-inch equals 20-feet unless, in the discretion of the Town of Windermere Permitting Department, it has been determined that a lesser detailed scale site plan of the area involved, either in whole or in part, will be sufficient for the purposes of this ordinance, in which case an appropriate substitution shall be acceptable. Aerial photographs having a minimum scale of 1-inch equals 50-feet may be substituted at the discretion of the Town of Windermere Permitting Department if adequate site plan information is supplied on the aerial photographs.

Section 19. Site Plan Information: Site plans submitted in connection with applications for permits required by this ordinance shall include the following information, which shall be summarized in legend form on the plan:

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1. Location of all existing or proposed structures, improvements, and site uses, properly dimensioned, and referenced to property lines, setback and yard requirements, and spatial relationships.
2. Existing and proposed site elevations, grades, and major contours.
3. Location of existing and proposed utility services.
4. The common or botanical names, sizes, and locations of all trees on the site, designating those as well as areas of native vegetative cover which are respectively to be retained, removed, relocated, or replaced.
5. Except Specimen or Historic trees, native vegetation which are all within close proximity may be designated as "clumps" with the predominate type, estimated number and average DBH noted, Specimen Trees eighteen (18) inches or larger and Historic Trees thirty-six (36) inches or larger must be designated individually by type and DBH.

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Section 20. Alternate Site Plan Information: If there are no trees or native vegetation located on the site to be developed which are required to be protected under the provisions of the ordinance, the applicant shall so state in their application for permit. If such statement is substantiated by a field inspection of the site by the Town of Windermere Permitting Department, the applicant shall be relieved of the necessity of supplying unnecessary or unimportant information.

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Section 21. Application Processing and Review: Upon receipt of a completed application, the Town of Windermere Permitting Department shall examine, review, and respond. A field inspection of the site will be performed if deemed necessary. The application shall also be referred to other Town departments or other governmental agencies as may be necessary or required in order to determine whether any adverse effects will be incurred as to the general welfare of the public, adjacent properties or public services and facilities. Following any necessary on-site inspections by the Town of Windermere Permitting Department and comments received from appropriate departments or other governmental agencies, the permit application will be approved, disapproved, approved with conditions, or deemed not required in accordance with the provisions of this ordinance.

The Town of Windermere Permitting Department may, at its sole discretion, require the applicant to provide supportive data from a licensed Certified Arborist and/or other licensed professional such as a Certified Landscape Architect to substantiate the information provided on the application or to provide additional information deemed necessary by the Town.

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Section 22. Tree Removal Requirements: No tree permit shall be issued allowing for the removal of trees unless one of the following conditions exist:

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1. The tree is located in the buildable area or yard area where a structure or improvement is to be placed and it unreasonably restricts the permitted use of the property and:
 - a. The tree cannot reasonably be relocated elsewhere on the property.
 - b. The tree cannot be reasonably relocated off-site because of the age, type, or size of the tree.
2. The tree is diseased, injured, in danger of falling, too close to existing or planned structures, interferes with existing or planned utility service, creates unsafe vision clearance or conflicts with other ordinances or regulations as determined by the Town of Windermere Permitting Department.
3. It is in the welfare of the general public that the tree be removed for a reason other than set above.

Section 23. Tree Relocation or Replacement Requirements: Pursuant to an application for a tree permit, the applicant is encouraged and allowed, where practical, to relocate a tree to an appropriate new location on the site. The relocation of a tree shall be performed in accordance

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with accepted forestry practices after evaluating the species, size, quality, and number of trees.

An applicant may be required to replace a tree being removed with another tree to be located elsewhere on the site. All replacement trees shall be of a type that will attain an overall height at maturity of at least fifteen (15') feet and a DBH of at least four (4") inches, and shall be a minimum of eight (8') in overall height with a DBH of two (2") inches when planted.

All replacement trees must be Indigenous to the State of Florida and selected from the list of "Official Tree Species for Windermere, Florida" as described in this ordinance.

Section 24. Permit Conditions: As a condition of issuing a tree permit for the removal and subsequent replacement of trees to meet the provisions of this ordinance, the Town of Windermere Permitting Department will review the species, condition, and location of all trees proposed for removal, and direct the applicant regarding the replacement of trees on either a one-for-one basis or an inch-for-inch basis, depending on the contributory value of the individual trees in relation to the development of the site.

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The replacement basis will be determined upon consideration given to the species, age, size, structure, durability, health and canopy mass of trees proposed for removal, and whether the site plan could reasonably be modified to preserve those trees proposed for removal, if they are deemed to be of high value.

If it is determined that it is not reasonable or practical to relocate or replace trees on the site, the Town of Windermere Permitting Department shall designate an appropriate public location within the Town for the relocation or replacement of said trees. The Town may, at its sole discretion, require a commensurate monetary payment in lieu of relocated or replacement trees. The monetary formula will be established by Resolution.

Section 25. Issuance: If the Town of Windermere Permitting Department, based on its findings and recommendations from staff, is satisfied that the work of removing, relocating or replacing trees and shrubs, described in the application for permit and site drawings filed therewith, conform to the requirements of this ordinance and other applicable laws, the approved permit will be forwarded for issuance to applicant. Payment of all applicable permit fees is required at the time the permit is issued.

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Section 26. Penalty: If it is determined that the property owner or agent failed to receive the proper permits prior to removal of trees, the registered property owner will be fined twice the amount due for mitigation purposes. If payment is not received within thirty (30) days of determination of penalty, the Town may seek a lien on the property and assess legal and filing fees in addition to the penalty amount.

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SECTION 27. Tree Replacement and Mitigation Fund:

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1. There is hereby created a Tree Replacement and Mitigation Fund. All funds collected as

tree replacement and/or mitigation fees shall be administered by the Town Manager with the advice and consent of the Tree Board.

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2. Disbursements from the Tree Replacement and Mitigation Fund shall be made only for the following purposes:

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a) Purchasing trees for planting and any associated costs in accordance with the Town's tree planting program.

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b) Purchases necessary for improvements (except vehicles) including contract services for the Town's Urban Forestry program.

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c) Protection of trees and enforcement of this ordinance.

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d) Tree conservation and educational programs.

e) Matching funds for Urban Forestry Grant projects for the Town of Windermere.

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Section 28. Appeal of Fine: All appeals of mitigation amounts and penalties shall be submitted in writing to the Town Manager ten (10) days after the permit is issued or after a penalty is imposed.

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Section 29. Illegal Removal Voids Appeals Process

1. Except in the event of an emergency as declared by the Town Manager, removal of a protected tree without a permit, except as allowed under this tree ordinance, shall make void any appeals.

2. Removal of protected trees requested on the tree removal permit application is regarded as the applicant's acceptance of the conditions for removal as stated on the application and voids any appeals.

Section 30. Dead or Diseased Trees On Private Property: The Town shall have the right to cause the removal of any dead or diseased trees on private property within the Town, when such trees constitute a hazard to life and property, or harbor insects or disease which constitute a potential threat to other trees within the Town. The Town will notify in writing the owners of such trees. Said owners, at their own expense, shall comply with removal within sixty days after the date of service of notice. In the event of failure of owners to comply with such provisions, the Town shall have the authority to remove such trees and charge the cost of removal and disposal to the owners or otherwise recoup costs by any approved Town code enforcement avenue available.

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Section 31. Precautions for Trees on Public Property and Right-Of-Ways:

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1. Public Tree Care:

The Town shall have the right to plant, structurally prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The Tree Board may recommend hazardous reduction pruning, removal of any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, cable, gas lines, water lines or other public improvements or is affected with any

injurious fungus, insect or other pest. This section does not prohibit the planting of street trees by adjacent property owners providing that the selection and location of said trees is approved by the Town of Windermere Permitting Department.

2. Tree Topping, Stripping, Lion's Tailing:

It shall be unlawful as a normal practice for any person, firm, or Town department to top any street tree, park tree or other tree on public or private property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches (3") in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

It shall be unlawful as a normal practice for any person, firm or Town department to prune by Stripping or Lion's Tailing any street tree, park tree or other tree on public or private property. Stripping/Lion's Tailing is defined as a extremely poor pruning practice in which an excessive number of branches are thinned from the inside and lower part of specific limbs or a tree crown, leaving mostly terminal foliage. This results in poor branch taper, poor wind load distribution, and a higher risk of branch failure.

Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempt from this ordinance at the recommendation of the Town of Windermere Permitting Department.

3. Pruning and Corner Clearance:

Every owner of any tree overhanging any street or right-of-way within the Town shall structurally prune the branches so that such branches shall not unduly obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet (8') above the surface of the sidewalks and thirteen feet (13') above street surfaces.

Said owners shall remove all dead, diseased, or dangerous trees, or broken and decayed limbs, which constitute a menace to the safety of the public. The Town shall have the right to structurally prune any tree or shrub on private property when it interferes with proper spread of light, or interferes with visibility of any traffic control device or sign on passage of vehicles up to a height of thirteen feet (13') above the road surface.

The Town shall also have the right to severe roots that interfere with public or private underground utilities, in utility easements or on Town streets or public property. The Town will confer with a Certified Arborist to reduce any negative impacts to the effected tree and its major roots.

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4. Spacing of Street Trees:

The spacing of street trees will be in accordance with the three species size classes listed in this ordinance, and no trees may be planted closer together than the following: Small (Understory) Trees, fifteen feet (15'); Medium Trees, thirty feet (30'); Large Trees, fifty feet (50'), except in special plantings designed or approved by the Tree Board.

5. Distance From Curb and Sidewalk:

The distance trees may be planted from curbs and sidewalks shall be in accordance with the three species size classes listed in this ordinance, and no trees may be planted closer to any curb or sidewalk than the following: Small trees, two feet (2’); Medium trees, three feet (3’); Large trees, four feet (4’), unless as part of a special project designed or approved by the Tree Board.

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6. Distance From Street Corners, Fire Hydrants and Underground Utilities:

No street tree shall be planted closer than twenty feet (20’) from any street corner, as measured from the point of nearest intersecting curbs or curb lines. No street tree shall be planted closer than thirty feet (30’) from any fire hydrant. No tree shall be planted in a location where the roots at maturity might reasonably be expected to interfere with existing, future or projected utility lines.

7. Telephone, Cable, Electric, Water, Wastewater and Gas Utilities:

No tree shall be planted without first requesting a “locate” of underground lines by the respective utility(s). Only tree species classified as Small Trees shall be planted under existing overhead utility lines. Whenever possible, water, sewer, and other underground utility lines shall be routed around the drip lines of protected trees.

8. Abusive Pruning and Topping:

Abusive pruning or topping, as defined in Section 6, of any trees preserved or installed to meet the provisions of this Ordinance shall be a violation of this Ordinance.

Section 32. Official Tree and Palm Species: The following list constitutes the Official Tree and Palm Species for the Town of Windermere, Florida. No species other than those included in this list may be planted as street trees or palms, park trees or palms or as trees or palms planted in other public places. Trees and Palms not included in the Official Tree Species list will be considered by the Town of Windermere Permitting Department for use in landscaping on private property provided they are indigenous, drought tolerant and are not invasive or noxious. Permits required by this ordinance shall be obtained by making application for the permit through the Town of Windermere Permitting Department.

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Deleted: Chickasaw Plum

Deleted: Redbud

Deleted: Red Maple

Deleted: Bottlebrush

Deleted: Golden Rain Tree

Deleted: Laurel Oak

Deleted: Pindo Palm

Deleted: Holly

Deleted: Live Oak

Deleted: Cherry Laurel

Deleted: Loblolly Bay

Deleted: Washington Palm

Deleted: Ligustrum

Deleted: Pumpkin Ash

Deleted: Sweetgum

Small Trees (Understory)	Medium Trees	Large Trees
<u>Bottlebrush</u>	<u>Ash, Carolina</u>	<u>Bay, Red</u>
<u>Cherry Laurel</u>	<u>Ash, Green</u>	<u>Bay, Swamp</u>
<u>Citrus Trees</u>	<u>Ash, Pumpkin</u>	<u>Birch, River</u>
<u>Crape Myrtle</u>	<u>Bay, Loblolly</u>	<u>Black Cherry</u>
<u>Dogwood, Flowering</u>	<u>Beech, American</u>	<u>Cypress, Bald</u>
<u>Dogwood, Swamp</u>	<u>Boxelder</u>	<u>Cypress, Pond</u>
<u>Florida Yew</u>	<u>Carolina Laurelcherry</u>	<u>Elm, Chinese</u>

<u>Fringetree</u> <u>Fruit Trees</u> <u>Gum Bumelia</u>	<u>Crepe Myrtle</u> <u>Holly, American</u> <u>Holly, East Palatka</u>	<u>Elm, Drake</u> <u>Elm, Winged</u> <u>Hickory, Mockernut</u>
<u>Hawthorn, Mayhaw</u> <u>Hawthorn, Parsley</u> <u>Hawthorne, Cockspur</u> <u>Hawthorne, Littlehip</u> <u>Hawthorne, Washington</u> <u>Holly, Burford</u>	<u>Mahogany</u> <u>Magnolia, Little Gem</u> <u>Magnolia, Sweetbay</u> <u>Oak, Darlington</u> <u>Oak, Heritage</u> <u>Oak, Overcup</u>	<u>Hickory, Pignut</u> <u>Hickory, Water</u> <u>Magnolia, Bigleaf</u> <u>Magnolia, Southern</u> <u>Maple, Florida</u>
<u>Holly, Dahoon</u> <u>Holly, Luster</u> <u>Holly, Weeping Yaupon</u> <u>Jerusalem Thorn</u> <u>Ligustrum</u> <u>Loquat</u> <u>Oak, Bluejack</u> <u>Palm, Pindo</u> <u>Plum, American</u> <u>Plum, Chickasaw</u> <u>Plum, Flatwoods</u> <u>Privet, Japanese</u> <u>Red Buckeye</u> <u>Redbud, Eastern</u> <u>Simpson's Stopper</u> <u>Wax Myrtle</u>	<u>Oak, Post</u> <u>Oak, Turkey</u> <u>Oak, Willow</u> <u>Palm, Cabbage</u> <u>Palm, Canary Island Date</u> <u>Palm, Chinese Fan</u> <u>Palm, Sabal</u> <u>Persimmon</u> <u>Red Buckeye</u> <u>Red Cedar, Southern</u> <u>Red Mulberry</u> <u>Redbud</u> <u>Sassafras</u> <u>Trumpet, Golden</u> <u>Trumpet, Pink</u> <u>Willow, Black</u> <u>Witchhazel</u>	<u>Oak, Laurel</u> <u>Oak, Live</u> <u>Oak, Shumard</u> <u>Oak, Southern Red</u> <u>Oak, Swamp Chestnut</u> <u>Oak, Swamp Laurel</u> <u>Oak, Water</u> <u>Oak, White</u> <u>Palm, Date</u> <u>Palm, Washingtonia</u> <u>Pine, Loblolly</u> <u>Pine, Longleaf</u> <u>Pine, Pond</u> <u>Pine, Slash</u> <u>Poplar, Tulip</u> <u>Sugarberry</u> <u>Sweetgum</u> <u>Sycamore</u> <u>Tupelo, Black</u> <u>Tupelo, Water</u>

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Permits required by this ordinance shall be obtained by making application for the permit through the Town of Windermere Permitting Department.¶

SECTION 33. Conflict: All ordinances or parts of ordinances in conflict herewith, shall be, and the same are hereby repealed.

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SECTION 34. Severability: If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a Court or competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of said Ordinance.

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SECTION 35. Effective: This ordinance shall take effect immediately upon its final adoption by the Town Council.

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Applicability. The terms and provisions of this ordinance shall apply to all trees and native vegetation located on real property as follows:

All real property upon which any designated protected, specimen or historic tree is located.

All vacant and undeveloped property.

All property that is redeveloped.

All Commercial Property

All Residential Property

All trees and native vegetation located within any street right-of-way, parks and other public places of the Town

Section 4. Exceptions.

The following are exempt from the provisions of this ordinance:

Trees and native vegetation located in state-licensed, governmental and commercial plant or tree nurseries or botanical gardens in which the trees are planted for the sale or intended sale to the general public in the ordinary course of business.

Trees and native vegetation in active commercial operation for bona fide agricultural purposes.

Trees, which due to natural circumstances and reviewed by a Certified Arborist, are no longer viable and are in danger of falling.

Trees, which are determined to be too close to existing structures so as to endanger such structures.

Trees that interfere with utility services, create unsafe vision clearance or constitute a safety hazard as determined by the Town Manager.

Trees that occur in the location of planned or future public utility services or public roads.

Trees with a Diameter Breast Height (DBH) of less than six (6) inches.

Agricultural Uses: Any property zoned or used for agriculture, which is effectively cleared of trees under the above exemptions, shall not be

eligible for changes to a more intensive land use for a period of three (3) years after the site is cleared.

C. The following types of trees are considered undesirable, noxious or invasive and shall be exempt from the provisions of this ordinance:

Australian Pine (*Casuarina*)
Cajeput or Punk Tree (*Melaleuca quinquenervia*)
Chinaberry (*Melia azedarch*)
Ear Tree (*Enterlobium cyclocarpum*)
Eucalyptus (*Eucalyptus*)
Florida Holly or Brazilian Pepper (*Schinus terebinthifloius*)
Paper Mulberry (*Broussonetia papyrifera*)
Silk Oak (*Grevillea robusta*)
Tradica sebifera (*sapium sebiferum*)
Mimose (*Albizia julibrissin*)
Poisonwood or Florida Poison Tree (*Metopium toxiferum*)
Any other tree defined as undesirable, noxious or invasive by the State of Florida

Section 5. Special Exceptions Due To Emergencies. During a period of an emergency such as a hurricane, tropical storm, tornado, or flood, the requirements of this ordinance may be waived by the Town Manager. The removal of all trees destroyed or harmed during such an emergency by natural forces which are beyond saving or which are a hazard to public safety shall be exempt from the provisions of this ordinance for a period of thirty (30) days following such occurrence, provided that the Town Manager is notified of the intended removal at least twenty-four (24) hours prior to the removal. The Town will have a list of Tree Service Companies acquired through a request for qualification procedure and ensure that the selected companies have Certified Arborists on staff to determine survivability of damaged trees. The Town Manager shall post the locations and specifications of the trees removed on the Town web site within a reasonable time after the emergency event. The Town Manager will post documentation requirements for trees removed during emergency events to ensure the intent of the ordinance is followed. All trees removed during the emergency event that are not destroyed or damaged during the event shall be subject to the fine structure indicated within the ordinance.

Section 6.