

Chapter 32 - TREE CODE

Sec. 32-1. - Intent.

(1) It is the intent of the Town of Yankeetown ("Town") to manage forestry practices involving Trees because they:

- A. Enhance the coastal village ambiance of the Town.
- B. Are a valuable natural resource.
- C. Increase property values.
- D. Enhance aesthetic vistas.

(2) It is the intent of the Town to define a Tree, identify forestry practices requiring a permit, identify the process to acquire a permit, identify when a permit or fee is not necessary, and explain penalties for violating this chapter.

(3) It shall be unlawful to damage, poison, destroy, or harm or cause to be damaged, poisoned, destroyed, or harmed, any Tree greater than four inches DBH, and any Protected Tree greater than one-inch DBH, without a permit except as exempted in this chapter.

(Code 2015, ch. 23, art. I, § A; Ord. No. 2015-01, § 1(A), 9-28-2015)

Sec. 32-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized Verifier means any individual authorized by the Mayor or Town Administrator to serve as an Authorized Verifier who has on file with the Town a written certification that they have viewed and understand the International Society of Arborists "best practices" video **Measuring DBH-Diameter at Breast Height**.

Buffer Zone means an identified space that provides a visual barrier between adjacent properties or property and a right-of-way.

Building Permit means a zoning compliance certificate, variance, special exception, conditional use or any other development approval, or building permit issued by the Town and authorizing the construction, building or installation of a Structure or Structures on a Parcel.

Building Area means, with regard to any Parcel, all areas of such Parcel within the foot print of any Structure approved to be constructed, built or installed pursuant to an active Building Permit, or laying within 3 feet thereof.

Crown means that area encompassed by the fronds or limbs and leaves of the Tree.

Diameter at Breast Height (DBH) means the Tree trunk diameter measured 4½ feet above ground level.

Drip Line means an imaginary, perpendicular line that extends downward from the outermost tips of the Tree branches to the ground.

Emergency means a condition wherein an emergency, including the Town, has been declared by a governmental authority [or any persons or property are in danger](#).

Hat Rack or Hat Racking means to trim a Tree using cuts on limbs near the junction with the main trunk, leader, or other limbs without regard to Tree health or structural integrity such that the remaining limbs and trunk resemble a hat rack.

Heritage Tree means a Tree which, due to size, shall be protected. The following Trees, if greater than 24-inch DBH, are Heritage Trees: Bald Cypress (*Taxodium Distichum*), Live Oak (*Quercus Virginiana*), or hardwood trees. ~~A pine Tree, except a pine Tree planted for commercial harvest, shall be a Heritage Tree if greater than 18-inch DBH.~~

Historic Tree means one that has been designated by the Town council as of value to the Town because of its location or historical association with the community. All Live Oaks within 25 feet of the edge of the right-of-way line of Riverside Drive, designated by the comprehensive plan as a scenic corridor, are declared Historic Trees by this chapter.

Invasive Species means species as identified as invasive by the University of Florida, IFAS, Center for Aquatic and Invasive Plants (<http://plants.ifas.ufl.edu/>).

Logging means the harvesting or cutting of any Trees in accordance with an approved forestry management plan.

Ministerial Permit means a permit issued pursuant hereto upon filing of an application in which the Parcel owner affirms under oath that (1) the Tree or Trees with regard to which the permit is requested are not Trees of Special Interest, and (2) the owner shall comply with the reforestation provisions of this ordinance.

Permitting Official means the Town Administrator, Zoning Officer, or Code Enforcement Officer or any other Town official or board member from time to time designated by the Town council.

Pre-Approved Planting Location shall mean and refer to any location within the Town from time to time identified by the Town as available for planting of a Tree or Trees. A Pre-Approved Planting Location may be on Town owned property or, with the consent of the property owner, on private property. The planning and zoning commission shall be charged with maintain a list of such Pre-Approved Planting Locations and specifying as it deems advisable the types of Trees which may be planted at each location. In authorizing the planting of replacement Trees at Pre-Approved Planting Locations the Town shall prioritize planting of Live Oaks along Riverside Drive to preserve and replace the existing canopy.

Prohibited Trees means any Tree not allowed to be planted in the Town, and includes all Invasive Species.

Protected Tree means any Tree protected by state or federal regulations or this chapter; Bald Cypress, (*Taxodium Distichum*), and Live Oak, (*Quercus Virginiana*), Trees with a one-inch DBH or greater are declared Protected Trees.

Protective Barrier means a physical structure limiting access to a protected area composed of suitable materials which ensure compliance with the intent of this chapter.

Remove, Removed or Removal means the actual removal by digging up or cutting down, or the effective removal through damage or other means.

Specimen Tree means a Tree that has been officially designated by the Town council, county, state, or federal government to be of high value because of its type, size, age or other relevant criteria.

Structure means anything constructed, installed or portable, the use of which requires a location on a parcel of land. The term "structure" includes a movable or anchored building or shed usable for housing, business, commercial, agricultural, storage or office purposes, either temporarily or permanently. The term "structure" also includes roads, walkways, paths, fences, swimming pools, tennis courts, poles, pipelines, transmission lines, tracks, signs, sewage treatment plants, sheds, mooring areas, off-shore swimming platforms, and other accessory construction

Topping means to trim a Tree by cutting the main axis or leader without regard to Tree health or structural integrity.

Transplant means the digging up of a Tree from one place on the Parcel, and the planting of the same Tree in another place on the same Parcel.

Tree means any self-supporting, woody plant which meets all of the following:

- (1) Grows to a minimum height of 15 feet or greater;

- (2) Has a mature Crown spread of 15 feet or greater;
- (3) Usually has a single main axis or trunk; and
- (4) Has a trunk with over five feet of clear wood.

The definition of the term "Tree" includes palms if they have a current height of 14 feet to the base of the Crown and excludes plants which are defined as shrubs, hedges, vines, or ground covers.

Tree Farm means any state-licensed government or commercial plant nursery, botanical garden, or actively-managed American Tree Farm System (ATFS) Tree farm.

Tree of Special Interest means any Protected Tree, Heritage Tree, Historic Tree, Specimen Tree or Waterfront Tree.

Tree Protection Zone means that area within the Drip Line of a Tree, not to exceed 20 feet from the Tree trunk.

Trimming means removal of up to 25 percent of the Crown of hardwood Trees in one year or growing cycle.

Waterfront Tree means any Tree of four-inches DBH or greater lying within twenty-five (25) feet of the mean high water line.

Sec. 32-3.- Exemptions. The terms and provisions of this chapter shall not apply:

- (1) To the pruning, Trimming or Removal of a Prohibited Tree or Invasive Species.
- (2) A. To the pruning, Trimming, or Removal of a Tree on a residential Parcel if the Parcel owner obtains documentation from an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect that the Tree (i) is dead, (ii) is diseased and will either die or removal of the same is advisable to prevent the spread of disease to other Trees, or (iii) presents a danger to persons or property.

 B. The Town may not require a notice, application, approval, permit, fee, or mitigation for the pruning, Trimming or Removal of a Tree if any of the above requirements are met.

 B. The Town may not require a Parcel owner to replant a Tree that was pruned, trimmed, or removed in accordance with this section.

 C. This section does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to Fla. Stat. ~~403.9321-403.9333~~.
- (3) To any lands with a valid conservation easement to a recognized conservation organization and managed in accordance with an approved forestry management plan from a state-registered arborist or an agent of the state or county forestry or extension departments or other forestry specialist.
- (4) Except as required below, to Tree Removals by duly constituted communication, water, sewer, electrical or other utility companies or federal, state or county agencies, or engineers or surveyors working under a contract with such utility companies or agencies:
 - A. Provided the 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;
 - B. Further provided that the activity is conducted ~~so-as-to~~ to avoid any unnecessary Removal.

Sec. 32-4. - Permit requirements.

See special conditions in section 32-8.

- (1) Contact Town hall for permit application.
- (2) Tree Removal permits shall expire after six months.
- (3) Approved permits shall be posted on the parcel visible from the street.
- (4) Zoning districts other than agriculture:
 - A. For any Tree, other than a Ppalm Tree, a permit is required to Remove any Tree greater than four inches DBH in these districts and any Protected Tree greater than one-inch DBH.
 - B. ~~For palm Trees, a permit is required for Removal if the height is 14 feet or greater to the base of the Crown.~~
- (5) Agricultural district.
 - A. Clear cutting shall only be allowed for Logging (see subsection (6) of this section).
 - B. Any clear cutting for agricultural purposes requires a permit.
 - C. A Parcel owner with adjacent Parcels is not required to maintain a Buffer Zone between his adjacent property lines.
 - D. A permit is required to Remove any Tree greater than four inches DBH when located within:
 1. Any setback area; or
 2. Any Buffer Zone, as described in subsection (6)e of this section.
- (6) Logging.
 - A. Clear cutting shall only be allowed for Tree Farms in existence prior to the effective date of the ordinance from which this chapter is derived.
 - B. Logging, but no clear cutting, is allowed in a Buffer Zone.
 - C. Logging is only allowed when:
 1. The land is officially designated as a Tree Farm by the American Tree Farm System (ATFS); or
 2. The land has an agricultural exemption from the county and there is an approved forestry management plan.
 3. Replanted species must consist of shrubs and or Trees of a minimum 12 to 18 inches in height when installed.
 - D. The following documentation must be presented to the Permitting Official to support the no fee permit Logging application:
 1. Current certification as a member of ATFS;
 2. Current copy of management plan;
 3. Proof of agricultural exemption.
 - E. A Buffer Zone is described as:
 1. The area within 50 feet of any governmental maintained roadway; and
 2. The area within 25 feet on all other sides of the property line.
 - F. A permit is required to Remove any Tree greater than four inches DBH when located within any Buffer Zone.
 - G. A Parcel owner who owns adjacent Parcels is not required to maintain a Buffer Zone between his adjacent property lines.

Sec. 32-5.- Ministerial Permits

- (1) A Parcel owner shall be entitled to issuance of a permit with regard to any Tree or Trees which are the subject of an application qualifying for a Ministerial Permit within one (1) business day of a determination by an Authorized Verifier that the application is true and correct, but under any circumstances within three (3) business days of filing such application unless within such three (3) day period an Authorized Verifier determines that the application is false, misleading or inaccurate.
- (2) Should an Authorized Verifier determine that an application is false, misleading or inaccurate as to any Tree or Trees which are the subject thereof the Parcel owner shall nevertheless be entitled to a permit with regard to any other Tree or Trees which are the subject of the Application within the time frame contemplated in subsection (1).
- (3) At such time as Parcel owner is entitled to issuance of a Ministerial permit the same may be issued by the Mayor, Town Administrator, Town Clerk, Assistant Town Clerk, Zoning Official, Code Enforcement Officer or any other Town council or board member authorized by the Mayor or Town Administrator.
- (4) Any Parcel owner found to have pruned, Trimmed, or Removed any Tree based upon an application filed pursuant hereto which application is later determined to be false, misleading or inaccurate shall be subject to the fines and penalties set forth in Section 32-13 below

Sec. 32-6. - Permit approvals.

(1) *Permitting Official.*

A. Generally.

1. If the Permitting Official determines a Tree, other than a Tree of Special Interest, is dead or hazardous, he may issue a permit for Removal without a requirement of replanting.
2. If the Permitting Official determines a Tree of Special Interest is dead he may issue a permit for Removal with a requirement of replanting per the reforestation provisions of section 32-10.
3. If the applicant does not wish to plant replacement Trees per the reforestation provisions of section 32-10, a Tree may be Removed with the Permitting Official approval, however, **the decision whether the owner must replant will be made by the planning and zoning commission.** (§18-125 states " The functions, powers, and duties of the commission shall include the power to identify the need for, and review proposals for, hold public hearings, and make recommendations to the town council for amendments to the town's comprehensive plan and land development regulations (LDRs)" I am under the assumption that P&Z is an advisory board not a action board.)
4. If the Permitting Official determines any Tree is an imminent hazard to public safety, or property, the Permitting Official can issue a permit, and the seven-day appeals process does not apply under section 32-14(3).

B. Building Permits.

1. If the applicant has a valid Building Permit the Zoning Officer will issue a permit to Remove all Trees within the Building Area, with a requirement for replanting with regard to all Trees of Special Interest Removed per the reforestation provisions of section 32-10.
2. In issuing the Building Permit, however, if the Zoning Officer determines that a reasonable alternative construction practice or relocation of the Structures for which the

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Building Permit is sought will allow the preservation of a Tree of Special Interest the Zoning Officer shall require, as a condition of issuing such Building Permit, such alternative construction practices or relocation. (Concern of infringing on property rights. If all other requirements are met, then a Parcel owner ought to have the right to remove a tree for construction.)

3. If the Parcel owner objects to such conditions the matter will go to the Board of Adjustment for a determination of whether the Parcel owner will be required to comply with the condition. (If 32-6-B-2 Remains in Ordinance then a time frame for the BOA to meet and make a decision ought to be made in order to not become a 6 month process.)

4. If the relocation requires a variance from setbacks the Town will waive any application or other fees with regard to the request for a variance brought before the Board of Adjustment.

(2) *Planning and zoning commission.* The following must go to the planning and zoning commission for approval, conditional approval, or rejection: (§18-125) Potentially the header needs to read as a "Planning and zoning commission. The following must go to the planning and zoning commission for a recommendation of approval, conditional approval, or rejection prior to a final decision made to the Town Council or Board of Adjustments.

A. Any permit exceeding the Permitting Official or Zoning Officer's authority.

B. Any appeal of a permit decision from the Permitting Official or Zoning Officer.

C. Any permit where the Parcel owner seeks a waiver for the normal requirements for replanting Trees, or permission to plant replacement Trees somewhere other than the Parcel owner's Parcel, or at a Pre-Approved Planting Location in accordance with section 32-10. The planning and zoning commission shall consider factors such as existing canopy cover, the number and size of Trees on the Parcel, and the consideration of replanting a replacement Tree at a safer distance from a Structure, when making a determination.

D. The planning and zoning commission can issue a permit for Removal of Protected Trees, with or without a requirement of replanting, subject to the provisions of section 32-8(1).

(3) *Town council.* The Town council must approve, conditionally approve, or reject the following types of applications unless no permit is required pursuant to Section 32-3(2) above, or a permit is issued pursuant to 32-6 (1) A. 1., 2., 3., or 4., or 32-6 (1) B.:

A. Historic or Specimen Tree .

B. Heritage Tree (removal of which may be approved only after review and recommendations by an arborist, staff and planning and zoning Commission finding such Tree to be diseased and endangering public safety.)

C. Trees within public rights-of-way which must be replanted by the Town, unless the request is initiated by a Parcel owner, in which case, the Parcel owner will be responsible for replacement of the Tree or payment of a replenishment fee to the Tree mitigation fund.

(4) *Approval permit.* All approved permits shall be posted on the Parcel facing and visible from the street.

(5) *Start of work.* No work shall begin until expiration of the appeal period, except in the case of (i) Ministerial Permits; (ii) where the Permitting Official determines the Tree is an imminent hazard, as stated in section 32-14(3).

Sec. 32-7. - Transplanting.

Transplanting of Protected Trees with a one-inch- unbranched young tree seedlings (referred to as a whip) DBH or greater, or all other Trees four inches DBH or greater shall require a permit, but no fee. If the Tree does not survive, the current landowner is responsible for planting another Tree of the same species.

Sec. 32-8. - Special conditions.

- (1) Protected Trees.
 - A. Unless no permit is required pursuant to Section 32-3(2) above or the zoning officer issues a permit pursuant to 32-6 (1) A. 1., 2., 3., or 4., or 32-6 (1) B, Protected Trees require a permit for Removal by the planning and zoning commission.
 - B. Any Trees protected by state or federal regulations may have additional requirements for Removal, and the owner must show evidence of compliance with those regulations in their permit application.
- (2) Designation of Historic or Specimen Trees.

A public hearing shall be held by the Town council before the designation of any Tree as an Historic or Specimen Tree, with due notice to the owner of the Parcel on which the Tree is located.
- (3) Tree Removal within public rights-of-way requires Town council approval. Utilities are exempt per exemption section 32-3 (4).

Sec. 32-9. - Tree protection during development.

To ensure the health and survival of Trees that are not to be Removed, the landowner and/or his agent shall:

- (1) Specify Tree protection on the submitted permit;
- (2) Use protective barriers to establish a Tree Protection Zone; and
- (3) Prevent the following kinds of Tree injuries during development activities:
 - A. Mechanical injuries to roots, trunks and branches;
 - B. Injuries by chemical poisoning;
 - C. Injuries by grade changes, excavations, and paving.

Sec. 32-10. - Reforestation.

- (1) *Replacement of protected species.*
 - A. Trees Removed shall be replaced at the expense of the person applying for the permit.
 - B. Replacement Trees may be planted anywhere on the Parcel or donated to the Town if there is no room to plant on the Parcel.
 - C. Removed Trees shall be replaced with another protected species, one Tree for one Tree.
 - D.
 1. Replacement Trees shall be Trees of protected species [unbranched young tree seedlings- one-inch-DBH-or-greater](#), nursery grown, Florida Grade No. 1.
 2. If the Tree does not survive the current Parcel owner is responsible for planting another Tree of the same species.
 - E. Replacement Trees must be planted within one planting cycle or calendar year of permit approval.
 - F. No Tree which has been planted as a replacement under the provisions of this section shall be Removed without a permit regardless of size.
 - G. Replacement Trees may be donated to the Town, or a fee in lieu thereof paid to the Town, for purposes of planting Trees on public property or at Pre-Approved Planting Locations selected by the Town. If no Pre-Approved Planting Location is [available, donation available, donation](#) of replacement Trees will require planning and zoning commission [approval recommendation to Council](#). The owner donating the replacement Tree shall be responsible for the cost and expense

of planting the same. The fee in lieu of replanting shall be based on the cost of purchasing, transporting, and planting, the requisite size and number of replacement Trees. Subsection D. 2. Shall apply if any such replacement Tree does not survive.

(2) *Replacement of any Tree which is not a Protected Tree.*

- A. Provisions of subsections (1)(A), (B) and (D) through (G) of this section apply, except for subsection (1)(C).
- B. Any hardwood Tree species shall be replaced one Tree for one Tree, with a hardwood Tree species.
- C. Other Trees may be replaced with any Tree on a one Tree for one Tree basis.

Sec. 32-11. - Emergencies.

- (1) When an Emergency exists, no permit is required for Removal of any Tree that has been severely damaged by the event to the point that the damage is a threat to persons or Structures or is impeding emergency or recovery services.
 - A. This Emergency permit exemption shall remain in effect until lifted.
 - B. The Parcel owner or agent shall provide the Permitting Official with photographs which show the condition of the damaged Tree necessitating Removal during the Emergency.
 - C. The Parcel owner or agent shall provide the Permitting Official with a sketch showing location of Tree Removed during the Emergency.
- (2) Improper Removal of a Tree during this Emergency permit exemption shall be a violation of this chapter.
- (3) The Permitting Official shall inspect the Town and collect the required owner Tree Removal exhibits.
- (4) If any Trees Removed were Trees of Special Interest replacement is mandatory. The Permitting Official shall track replanting.
- (5) The Permitting Official shall review other types of Trees that were Removed and remaining tree cover and recommend amount of replacement to the planning and zoning commission.
- (6) The planning and zoning commission shall determine Tree replacement requirement for other types of Trees, based upon the Permitting Official recommendations.

Sec. 32-12. - Stop-work orders.

- (1) The Permitting Official shall issue a stop-work order, upon determination that this chapter is being, or has been, violated.
- (2) Hat Racking, Topping, excessive Trimming, and Tree Removal without a permit are only a few examples of items which will result in a stop-work order.
- (3) All work shall stop immediately until the Permitting Official has cleared the stop-work order.
- (4) If the violator fails to cease and desist immediately, the Permitting Official shall notify the Town attorney, who shall immediately proceed with civil and/or criminal prosecution.
- (5) If the violator fails to cure the violation, as agreed in discussions and with the Permitting Official and approved by either the Mayor or Town Administrator (which cure may include payment of fine), the Permitting Official, mayor, or Town Administrator shall notify the Town Attorney, who shall immediately proceed with civil and/or criminal prosecution.
- (6) Any person aggrieved by the issuance of a stop-work order shall have the right to appeal.
- (7) All appeal rights are conditioned on stopping all work during the appeal process.

Sec. 32-13. - Failure to comply.

- (1) Any person, firm, company or corporation who refuses to comply with, or violates, any section of this chapter, or the emergency measures which may be made effective pursuant to this chapter, shall be guilty of a civil infraction of this Code.
- (2) Any person, firm, company or corporation refusing to comply with, or who violates, any section of this chapter, or the emergency measures of this chapter shall be punished as follows:
 - A. For Trees of Special Interest, as defined herein, the fine shall be a civil penalty of:
 1. \$500.00 for a violation.
 2. Plus \$500.00 per inch DBH to a maximum of \$5,000.00 for any violation found to be irreparable or irreversible in nature.
 - B. For all other Trees, the fine shall be a civil penalty of:
 1. \$250.00 for a violation.
 2. Plus \$250.00 per inch DBH to a maximum of \$5,000.00 for any violation found to be irreparable or irreversible in nature.
 - C. Each Tree shall constitute a separate violation.
 - D. Any person that refuses to comply with a stop-work order shall be subject to a civil penalty up to \$5,000.00, in addition to any other penalties.
- (3) Nothing contained herein shall prevent the Town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this chapter or the emergency measures which may be made effective according to this chapter. Such other lawful action shall include, but shall not be limited to the following:
 - A. An equitable action for injunctive relief; or
 - B. An action at law for damages.
- (4) If this penalty section shall be in conflict with other provisions of this Code, this section shall prevail.

(Code 2015, ch. 23, art. I, § K; Ord. No. 2015-01, § 1(K), 9-28-2015)

Sec. 32-14. - Appeals process.

- (1) Any person denied a permit or in disagreement with the terms of an approved permit by the Permitting Official, Zoning Officer, planning and zoning commission or Town council shall have the right to appeal the decision to the board of adjustment.
- (2) The notice of appeal shall be in writing, stating the grounds for seeking an appeal.
- (3) The notice of appeal must be filed with the clerk of the Town within seven days of the denial of the permit. All approved permits shall be posted on the Parcel facing and visible from the street. No work shall begin until expiration of the appeal period except in case the Permitting Official has determined there is an imminent hazard.
- (4) The Town clerk shall immediately notify the board of adjustment and the planning and zoning commission.
- (5) The board of adjustment shall fix a reasonable time, not to exceed 30 days, for the hearing of the appeal, give public notice thereof, as well as give due notice to the parties in interest.
- (6) The board of adjustment shall specifically have the authority to support or overturn the decision or change conditions to the granting of a permit.

(Code 2015, ch. 23, art. I, § L; Ord. No. 2015-01, § 1(L), 9-28-2015)