

REPORT OF THE PLANNING AND DEVELOPMENT DEPARTMENT

DECEMBER 8, 2016

The Planning and Development Department hereby forwards to the Planning Commission, Land Use and Zoning Committee and City Council its comments and recommendations on:

ORDINANCE 2016-705

AN ORDINANCE AMENDING SECTION 656.1205 (REMOVAL OF PROTECTED TREES PROHIBITED; EXCEPTIONS), PART 12 (LANDSCAPE AND TREE PROTECTION REGULATIONS), SUBPART B (TREE PROTECTION), CHAPTER 656 (ZONING CODE), ORDINANCE CODE, TO CREATE AN ADDITIONAL EXCEPTION FOR LAND DEVELOPED AS SALT WATER MITIGATION BANK PURSUANT TO A PERMIT ISSUED BY ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, OR THE UNITED STATES ARMY CORPS OF ENGINEERS, SO LONG AS NO HARDCAPE CONSTRUCTION IMPROVEMENTS ARE MADE; PROVIDING FOR RETROACTIVE APPLICATION TO JANUARY 1, 2013; PROVIDING AN EFFECTIVE DATE.

I. GENERAL INFORMATION

This bill amends Section 656.1205 (Removal of Protected Trees Prohibited; Exceptions), Part 12 (Landscape and Tree Protection regulations) Subpart B (Tree Protection) Chapter 656 (Zoning Code), Ordinance Code to create an additional exception for land developed as a saltwater wetland mitigation bank; and provides for retroactive application to January 1, 2013.

II. EVALUATION

A. The need and justification for the change

The change is needed in order to promote the creation and maintaining of saltwater wetland mitigation banks.

B. Summary of Bill

The amendment to the Zoning Code inserts an additional exemption from the requirement to mitigate for the removal of protected trees, on land that will be utilized as a saltwater wetland mitigation bank, so long as no horizontal or vertical hardscape construction improvements are made on any portion of the site. The legislation provides that this exemption is retroactive to January 1, 2013.

Wetland mitigation banks, both saltwater and fresh water, are regulated by the St. Johns River Water Management District ("SJRWMD"), the Florida Department of Environmental Protection ("FDEP"), and the United States Army Corps of Engineers ("USCOE"). They

provide a way to mitigate for environmental impacts to wetlands caused by development within a specified drainage basin. Mitigation "credits" are sold to developers whose project will impact wetlands.

One saltwater mitigation bank has been permitted by the SJRWMD, FDEP and the ACOE in Jacksonville. It is currently under construction, is owned by Riverfront Associates, LLC, and is located between the St. Johns River and Heckscher Drive west of Sister's Creek, surrounding the Joe Carlucci Sister's Creek Boat Ramp. Heritage River Road, a public right-of-way, traverses the site providing access from Heckscher Drive to the boat ramp.

In 2011 (Ord. 2011-239-E) the City Council closed and abandoned the right-of-way of Heritage River Road between Heckscher Drive and the Boat Ramp so that the owner could incorporate the right-of-way into the mitigation bank, on the condition that a new road be provided by the developer that would continue to give access to the boat ramp. In 2013 (Ord. 2013-265-E) the Council repealed ordinance 2011-239-E and approved a Development Agreement between Riverfront Associates, LLC ("Developer") and the City.

The Development Agreement required/authorized the following: (1) City to provide an easement to the Developer for culverts under Heritage River Road and mitigation activities along Heritage River Road right-of-way in exchange for Developer paying \$200,000 to the City, which was to be placed in an account to be used for maintenance of Heritage River Road (the culverts were necessary to be placed under Heritage River Road in order to allow tidal flushing between the river and the large portion of the mitigation bank between Heritage River Road and Heckscher Drive); (2) Developer to record Covenants and Restrictions, (3) Developer to record conservation easement in favor of SJRWMD, and (4) Developer to convey "Access Parcels" to City, or pay City \$100,000 which would be used for boat ramp park improvements.

The Development Agreement has not been executed. The Easement Agreement has not been executed, and no money has been paid to the City although the culverts have been constructed and mitigation activity has taken place by the Developer in the Heritage River Road right-of-way.

The construction of the mitigation bank required the removal of protected trees as defined in Part 12 of the Zoning Code and the Jacksonville Charter. A Letter of Credit in the amount of \$501,797 was provided by the Developer to the City's Tree Protection and Related Expenses Trust Fund to cover this impact.

This bill clearly provides that trees removed for purposes of creating a saltwater mitigation bank are exempt from the "protected tree" provisions of the Zoning Code.

C. Consistency with the Comprehensive Plan.

Ordinance 20016-705 is consistent with the following Goals, Objectives, and Policies of the 2030 Comprehensive Plan:

Coastal Conservation and Management Element (CCME) GOAL 3: Manage, preserve and enhance viable native ecological communities in order to protect and improve the functions

of natural systems and the distribution, productivity and diversity of native plants, animals and fisheries, particularly those species which are endangered, threatened, of special concern, or have high ecological, recreational, scientific, educational, aesthetic, or economic value.

CCME Policy 4.1.15: The City of Jacksonville currently has a freshwater wetlands mitigation bank known as Loblolly in the southwest quadrant of the City. The City shall consider, by 2015, establishing additional mitigation banks that will offer the ability to create, restore, enhance, and preserve wetlands and/or other aquatic resources to provide opportunities to mitigate for impacts to wetland resources throughout the City of Jacksonville. Consideration shall include saltwater marsh mitigation and incorporation of Preservation Project Jacksonville (PPJ) lands for preservation or restoration of wetlands. As part of the program, the City shall establish a system of incentives to encourage developers to utilize the City's mitigation banking program.

CCME Objective 4.3: The City shall regulate land development activities in wetlands so as to complement and not duplicate existing wetland protection programs of the Florida Department of Environmental Protection DEP , St. Johns River Water Management District (SJRWMD) and the U.S. Army Corps of Engineers (USACOE).

CCME Objective 4.4: The City shall consider incentives and other market-based programs to protect high functional valued wetlands and environmentally sensitive lands that are critical to the health of the City's waterways and water quality.

Future Land Use Element (FLUE) Policy 1.5.9: Revise the Land Development Regulations to include provisions designed to protect wetland functions in connection with development in and adjacent to wetlands.

III. RECOMMENDATIONS

Based upon examination of the proposed ordinance with respect to the goals, objectives and policies of the 2030 Comprehensive Plan, and the intent of the Zoning Code, the Planning and Development Department finds that Ordinance 2016-705 is consistent with the Comprehensive Plan and furthers the spirit and intent of the Zoning Code. Therefore, it is the recommendation of the Planning and Development Department that Ordinance 2016-705 be **APPROVED**.

1 PART 12. Landscape and Tree Protection Regulations

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3 SUBPART B. Tree Protection

4 * * *

5 Sec. 656.1205. Removal of protected trees prohibited;
6 exceptions.

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9 (e) This section shall not apply to the removal of trees (1) on
10 land classified as agricultural land pursuant to Section 193.461,
11 Florida Statutes, if the removal of such trees is regulated through
12 Best Management Practice criteria formally adopted into the Florida
13 Administrative Code by the Florida Department of Agriculture and
14 Consumer Services; or (2) land for use as a salt water mitigation
15 bank pursuant to a permit issued by the St. Johns River Water
16 Management District, the Florida Department of Environmental
17 Protection, or the United States Army Corps of Engineers, so long
18 as no horizontal or vertical hardscape construction improvements
19 are made on any portion thereof.

20 Section 2. Retroactive applicability. This ordinance
21 shall be retroactive in application so that the amendment adopted
22 herein shall be effective as to land for use as a salt water
23 mitigation bank pursuant to an environmental resource permit issued
24 by the St. Johns River Water Management District, the Florida
25 Department of Environmental Protection, or the United States Army
26 Corps of Engineers on or after January 1, 2013.

1 Section 3. Effective Date. This ordinance shall become
2 effective upon signature by the Mayor or upon becoming effective
3 without the Mayor's signature.

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5 Form Approved:

6 /s/ Susan C. Grandin

7 Office of General Counsel

8 Legislation Prepared By: Susan Grandin

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