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**ORDINANCE
NUMBER 2021-01**

AN ORDINANCE OF THE CITY OF LABELLE, FLORIDA; AMENDING THE CITY OF LABELLE LAND DEVELOPMENT CODE, CHAPTER 4, ZONING; AMENDING ARTICLE V, SUPPLEMENTARY DISTRICT REGULATIONS, SECTION 4-80.16, TREE PROTECTION; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

RECITALS

WHEREAS, the City of LaBelle, Florida has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida; Chapters 163 and 166; and Section 381.986 Florida Statutes; and

WHEREAS, the City of LaBelle desires to maintain minimum regulations to ensure the protection of public health, safety and welfare; and

WHEREAS, the City of LaBelle is the “City Under The Oaks” and places emphasis on the natural beauty and community character attributed by the City’s abundant significant oak trees;

WHEREAS, the City of LaBelle desires to maintain the native oak tree canopy to the extent possible while providing flexibility for quality development to occur; and

WHEREAS, the proposed ordinance was properly advertised and has received public hearings before the Local Planning Agency on January 14, 2021 and the City Commission on February 11, 2021 and March 11, 2021; and

WHEREAS, the City finds that this Ordinance is in the interests of the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of LaBelle, Florida:

Section 1. Recitals. The forgoing recitals are hereby ratified and confirmed as being true and correct and hereby made a part of this Ordinance and adopted as legislative findings.

Section 2. Amendment to the City Code. Appendix B, Land Development Code, Chapter 2, Language and Definitions, Section 4-80.16, Tree Protection, of the City of LaBelle Land Development Code are hereby amended with the following provisions:

43 LAND DEVELOPMENT CODE

44 CHAPTER 4 – ZONING

45 ARTICLE V. SUPPLEMENTARY REGULATIONS

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49 Sec. 4-70. – Landscaping.

50 4-80.1. *Purpose and intent.* [NO CHANGE]

51 4-80.2. *Definitions.* [NO CHANGE]

52 4-80.3. *City tree board.* [NO CHANGE]

53 4-80.4. *Landscape areas, generally.* [NO CHANGE]

54 4-80.5. *Landscape plan.* [NO CHANGE]

55 4-80.6. *Acceptable landscape materials and practices.* [NO CHANGE]

56 4-80.7. *Landscape betterment plan.* [NO CHANGE]

57 4-80.8. *Maintenance.* [NO CHANGE]

58 4-80.9. *Buffers and screening.* [NO CHANGE]

59 4-80.10. *Street landscaping.* [NO CHANGE]

60 4-80.11. *Building landscaping.* [NO CHANGE]

61 4-80.12. *Standards.* [NO CHANGE]

62 4-80.13. *Stormwater management areas.* [NO CHANGE]

63 4-80.14. *Rights-of-way and protection of infrastructure.* [NO CHANGE]

64 4-80.15. *Tree Preservation.* [NO CHANGE]

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66 4-80.16. *Tree protection.*

67 4-80.16.1. *Intent.* It is the intent of the city commission to protect and preserve mature, native
68 trees, particularly significant oak trees as defined in Sec. 2-4 of this Code, within the city.
69 The city commission has determined that the protection and preservation of the oak tree
70 canopy provided by the native oak trees. commonly known as Live Oaks, Laurel Oaks
71 and Water Oaks is important to the health, safety and welfare of the residents of the city,
72 and recognizes the importance of maintaining and renewing the canopy for future
73 generations. The canopy also provides an ambiance that has been a factor in attracting
74 visitors and new residents. Loss of this significant canopy will negatively affect the city,
75 both physically and fiscally. Therefore, the city commission has determined that
76 preservation and replacement of these trees is in the best interest of the city to protect its
77 vision as the "The City Under the Oaks".

78 While the priority of the city is to preserve and protect significant oaks, it is not the city's
79 intent to restrict the reasonable development of property. Through application, an
80 applicant may propose an alternative to the requirements of the land development code

81 in an effort to preserve significant oak trees. The city commission will determine whether
82 the preservation of such trees meets the intent of this Code with regard to health, safety
83 and welfare.

84 4-80.16.2. *Applicability.* This section applies to all development and redevelopment of land
85 within the city, including the development and redevelopment of single-family dwellings
86 on existing lots of record.

87 4-80.16.3. *Exceptions.* Exceptions to the requirement for a tree removal permit are as follows:

88 A. Natural emergencies or disasters. Upon declaration of a state of emergency by the city
89 mayor or city commission, issuances of permits for the removal of damaged trees may be
90 waived by the city superintendent of public works. Such waiver may not be for an
91 indefinite period and shall expire when the mayor or city commission determines that
92 emergency conditions have ended.

93 B. Dead oak trees. If the superintendent of public works or his designee determines that a
94 tree is dead, then no permit shall be required. Replacement trees shall not be required if
95 the oaks on the subject property meet or exceed the current tree requirement of the
96 landscape code.

97 4-80.16.4. *Tree removal/relocation permit required.* A significant oak tree may not be
98 removed or relocate without a tree removal permit. Tree removal permits may be issued
99 by the building official or designee, or by application to the city commission, as set forth
100 in this section.

101 4-80.16.4.1. *Administrative tree removal permit.*

102 a. Administrative approval criteria. Removal or relocation of significant oak trees
103 may be approved administratively by the Superintendent of Public Works or
104 their assigns, upon a finding that the oak tree(s) satisfies at least one (1) of the
105 following in addition to required mitigation per 4-80.16.5:

106 1. Poses a safety hazard due to structural damage to the property, or due to
107 health of the tree.

108 2. Has been weakened by disease, age, storm, fire or other injury; is
109 determined dead; or is in such a significant state of decline that death is
110 imminent based.

111 3. Is so disfigured that it no longer represents a healthy specimen.

112 4. Is required in order to obtain property insurance. Proof in writing shall be
113 required.

114 b. Administrative tree removal application requirements.

115 Administrative applications shall be initiated by submittal of an administrative
116 tree removal application and the associated application materials and will
117 include the following additional information:

118 1. The location and type of significant oak tree(s) proposed for removal or
119 relocation;

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2. Administrative applications requesting removal due to structural damage shall include verification from a certified engineer in the State of Florida that the significant oak tree(s) is currently or will in the near future cause structural damage to existing structures. Verification will include identification of the tree(s) causing structural problems, and will provide an explanation of the concern. Written verification will be sealed by the engineer of record.
3. Administrative applications requesting removal of a significant oak tree(s) due to a decline in health require verification of claim(s) from a qualified tree. An expert shall be an individual, in the State of Florida, that is: an official horticulturalist with IFAS, a certified horticulturalist, a master gardener, a licensed landscape architect certified in the State of Florida, certified arborist, or an urban forester. The verification letter shall identify the weakened tree(s) and shall provide an explanation of the problem, and state the qualifications of the tree expert.
4. Description of method of removal or relocation to be used; and
5. Planting plan and narrative describing required mitigation in accordance with Sec. 4-80.16.5.

4-80.16.4.2. *Tree removal permit requiring city commission approval.* Through application to the city commission, an applicant may request the removal or relocation of significant oak trees that do not meet the criteria for administrative approval pursuant to this section.

a. Criteria for permits requiring city commission approval.

The criteria provided below must be met for consideration of approval of a tree removal application by the city commission:

1. The applicant shall demonstrate that the significant oak tree(s) prevents the reasonable development of the site; and
2. That relief from other land development code requirements, such as reduced setbacks or parking lot layout, are not reasonable alternatives for tree preservation; and
3. That any approval for significant oak tree removal or relocation granted by the city commission does not adversely impact adjacent properties.
4. Demonstration of the required mitigation in accordance with this in accordance with Sec. 4-80.16.5.

b. Application requirements for permits requiring city commission approval.

Application shall be initiated by submittal of a public hearing tree removal application and the associated application materials and will include the following additional information:

1. The location and type of significant oak tree(s) proposed for removal or relocation;

- 160 2. A statement (narrative) addressing the following:
- 161 a. Why the significant oak tree(s) prevents reasonable development, and
- 162 b. What alternatives the applicant has considered and why these
- 163 alternatives cannot be used:
- 164 3. Demonstration of consideration of relief from other land development code
- 165 requirements that might enable development to proceed and avoid tree
- 166 removal:
- 167 4. Description of method of removal or relocation to be used; and
- 168 5. Description of how other significant oak trees or groups of trees will be
- 169 protected during any approved tree removal or relocation and any associated
- 170 construction or clearing, where applicable.
- 171 6. Planting plan and narrative describing required mitigation.

172 4-80.16.4.3. *Removal or relocation approval in conjunction with public hearing*

173 *development approval.* When tree removal or relocation is contemplated in

174 conjunction with development requiring public hearing approval, including but not

175 limited to a special exception, rezoning (including Planned Unit Development

176 rezonings), development plan or subdivision plat, such removal or relocation shall

177 be considered by the city commission as part of the development review process and

178 a separate tree removal application is not necessary. Consideration by the city

179 commission shall be based upon the criteria established in section 4-80.16.2.2.

180 Development plans and/or plats must include tree removal application materials as

181 described in section 4-80.16.3.

182 4-80.16.5 *Required mitigation.* Where significant oak tree(s) are approved for removal under

183 this section, including administrative approval and tree removal permits requiring city

184 commission approval, mitigation must be provided as follows:

- 185 1. Replacement tree(s) must be a Live Oak specimen.
- 186 2. ~~One (1) replacement tree(s) is required for each significant oak tree removed from the~~
- 187 ~~site.~~ The replacement Live Oak tree must be at minimum: ten (10) feet in height, contain
- 188 a four (4) foot spread, and have ~~two (2)~~ four (4) inch caliper, DBH, at time of planting.
- 189 All significant oak tree(s) approved for removal shall be replaced on a DBH inch for DBH
- 190 inch basis.
- 191 3. All replacement tree(s) shall be balled and burlapped, tree spaded or containerized.
- 192 4. Replacement tree(s) shall be located in approximately the same location as the significant
- 193 tree, unless such location would be unreasonable under the circumstances, or in locations
- 194 readily visible by the public from adjacent rights-of-way.
- 195 5. Where replacement tree(s) are proposed to be planted off-site, the request must be
- 196 approved by the city commission.
- 197 6. Where the Applicant proposes a payment-in-lieu of replanting oak tree(s) in accordance
- 198 with this section (either on-site or off-site), the request must be approved by the city

199 commission. The mitigation fee is hereby established at \$150 per inch of significant oak
200 tree removed, measured DBH.

201 7. The superintendent of public works or their designee shall inspect the property upon
202 completion of all mitigation permitted pursuant to this article to determine compliance.
203 The enforcing official shall then reinspect the property approximately one (1) month
204 thereafter and then at four-month intervals to ensure compliance. If at any time the
205 enforcing official determines that the corrective action is not successful, he/she shall
206 notify the owner and/or resident of the property as provided in this section.

207 4-80.16.6. *Attachments to trees prohibited.* No attachments or wires other than those of a
208 protective and nondamaging nature shall be attached to any tree.

209 4-80.16.7. *Enforcement.*

210 4-80.16.7.1. *Enforcing officials.* The city superintendent of public works shall designate
211 such person or persons as may be necessary to administer and enforce the provisions
212 of this chapter.

213 4-80.16.7.2. *Authority to enter on private property.* Those persons designated to
214 administer and enforce the provisions of this chapter may, in the performance of such
215 functions and duties, enter upon any land and make such inspections, examinations
216 and surveys as are required for the proper administration and enforcement hereof and
217 may obtain any necessary search warrants therefore.

218 4-80.16.7.3. *Violations deemed public nuisance.* The provisions of this chapter are
219 deemed to be necessary for the protection of the public health, safety and welfare and
220 for the protection of the peaceful use and enjoyment of any lands by the owners
221 thereof, and any violation of the terms of this chapter is declared by the city
222 commission to constitute a public nuisance.

223 4-80.16.7.4. Whenever the enforcing official finds any violation of the provisions of this
224 ordinance, he/she shall institute enforcement proceedings as follows:

225 1. *Notice.* The enforcing official shall issue a code violation to the owner of the
226 property which shall be given either by personal delivery or by deposit in the United
227 States mail in an envelope marked certified mail (certificate of mailing), postage
228 prepaid, addressed to the owner as listed on the current tax assessor's tax roll. The
229 notice of code violation shall include:

230 a. A location of the property either by street address or legal description.

231 b. A statement indicating the nature of the violation and the reason or reasons why
232 the notice of violation is issued.

233 c. A specification of the subsection or subsections on which violation is based.

234 d. If corrective action will bring the violation into compliance with these sections,
235 a statement of the nature and extent of such action, repairs or alterations
236 necessary to remedy the violation in accordance with the performance standards
237 provided herein. The city shall specify the time for performing such actions,
238 such time not to be less than ten (10) nor more than thirty (30) days.

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e. The name or names of persons upon whom the notice of violation is served.

f. A statement advising that the city may institute legal proceedings as provided herein.

4-80.16.7.5. *Appeals and variances.* An appeal to the city commission of the decision of the enforcing official or a petition for special exception as provided in the city Code, if applicable, stay further proceedings by the enforcing official until final disposition by the city commission.

4-80.16.7.6. *Failure to comply.* If corrective action is not taken within the time specified in the notice of violation, or if an appeal is taken and corrective action is not taken in accordance with the decision of the city commission, then the enforcing official may institute further proceedings as provided by the enforcement provisions of this chapter.

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Section 3. Codification. This ordinance shall be incorporated into the City of LaBelle Land Development Code. The sections of this Ordinance can be renumbered or re-lettered to the appropriate word or phrase to accomplish codification. Omissions, grammatical, and typographical errors, as well as clarifications of ambiguous wording that do not affect the intent of this Ordinance, may be authorized by the Mayor without need for a public hearing.


Section 4. Severability. In the event that any portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 5. Conflicts. The provisions of this article shall supersede any provisions of existing ordinances in conflict herewith to the extent of said conflict.

Section 6. Effective Date. This Ordinance shall take effect immediately upon its adoption by the City Commission.

PASSED AND DULY ADOPTED this 11th day of March, 2021.

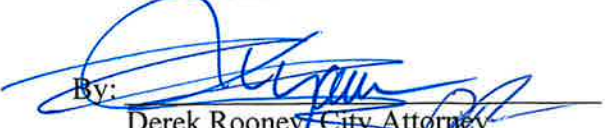
CITY COMMISSION OF THE CITY OF LABELLE, FLORIDA

By: 
David A. Lyons, Mayor

ATTEST:

By: 
Thomas A. Smith, Clerk-Commissioner

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: 
Derek Rooney, City Attorney

295	Vote:	A Y E	N A Y
296			
297	Mayor Lyons	✓	—
298	Commissioner Smith	✓	—
299	Commissioner Wilkins	✓	—
300	Commissioner Akin	✓	—
301	Bobbie Spratt	✓	—