



Legislation Text

File #: 110076., **Version:** 2

LAND DEVELOPMENT CODE - PROTECTION OF NATURAL AND ARCHAEOLOGICAL RESOURCES (B)

Ordinance No. 110076, Petition No. PB-10-143 TCH

An ordinance of the City of Gainesville, Florida, amending the Land Development Code and amending Appendix A. Fees, Rates, and Charges of the Code of Ordinances, related to regulation of natural resources, archaeological resources and surface waters and wetlands; by amending Section 30-23 (c) definitions; by repealing Section 30-250 (c) Environmental review; by amending Section 30-275 Applicability and effect of overlay districts; by adding a new Section 30-300 Regulated surface waters and wetlands; by amending Section 30-301 Regulated surface waters and wetlands; by amending Section 30-307 Nature park district; by repealing Section 30-309 Significant ecological communities district and repealing Section 30-309.1 Rezoning to significant ecological communities district; by adding a new DIVISION 4. REGULATED NATURAL AND ARCHAEOLOGICAL RESOURCES and adding new Sections 30-310 generally, 30-310.1 Resources assessment, 30-310.2 Regulation of natural and archaeological resources, 30-310.3 Conservation management areas and management plans, 30-310.4 Avoidance, minimization, mitigation, and monitoring, and 30-310.5 Alternative compliance; by re-numbering existing DIVISION 4. RELIEF AND ENFORCEMENT to DIVISION 5. and amending and renumbering the sections within DIVISION 5; by amending Appendix A. of the City Code of Ordinances related to Fees, Rates and Charges for Environmental Review; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

The City Commission adopt the proposed ordinance.

PLANNING AND DEVELOPMENT SERVICES DEPARTMENT STAFF REPORT

This ordinance significantly revises the text of the Land Development Code related to regulation of natural and archaeological resources by:

1. adding new definitions related to natural and archaeological resource protection;
2. amending the Nature Park District by renaming it to include public conservation/preservation areas and by including new buffering requirements for developments adjacent to a Nature Park;
3. specifying the level of review (Basic, Level 1, and Level 2);
4. adding review requirements for most development applications in order to determine the impacts on natural and archaeological resources;
5. providing several exemptions from review, including: certain small (equal to or less than five acres) parcels of record; bona-fide agriculture/silviculture activities; removal of invasive non-native vegetation on conservation lands; vegetation in park land; activities authorized by a city-approved management plan; existing utility installations, drainage or easement, and road right-of-way; fencing and firebreaks; survey or other required test; text amendment; de minimus impact; and certain strategic ecosystems;
6. requiring that parcels containing strategic ecosystems or significant natural communities not be disaggregated such that there is lesser natural resource protection;

7. setting requirements for natural and archaeological resources assessments;
8. setting further regulations for parcels with confirmed regulated natural or archaeological resources (regulated resources include: significant natural communities, listed species, strategic ecosystems, Floridan aquifer high recharge areas, significant archaeological resources, and significant geological resource features);
9. providing for conservation management areas and management plans;
10. establishing avoidance, minimization, mitigation and monitoring requirements with respect to the regulated natural and archaeological resources;
11. amending the Relief and Enforcement provisions of Article VIII, Environmental Management;
12. deleting the Significant Ecological Communities section of the Code (Sections 30-309 & 30-309.1); and,
13. amending the fees for reviews.

The manner in which the City addresses the protection of significant ecological communities, particularly with respect to Alachua County-designated Strategic Ecosystems that have been annexed by the City, was referred to the Community Development Committee in October 2007. A staff team subsequently worked for approximately one year to develop draft regulations to protect designated Strategic Ecosystems once they are annexed and to protect other natural and archaeological resources.

On September 24, 2009, the Plan Board heard and unanimously approved Petition PB-09-125. The City Commission heard that petition on December 3, 2009 (Legistar No. 090536) and continued it to an unspecified later date for further work by staff. Petition PB-09-125 was later deemed denied without prejudice (per Sec. 30-347.8 of the Land Development Code) because the petition was not finally acted upon within six months of the filing of the Plan Board's recommendation with the City Commission.

Staff then worked with the City Attorney's Office in developing the current petition (Petition PB-10-143 TCH) and this ordinance. The proposed regulations focus on the preservation of significant natural communities and features through the normal development review process. In addition, Alachua County's land development regulations were reviewed and County staff was consulted in the preparation of these regulations.

Public notice was published in the Gainesville Sun on March 8, 2011. On March 24, 2011, the City Plan Board, by a vote of 5-1, recommended approval of the petition with modifications. As part of the Plan Board's recommendation, they encouraged staff to continue working on the regulations and communicate with stakeholders. Planning staff held a meeting with stakeholders on May 9, 2011. There were additional comments and suggestions for improving the proposed regulations, and many of these have been incorporated into the final version of the proposed ordinance. Planning staff also held a meeting on June 9, 2011 with GRU staff to discuss their concerns about the regulations and explain certain provisions. Additional changes were made to the regulations based on GRU's comments.

On August 4, 2011, the City Commission approved the petition with one modification (by a vote of 6-1) that the threshold for review be raised from 2 acres to 5 acres, except when listed species are present or the parcel contains an archaeological site identified by a Florida Master Site file number. Staff has made that revision in the draft ordinance.

In addition, the City Commission requested (by a vote of 5-2) that, at first reading of the ordinance, staff present a fee-in-lieu mitigation option that focuses more on ecological value of the property rather than market value. In response to this request, staff researched other methods for fee-in-lieu calculations and consulted with professionals from the University of Florida and local land conservation and appraisal firms and was unable to find an alternative valuation methodology that was uniformly accepted, easy or cost effective to undertake. In further consultation with the City Attorney's Office, staff became concerned that, as written, the fee-in-lieu provision is problematic because the fee collected is based solely

on real estate market value and would be used for general green space acquisition. In order for such a fee to be legally defensible, the amount of the fee and use of the fee should be rationally related to addressing the loss/destruction of the resource caused by the development. In the opinion of staff it would be burdensome for the City to establish such a fee structure and set up funds and processes to ensure the amount of such fees and their usage was defensible. As a result, staff has not included a fee-in-lieu mitigation option in the draft ordinance. It is the opinion of staff that this is consistent with the purpose and intent of the ordinance, which is to protect resources, and that the ordinance provides other viable mitigation and alternative compliance options for property owners. Staff has also removed the provisions for alternative compliance by use of an Environmental Master Plan, as that concept was not developed enough to provide the requirements of such a Plan, its effect and the criteria by which it would be evaluated and approved or denied. Again, it is the opinion of staff that the ordinance provides other viable mitigation and alternative compliance options for property owners.

In addition, staff evaluated the current review fee structure and recommends reducing the level 1 fee from \$1,000 down to \$500. Staff believes this amount is commensurate with the staff effort required for a level 1 review and in recognition that these reviews are now conducted in-house by the City's environmental coordinator and no longer require the City to contract for more costly reviews by an outside party.

This ordinance was originally scheduled for first reading on June 21, 2012; however, the City Commission continued the first reading to July 19, 2012. In addition, staff was copied on correspondence dated June 14, 2012 from representatives of East Gainesville Development Partners (EGDP) to the City Commission. Staff responded via memorandum to the City Commission, via phone conference with the EGDP representatives and by making further clarifying revisions to this draft ordinance.

CITY ATTORNEY MEMORANDUM

Should this ordinance pass on first reading, second and final reading will be held on Thursday, August 2, 2012.