

ORDINANCE NO. 10-23

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH CODE OF ORDINANCES CHAPTER 4, "ZONING REGULATIONS," ARTICLE 4.6, "SUPPLEMENTAL DISTRICT REGULATIONS," SECTION 4.6.19, "TREE PRESERVATION, PROTECTION, ENFORCEMENT, AND MAINTENANCE," TO REMOVE THE FEE SCHEDULE FOR IN LIEU FEES, VEGETATION REMOVAL PERMITS AND EXCEPTIONAL SPECIMEN TREE PENALTIES FROM THE LAND DEVELOPMENT REGULATIONS IN ORDER TO BE APPROVED BY RESOLUTION TO ESTABLISH MITIGATION REQUIREMENTS FOR PALM TREES, TO REQUIRE MITIGATION FOR TREES AND PALMS WITH LESS THAN 50 PERCENT CONDITION RATING, TO MODIFY THE LIST OF NUISANCE PLANT SPECIES, AND TO UPDATE THE LANGUAGE FOR CLARITY; AND AMENDING APPENDIX A, "DEFINITIONS," TO MODIFY THE DEFINITION OF EXCEPTIONAL SPECIMEN TREE TO REQUIRE A DIAMETER AT BREAST HEIGHT OF 18 INCHES OR MORE AND TO DELETE IN ITS ENTIRETY THE DEFINITION OF SPECIMEN TREE AS DUPLICATIVE; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AUTHORITY TO CODIFY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Land Development Regulations ("LDR") of the City of Delray Beach ("City") Code of Ordinances provide authority for the City Commission to amend, change, supplement, or repeal the LDRs from time to time; and

WHEREAS, Section 4.6.19 of the LDR promotes the preservation of trees and palms in all development proposals, by requiring preservation and mitigation; and

WHEREAS, the City desires to modify the requirements for tree mitigation in Section 4.6.19(E) of the LDR, to include regulations specific to palm mitigation, and to improve readability and ease of interpretation; and

WHEREAS, the City determined that in-lieu fees associated with the tree or palm removal should no longer be incorporated into Section 4.6.19 of the LDR, but rather be established through resolution; and

WHEREAS, the City is considering Resolution No. 39-23 to adopt the in-lieu fee schedule for tree or palm removal concurrent with the effective date of this Ordinance; and

WHEREAS, pursuant to Florida Statutes 163.3174(4)(c), the Planning and Zoning Board for the City of Delray Beach, sitting as the Local Planning Agency, considered this item at a public hearing on September 12, 2022, and voted 5 to 1 to recommend denial of the proposed text amendments, finding that the request and approval is not consistent with the Comprehensive Plan and does not meet the criteria set forth in the

Land Development Regulations; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The recitations set forth above are incorporated herein.

Section 2. The City Commission of the City of Delray Beach finds this Ordinance is consistent with the Comprehensive Plan, meets the criteria set forth the Land Development Regulations, and is in the best interests of the City.

Section 3. Chapter 4, “Zoning Regulations,” Article 4.6, “Supplemental District Regulations,” Section 4.6.19, “Tree preservation, protection, enforcement, and maintenance,” of the Land Development Regulations of the City of Delray Beach, Florida, is hereby amended as follows:

Sec. 4.6.19. Tree preservation, protection, enforcement, and maintenance.

- (A) ***Purpose.*** The purpose of this section is to promote the public health, safety and general welfare and to encourage the preservation, protection, enforcement, and maintenance of trees. Through maintaining and enhancing their canopy, trees contribute to making cities sustainable by: providing food and securing nutrition, increasing natural biodiversity, housing wildlife, mitigating climate change, cooling the air, filtering pollutants, improving physical and mental health, reducing storm water runoff, reducing carbon emissions and increasing property values.
- (B) ***Applicability.*** This section shall apply to all improved and unimproved properties within the City, including single family homes and duplexes.
- (C) ***Compliance, enforcement, and relief.***
 - (1) ***Compliance.***
 - (a) Prior to the issuance of a landscape permit or a building permit for a structure, a paving permit, or site permit for infrastructure installation, compliance with the requirements of this section shall be assured through the review and approval of a landscape plan submitted pursuant to Sections 2.4.3(C) and 4.6.16.
 - (b) Prior to any tree removal or land clearing operation, a Vegetation Removal Permit per Sec. 4.6.19(E), must be submitted and approved.
 - (2) ***Enforcement.*** Violations of this section that are deemed to be public nuisances under Chapter 100 of the Code of Ordinances may be enforced in accordance with all remedies and alternative remedies provided under Chapter 100. Violations may also be enforced by the Code Enforcement Board, County Court Citation, a Notice to Appear, and/or any other means available under state or federal law, inclusive.

- (D) ***Preservation and promotion of existing trees and palms.*** To the fullest extent practicable, all development proposals (land development applications or building permits) must provide for the protection of existing trees having a trunk four inch or greater diameter measured at four and one-half feet above grade (Diameter at Breast Height or DBH) and palms having a Clear Trunk (CT) of eight feet or more. Concurrent with a land development application, a Tree Disposition Plan shall be required, displaying the location, diameter, species, condition, and disposition of all trees greater than four inches DBH and palms greater than eight feet CT and shall illustrate all new development in relation to the existing condition of the site. The Tree Disposition Plan shall identify trees and palms to be preserved, relocated, and removed. Tree and palm protection and relocation measures shall be specified on the plan, as well as mitigation calculations (i.e. In Lieu Fees). The Tree Disposition Plan, including the relocation measures and mitigation (including transport methods, watering details, etc.), shall be subject to review by ~~SPRAB~~the approving body, as a part of the development proposal's landscape plan, and may be approved, denied, or approved with conditions.
- (1) ***Preservation of native plant communities.*** All existing native plant communities on sites proposed for development shall be preserved where possible through ~~their~~ incorporation into the site design. Existing plant communities that are specified to remain shall be preserved to the greatest extent possible with trees, understory, and ground covers left intact and undisturbed, except for the eradication of prohibited and/or invasive plant species. In addition, stands of trees with or without understory plantings shall also be preserved.
- (2) ***Preservation of trees.*** To the fullest extent possible, trees are to be preserved on site and protected from damage during the construction process. ~~The Planning, Zoning and Building Development Services Director, or designee,~~ shall have the authority to require the preservation of trees on site and condition the approval of the development to incorporate existing trees into the site design. To accommodate the site development scenarios conducive to preserving trees, the City will consider flexible site design options. Proposed flexible site design options will be considered on a case-by-case basis and are subject to review and approval by the Historic Preservation Board (HPB) or Site Plan Review and Appearance Board (SPRAB), as appropriate. Trees designated ~~to be preserved~~ for preservation that do not survive shall be replaced by a tree of equal DBH size or an equivalent number of trees with the total trunk DBH equal to the DBH size of the perished tree(s). Palms designated ~~to be preserved~~ for preservation that do not survive shall be replaced by one palm of equal overall height for each perished palm. Replacements shall be the same species or an alternate species approved by the City.
- (3) ***Relocation of trees and palms.*** If tree preservation is not feasible, trees and palms must be relocated on site. If tree relocations severely restrict the use of the property, then trees and palms may be relocated off-site to a location approved by the City. To determine feasibility of relocation, a written report from a certified arborist, per Section 4.6.19(E)(2)(C), must be submitted with the land development application, as well as the arborist's assessment of relocation.

Trees designated ~~to be relocated~~ for relocation that do not survive shall be replaced by a tree of equal DBH size or an equivalent number of replacement trees with the total trunk caliper size equal to the total DBH size of the perished tree(s) as required by Section 4.6.16. Palms

designated ~~to be relocated~~ for relocation that do not survive shall be replaced by one palm of equal overall height for each perished palm.

- (4) ***Tree and palm removal.*** A tree may be removed only when an applicant has demonstrated that the proposed development will preclude preservation of trees in place and that relocation of trees is not feasible either on or off-site. Tree removal requires the issuance of a Vegetation Removal Permit. All trees removed must be mitigated per Section 4.6.19(E)(5).
- (E) ***Vegetation removal permits.*** ~~A Vegetation Removal Permit is required~~ subject to the following:
 - (1) ***Permit required.*** It shall be unlawful for any person, without first obtaining a permit, to remove, cause to be removed, or effectively remove through damaging any tree, having a DBH of four inches.
 - (a) No Vegetation Removal Permit shall be issued for a property until the proposed development plan has received site plan approval, if required. Application for a Vegetation Removal Permit may commence only after the site plan and corresponding landscape plan has been approved and the building permit and mitigation fees have been paid.
 - (b) ~~For s~~Single family homes and duplexes ~~that are~~ located within ~~the~~ a historic overlay district or ~~are~~ individually designated as historic properties shall follow the planning and zoning process as provided in the Land Development Regulations. The Vegetation Removal Permit will be reviewed with the entire permit package, per Sections 4.6.16 and 4.6.19(E)(2)(a) through (e).
 - (c) For all single family homes and duplexes not located in a historic overlay district or individually designated as historic, the Vegetation Removal Permit will be administratively reviewed by City Staff along with the proposed building and landscape plans, per Sections 4.6.16 and 4.6.19(E)(2)(f).
 - (2) ***Permit application information required.*** The following information and documentation must be provided with the Vegetation Removal Permit application:
 - (a) A copy of the approved site/landscape plan showing the location of proposed or existing driveways, parking and structures on the site.
 - (b) A tree survey ~~shall be required~~ for all projects, including single family homes and duplexes within the historic or beach overlay districts.
 - (c) For development applications, a condition assessment (~~See Appendix "A" for definitions~~) for all trees performed by a certified arborist that describes the condition percentage rating of the tree, makes note of hazardous trees and identifies trees that are a threat to endanger structures, pavement, and/or utilities. ~~Those trees that are~~ Trees identified to be relocated for relocation will require a written assessment of transplant feasibility.

- (d) Designation of the disposition of all trees proposed ~~to be preserved, relocated, or removed~~ for preservation, relocation, or removal, presented on a Tree Disposition Plan.
 - (e) Any proposed grade changes which might adversely affect or endanger any trees on the site with specifications as to how to maintain such endangered trees.
 - (f) For single family homes and duplexes outside of the historic or beach overlay districts, a sketch plan, indicating the approximate location of all trees four-inch DBH and larger with identification of species, trunk ~~diameter at breast height~~ (DBH), approximate overall tree height, and the designation of the dispositions of the trees per Section 4.6.19(E)(2)(d) may be substituted for a professional tree survey. An arborist report may be required per Section 4.6.19(E)(5)(e).
- (3) ***Procedure.*** Upon acceptance of ~~the~~ an application, the ~~Planning, Zoning and Building Development Services~~ Director, or designee, shall inspect the site, verify the information provided in the application, identify additional information required to complete the application, and approve or deny the application. Trees may be removed if either of the following conditions exist:
- (a) The tree is located in the buildable area or yard area where a structure or improvements are to be placed and it unreasonably restricts the permitted use of the property; and, the tree cannot be relocated on the site or to an off-site location because of its condition, size, type, or age; or
 - (b) The tree is diseased, injured, in danger of falling, interferes with utility services, creates unsafe vision clearance, or deemed to be hazardous by the ~~Planning, Zoning, and Building Development Services~~ Director or designee. Observable physical damage to building foundations, driveways, and water and sewer lines shall also constitute a reasonable request for the removal of a tree only if root protection devices (such as root barriers) are not a viable option.
- (4) ***Issuance of permit.***
- (a) ***Normal issuance.*** Upon approval of the application and payment of the application fee, a permit shall be issued, and shall be valid for a period of 180 days. The permit shall require compliance with the conditions of approval, a copy of which shall be provided with the permit. ~~The permit shall be valid for a period of 180 days.~~ Permit applications that include tree removal must be submitted by a licensed tree trimmer or arborist, ~~licensed with the City of Delray Beach~~. Contractors licensed simply as a landscape contractor shall not remove trees.
 - (b) ***Issuance for single family homes and duplexes.*** On the property of single family homes and duplexes, the owner may submit a tree removal permit application to do the work ~~himself~~ themselves, providing the dwelling is owner occupied and providing

that the extent of the work, in the determination of the ~~Planning Zoning and Building Development Services~~ Director, or designee, can be done safely by the property owner. However, street trees that are depicted on the landscape plan of record for a subdivision may not be removed unless conditions as described within LDR Section 4.6.9(E)(3) exist. Mitigation requirements shall apply per Section 4.6.19(E)(5)(e).

- (c) ***Emergency issuance.*** In the event that any tree shall be determined to be hazardous or in a condition so as to endanger the public health or safety, and requires removal without delay, verbal authorization may be given by the ~~Planning Zoning and Building Development Services~~ Director, or designee and the tree may be removed prior to the issuance of a permit as herein required. A permit shall be applied for retroactively within seven days of the verbal authorization and removal.
- (d) ***Hurricanes.*** During emergencies caused by hurricanes or other disaster, the City may suspend all or part of the land clearing and tree removal permit requirements for an indefinite period of time. Trees which have been uprooted, blown over and cannot be righted, or whose major branches are split or broken may be removed after a hurricane, for a period of 60 days after the storm event without obtaining a permit from the City. Trees identified on a 'Landscape Plan of Record' will ultimately have to be replaced. Residential uses shall have one year after the storm event for replacements and non-residential uses shall have six months to replace required trees and palms.
- (5) ***Imposition of conditions.*** The ~~removal permit shall set forth~~ may require mitigation of adverse impacts, ~~included in the "conditions of approval" associated with removal or relocation~~ as provided ~~for~~ in the following:
 - (a) ***Relocation.*** The tree or palm may be required to be relocated to a suitable location on the site or off site.
 - (b) ***Mitigation.*** ~~The total DBH of all trees with a condition rating of 50 percent or greater removed shall be replaced with the equivalent number of caliper inches of replacement trees, installed at a minimum size as required by Section 4.6.16.~~

~~Removed palms with a condition rating of 50 percent or greater shall be replaced with one palm of equal overall height or a replacement palm of 16 feet overall height, whichever is greater. Replacement trees and palms may contribute to the requirements of Section 4.6.16. The caliper of minimum required tree sizes (Per Section 4.6.16) may be increased so the added caliper inches can contribute to the total required for mitigation. Mitigation trees may not be substituted by palms. Mitigation is required as follows:~~

~~Trees and palms with a condition rating less than 50 percent are exempt from DBH/caliper inch for inch replacement, but are required to be mitigated on a tree-for-tree or palm-for-palm basis per Section 4.6.19.E.6.a.~~

- i. Tree and palm removal shall be mitigated pursuant to Table 4.6.19(E)(5)(b)(i). Removed trees shall not be mitigated with palms; however, removed palms may be mitigated with trees.

Table 4.6.19 (E)(5)(b)(i)			
	Condition Rating	Measurement	Replacement
<u>Tree</u>	<u>50% or greater</u>	<u>Total diameter at breast height (DBH) inches of trees</u>	<u>Equivalent caliper inches of trees</u>
	<u>less than 50%</u>	<u>Number of trees</u>	<u>Tree-for-tree basis</u>
<u>Palm</u>	<u>50% or greater</u>	<u>Number of palms</u>	<u>Comparable size and species on palm-for-palm basis</u>
	<u>less than 50%</u>	<u>Number of palms</u>	<u>Palm-for-palm basis</u>

- ii. Trees or palms designated for preservation or relocation that do not survive shall be replaced in accordance with Table 4.6.19(E)(5)(b)(i). Replacements shall be the same species, or an alternate species approved by the Development Services Director, or designee.
- iii. If trees or palms with a condition rating of less than 50 percent cannot be replaced on-site on a tree-for-tree or palm-for-palm basis, removed trees and palms shall be mitigated via an in-lieu fee as required by Section 4.6.19(E)(5)(d).
- iv. Trees or palms provided in excess of the required replacement are not subject to the minimum specifications.

(c) ***Replacement.*** All replacement trees must be planted within ~~60 days~~ 90 days of the issuance of the permit, or prior to issuance of conditional certificate of occupancy or first certificate of occupancy, except or within the guidelines established for tree replacements in connection with major storm events as described in Section 4.6.19(E)(4)(d). ~~unless a phasing plan has been approved by the City.~~

(d) ***In-lieu fee.*** Where the property cannot accommodate tree or palm replacement ~~on a DBH/caliper inch-per-inch basis through mitigation~~, an in-lieu ~~of~~ fee shall be deposited into the Tree Trust Fund ~~for those trees with a condition rating of 50 percent or greater prior to permit approval~~. The in-lieu fee is ~~calculated per DBH inch for each tree that cannot be mitigated by replacement and shall be approved by the Site Plan Review and Appearance Board (SPRAB) or the Historic Preservation Board (HPB), as appropriate, as part of the landscape plan. The in-lieu fee shall be calculated on an escalating a scale as established by Resolution of the City Commission:~~

- ~~• DBH 0 inches through 8 inches are calculated at \$450.00/DBH inch;~~
- ~~• DBH 9 inches through 12 inches are calculated at \$650.00/ DBH inch;~~

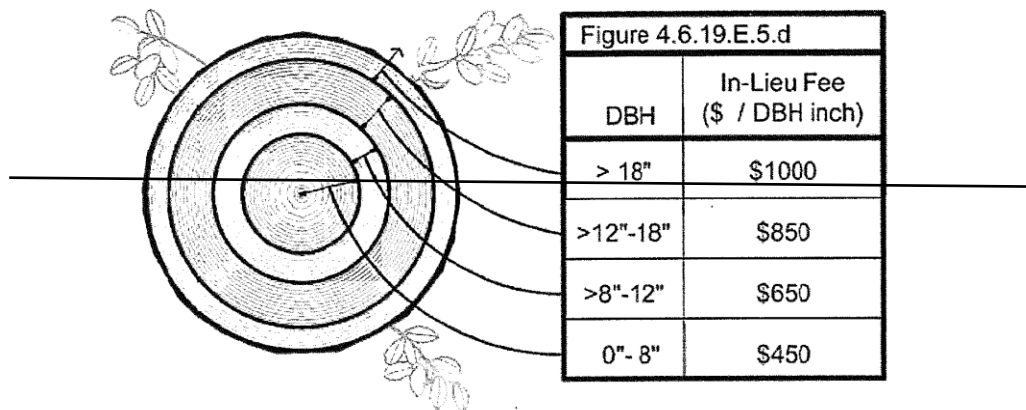
- ~~DBH 13 inches through 18 inches are calculated at \$850.00/DBH inch;~~
- ~~DBH 19 inches and greater are calculated at \$1,000.00 per inch.~~

~~Refer to Figure 4.6.19.E.5.d.~~

Example 1: The in lieu fee for a six inches DBH tree calculation would be: $(\$450.00 \times 6") = \$2,700.00$

Example 2: The in lieu fee for a 21 inches DBH tree calculation would be: $(\$450.00 \times 8") + (\$650.00 \times 4") + (\$850.00 \times 6") + (\$1,000.00 \times 3") = \$3,600.00 + \$2,600.00 + \$5,100.00 + \$3,000.00 = \$14,300.00$

~~For trees with a condition rating of between 25 percent and 50 percent, the in-lieu fee shall be calculated at 50 percent of the above escalating scale.~~



- (e) ***[Exemption.]*** Existing single family homes and duplexes outside of historic or beach overlay districts; are generally exempt from mitigation requirements so long as Diameter at Breast Height (DBH) four inches provided the tree proposed for removal has a DBH of less than 4 inches, and the property contains the minimum number of code required trees per Section 4.6.16. Exemptions and exceptions are described as follows:
- Mitigation is required for the removal of code-required trees ~~that have~~ with a DBH of four inches or greater, unless the location interferes with a proposed addition to an existing structure or new accessory structure.
 - Code-required trees with a DBH four inches or greater ~~cannot~~ can be removed ~~unless~~ for life safety issues, property destruction, irreversible structural deficiencies within the tree, or if an incurable disease can be documented by a certified arborist's report and no other tree saving options are available as determined by the Chief Building Official Development Services Director or designee. Mitigation is not required for trees that present an unacceptable risk.

- iii. ~~A certified arborist's report is required to be submitted documenting these issues in support of an application for removing a code required tree.~~
- iv. ~~Trees with a DBH four inches or greater may be removed if their location interferes with the proposed addition to an existing structure or the development of an accessory structure.~~
- iv. If applicable, mitigation of removed trees shall be the smaller of either the quantity of trees to reach the minimum code requirement for the size of the lot or a quantity of trees that equal the caliper measurement of the tree that is proposed for removal. Notwithstanding Sections 4.6.19(E)(6), 4.6.19(E)(4)(c), 4.6.19(E)(4)(d) of the Land Development Regulations, tree removal permits are required prior to removal and penalties may be assessed pursuant to Section 4.6.19(E)(8) where a permit was not obtained prior to removal.

(6) ***Exceptions to permit requirements.***

- (a) ~~***Tree condition exceptions.*** Trees and palms with condition rating of less than 50 percent do not require mitigation on a DBH/caliper inch basis or payment into the Tree Trust Fund via an in-lieu fee. However, trees with a condition rating of less than 50 percent are required to be mitigated by replacing on a tree for tree or palm for palm basis with the minimum size tree or palm required by Section 4.6.16.~~
- (b-a) ***Nuisance tree plant species exception.*** ~~All trees, including nuisance trees, shall be included as a part of a Vegetation Removal Permit application.~~ Nuisance plant species are those plant species classified as Category I by Florida Invasive Species Council (FISC). Removal of a ~~The nuisance tree plant species listed below shall be authorized by the Development Service Director or designee and may be removed without a permit fee and without mitigation. When these trees~~ nuisance plant species are indicated on the landscape plan of record, approval shall be conditioned upon their removal.

~~Australian Pine~~ — ***Casuarina Species***

~~Brazilian Pepper~~ — ***Schinus terebinthifolius***

~~Melaleuca~~ — ***Melaleuca quinquenervia***

~~Carrotwood~~ — ***Cupianopsis anacardioides***

~~Earleaf Acacia~~ — ***Acacia auriculiformis***

~~Schefflera~~ — ***Brassaia actinophylla***

~~Bischofia~~ — ***Bischofia javanica***

(e-b) **Location exceptions.** Removal permits and mitigation shall not be required:

- ~~1i.~~ On the property of licensed tree nurseries; or
- ~~2ii.~~ When work is done by the electric utility company within the city right-of-way or on city property; or
- ~~3iii.~~ Within the rights-of-way of the Lake Worth Drainage District, as governed by the Interlocal Agreement with the City, approved in 2003; or
- ~~4iv.~~ On city lands, rights-of-way and easements, the City shall have the right to plant, prune, maintain and remove trees as may be necessary to ensure public safety or preserve and enhance the beauty of public grounds. ~~The City shall not have to obtain a tree removal permit to remove such trees; or~~
- v. On properties with a single-family detached building actively used for single-family residential purposes if the property owner possesses documentation from an arborist certified by the International Society of Arboriculture (ISA) or a Florida licensed landscape architect that the tree poses an unacceptable risk to persons or property.

(7) **Permit fees.**

- (a) Vegetation Removal Permit Fees: Permit ~~F~~fee amounts are established by Resolution of the City Commission pursuant to provided in Section 2.4.3(K)(k)(2)(a) and (b) of the Land Development Regulations.
- (b) Permit Fees Waived: Where a tree or palm has died due to natural causes, including disease, lethal yellowing, freezing, lightning or storms, or ~~if the tree is of a nuisance plant prohibited species~~, there shall be no permit fee, even though inspection and permitting and replacement requirements ~~shall~~ may be met required.

(8) **Penalties.** The penalty for failing to obtain a vegetation removal permit shall result in a triple permit fee for each violation, including each tree or palm removed. Additionally, mitigation is required and must be provided using one of the following:

- (a) **DBH Replacement and Triple Permit Fees:** ~~The penalty for failure to obtain a permit shall result in a triple permit fee for each violation including each tree removed. The total Diameter at Breast Height (DBH) for Each trees removed shall be replaced with one or more trees with the equivalent DBH number of caliper inches with at the direction of the Planning, Zoning and Building Development Services Director or designee. Where the property cannot accommodate tree replacement on a DBH/caliper inch-per-inch-basis, an in-lieu fee shall be deposited into the Tree Trust Fund, as set forth in Section 4.6.19(E)(5)(d). The in-lieu fee shall be calculated per Section 4.6.19(E)(5)(d) for those trees up to 18 inches DBH and palms. Trees 18 inches DBH~~

~~and larger removed without a permit are considered Specimen Trees per Sec 4.6.19(E)(8)(c). This in-lieu fee is in addition to the triple permit fee penalty.~~

(b) **Palm Replacement:** Palms shall be replaced on a one-on-one basis with palms of the same clear trunk measurement, to be approved by the Development Services Director or designee. Where the property cannot accommodate palm replacement on a one-on-one basis, an in-lieu fee shall be deposited into the Tree Trust Fund, as set forth in Section 4.6.19(E)(5)(d).

(b~~c~~) **Canopy Replacement and Triple Fees for trees or palms:** ~~If trees or palms are removed before obtaining authorization for removal, and the DBH or clear trunk size of the removed trees(s) cannot be determined from any remnants, aerial photography will be used to calculate mitigation. The number of required replacement trees shall be based upon the size of canopy removed. The and the type of replacement trees selected by the applicant and must be approved by the City Development Services Director or designee. Replacement area credits shall equal the canopy removed, per Table 4.6.19(E)(8)(b). Where the property cannot accommodate tree replacement on a canopy replacement basis, an in-lieu fee shall be deposited into the Tree Trust Fund, as set forth in Section 4.6.19(E)(5)(d). The in-lieu fee shall be calculated:~~

- ~~i. At \$450.00 per 100 square feet for those removed trees with a canopy 400 square feet to 899 square feet.~~
- ~~ii. At \$850.00 per 100 square feet for those removed trees with a canopy 900 square feet to 1,599 square feet.~~
- ~~iii. Trees with a canopy 1,600 square feet and larger removed without a permit are considered Specimen Trees per Section 4.6.19.E.8.c. This in-lieu fee is in addition to the triple permit fee penalty.~~

TABLE 4.6.19(E)(8)(b) DETERMINING REQUIRED NUMBER OF REPLACEMENT TREES (FOR TREES REMOVED BEFORE OBTAINING AUTHORIZATION BY PERMIT)	
Replacement Tree Type	Replacement Canopy Area Credit (In Square Feet)
Type 1 Tree	300
Type 2 Tree	100
Type 3 Tree	50
Notes: Type 1: <u>Shade Tree</u> Minimum of 14 feet in height, Florida Grade #1 canopy tree at time of planting; Type 2: <u>Understory Tree</u> Minimum of 10 feet in height, Florida Grade #1-understory tree at time of planting; Type 3: <u>Palm</u> Minimum of 14 feet in height, Florida Grade #1 palm tree at time of planting.	

- (ed) **Exceptional Specimen Trees and Triple Permit Fees:** If the removed tree qualifies as a Exceptional Specimen Tree, in addition to the triple permit fee penalty and mitigation requirements above, The an additional penalty, as adopted by Resolution, shall apply. for removing a specimen tree with a Diameter at Breast Height (DBH) of 18 inches or greater or with a canopy size of 1,600 square feet or greater without obtaining a permit shall be a one thousand dollar fine per tree in addition to mitigation for the removed tree. If the DBH can be calculated based on tree remnants or a tree survey, mitigation is per Section 4.6.19(E)(5). If the DBH size of the removed tree cannot be determined from any remnants, aerial photography will be used to calculate mitigation based on canopy size. Mitigation for canopy replacement shall be calculated per Section 4.6.19(E)(8)(b). Where the property cannot accommodate required replacement trees, an in lieu fee shall be deposited into the Tree Trust Fund. The in-lieu fee for Exceptional Specimen Trees shall be calculated at \$1,000.00 per DBH inch or \$1,000.00 per 100 square feet of canopy removed. This in-lieu fee is in addition to the exceptional specimen tree removal penalty and triple permit fee penalty.
- (F) **Tree Pruning:** The purpose of tree pruning of trees is to allow for promote uniform and healthy growth. Pruning of tree limbs on a regularly scheduled basis will improve tree health, control growth, and enhance fruiting, flowering and appearance. Trees should be pruned for the first time, two to three years after planting, and every five years thereafter, to remove diseased limbs, co-dominant leaders, sucker growth, or crossing branches, and to remove limbs or foliage that present a hazard to power lines or structures..
- (1) Tree pruning does not require a permit, but if it is done in violation of these regulations, the property owner shall be cited, and the following remedial requirements shall be imposed:
- (a) The property owner will be required to replace the tree as per the landscape plan of record, or with a shade tree a minimum of 12 feet in height, with a six-foot spread of canopy.
- (b) In lieu of replacement, the property owner may have the option of contracting with a certified arborist, to provide remedial pruning to the disfigured tree over a period of three years in an effort to repair the structural damage to the tree, if in the opinion of the arborist, this can be accomplished. A report from a certified arborist and a copy of the contract for remedial pruning must be submitted to the City for consideration of this option.
- (2) Trees shall be allowed to attain their normal size, and at a minimum attain a 20-foot-foot spread of canopy. It is important to trim trees when they are young to develop a strong structure and to remove diseased limbs, co-dominant leaders, sucker growth, crossing branches or to remove limbs or foliage that present a hazard to power lines or structures. Trees should be pruned for the first time, two to three years after planting and then every five years thereafter. Tree trimming practices in the City of Delray Beach must adhere to the following:
- (a) Lower branches and suckers must be selectively removed to provide a minimum of six feet of clear trunk, and as they mature, the clearance shall be increased to seven feet

adjacent to sidewalks and in areas where trees may impact traffic and pedestrian visibility.

- (b) Severely cutting back branches and canopy, or "hatracking" is expressly forbidden. Topping a large tree causes excessive sprouting of weakly attached new branches, and increases wind resistance by creating denser branching patterns. All cuts must be made at the juncture of a lateral branch.
 - (c) The practice of "Lion's Tailing" wherein all foliage is removed except at the end of the branch, is expressly forbidden. This excessive lifting creates a condition where trees become top-heavy and can increase the chances of wind damage.
 - (d) Trees shall be periodically thinned to reduce leaf mass in preparation of tropical storms. No more than 30 percent of a tree's interior canopy, however, shall be removed through thinning. ~~Do not over thin since~~ Foliage within a tree's canopy can help protect structures from flying debris during high winds.
 - (e) All pruning shall be accomplished in accordance with the "National Arborist's Association Standards" or "The American National Standards Institute A 300 (ANSI A300)." A tree's habit of growth must be considered before planting to prevent conflicts with view or signage, and such a conflict shall not, of itself, necessarily permit the removal of the tree.
- (G) ***Palm tree pruning.*** Many palms are self-pruning, however, for aesthetic reasons palm fronds are often removed. The practice of removing all but a few fronds significantly weakens the trunk of a palm and could result in it snapping in high winds, and, is therefore, prohibited. In particular, Sabal Palms are often 'carrot topped' or 'hurricane cut'. Unless palms are being prepared for relocation, no fronds shall be removed unless they hang below a horizontal position. Fronds that touch a structure should be removed.
- (H) ***Tree pruning/removal/maintenance requirements in the public rights-of-way.*** The adjacent property owner is responsible to maintain trees and vegetation between the property line/right-of-way line, and the edge of pavement of the adjacent improved right-of-way, or between the property line and the centerline of an unimproved alley. These trees may not be removed without obtaining a permit. Trees and vegetation must be maintained so as not to restrict use or visibility of public improvements, as follows:
- (a1) Trees and vegetation must be ~~maintained to~~ not interfere with traffic flow or traffic safety. This includes maintaining visibility at intersections, not obstructing traffic lights, stop signs or other traffic signage.
 - (b2) Trees and vegetation must be ~~maintained so as not to~~ obstruct streetlights, street signs, sidewalks, roads, utilities and other public improvements.

(I) ***Existing street trees.*** New development and building expansion shall take into consideration the existing vegetation and provide designs which will not result in the removal of street trees, or diminish existing streetscapes.

(J) ***Hurricane preparedness and cleanup.***

(1) ***Shade tree and palm tree pruning***

(a) ~~Palm fronds that are d~~Dead palm fronds should be removed. All coconut palms must have their coconuts removed prior to hurricane season.

(b) Shade trees can be pruned to enable trees to hold up better to high winds and storm damage. The following pruning practices can promote the growth of strong branches:

~~1~~i. Encourage a good branch angle. A narrow angle between branches signals a point of future weakness. To prevent this, remove one of the two branches when the tree is young.

~~2~~ii. Encourage strong branch/trunk size relationships. Lateral branches should be no more than 1/2 to 3/4 the diameter of the trunk. Branches heavier than that often cannot be supported by the trunk in high winds. Large lower lateral branches should be removed.

~~3~~iii. Maintain a stable center of gravity. If a tree has grown off center, due to loss of limbs or other problems. Selectively removing branches on the leaning side and encouraging branch growth on the opposite side can help re-balance the tree.

~~4~~iv. Remove rubbing branches, suckers and water sprouts. Branches rubbing against each other produce wounds and decay, and one of the branches should be removed. Water sprouts and sucker growth can occur at the base of the tree and inside the crown. These branches are weakly attached and should be removed before they increase in size and add stress to the tree's limbs.

~~5~~v. Do not cut branches back to stubs or 'hatrack' the tree. When a branch is cut to a stub, new branches will grow from the edges which are weakly attached and will be a weak point in high winds.

(2) ***Hazardous tree removal.***

(a) All dead trees and palms ~~which are dead~~ must be removed prior to hurricane season. Tree removal permits ~~shall be~~ are required.

(b) Trees or palms that increase the probability of damage to life, property, or utilities during hurricane force winds, due to, ~~which by reason of~~ height, proximity to adjacent structures, physical condition or other peculiar characteristic, ~~which increase the~~

~~probability that in times of hurricane winds prevalent in this region, the tree might cause damage to life, property or utilities within the immediate area are declared to be a hazard and a public nuisance. The City shall retain the right to require corrective measures which that may include the removal of the tree(s), or which may result in the reduction of pruning to reduce the tree's height or canopy.~~

(3) **Cleanup.**

- (a) After a storm, all property owners are required to have trees trimmed to reduce hazards from hanging limbs and branches and to provide reconstructive pruning to restore the tree's canopy, to the extent possible.
- (b) Tree stumps and remains of trees that constitute a hazard shall be removed within six months after the storm event.
- (c) All properties with a landscape plan of record ~~shall be~~ are required to replace trees and landscaping per the approved plan. Trees shall be replaced per the approved plan on a tree per tree basis and not on a caliper inch basis, thereby not requiring a deposit into the tree trust fund. Residential properties have one year from the storm event, and non-residential properties have ~~sux~~ six months after the storm event. The ~~Planning, Zoning and Building~~ Development Services Director or designee may approve additional time for replacement in instances where damage has been severe or tree replacements are unavailable.

- (K) ***Nuisance species prohibited.*** ~~The following is a list of invasive and exotic nuisance species that must be removed from all properties proposed for development or redevelopment.~~ Nuisance plant species are those classified as Category I by Florida Invasive Species Council (FISC).

(1) ~~Australian Pine~~ ***Casuarina Species***

(2) ~~Brazilian Pepper~~ ***Schinus terebinthifolius***

(3) ~~Melaleuca~~ ***Melaleuca quinquenervia***

(4) ~~Carrotwood~~ ***Cupianopsis anacardioides***

(5) ~~Earleaf Acacia~~ ***Acacia auriculiformis***

(6) ~~Scheffelera~~ ***Brassaia actinophylla***

(7) ~~Bischofia~~ ***Bischofia javanica***

- (L) ***Prohibited species removed.*** All Prohibited Species shall be removed from all properties and tree replacements may be required if trees were used to satisfy landscape code requirements at the direction of the ~~Planning Zoning and Building~~ Development Services Director or designee. Trees

shall be replaced per an approved plan on a tree-per-tree basis and not on a caliper inch basis, thereby not requiring a deposit into the tree trust fund.

(M) ***Lethal yellowing.***

- (1) Lethal yellowing is a systemic disease of palms caused by bacterium transmitted by tropical insects. Palms ~~considered to be~~ that are highly susceptible to lethal yellowing ~~are to~~ should be limited in use. The following ~~common~~ palms are ~~known to be~~ susceptible to lethal yellowing disease:
 - (a) Christmas Palm — *Adonidia merrillii*
 - (b) Coconut Palm — *Cocos nucifera*
 - (c) Hurricane Palm — *Dictyosperma album*
 - (f) Chinese Fan Palm — *Livistonia Chinensis*
 - (g) Canary Island Date Palm — *Phoenix canariensis*
 - (h) Edibe Date Palm — *Phoenix dactylifera*
 - (d) Senegal Date Palm — *Phoenix reclinata*
 - (e) Wild Date Palm — *Phoenix sylvestris*
 - (f) Arikury Palm — *Syagrus schizophylla*
- (2) Palm varieties resistant to lethal yellowing shall be planted in favor of ~~palms known to be those~~ susceptible to lethal yellowing.
- (3) Proposed ~~C~~coconut palms ~~proposed as a part of a permit application~~ must be resistant to lethal yellowing. Proof of the variety must be provided at the time of permit inspection.

Section 4. Appendix A, “Definitions,” of the Land Development Regulations of the City of Delray Beach, Florida, is hereby amended as follows:

EXCEPTIONAL SPECIMEN TREE. Any tree determined to be of value to the public because of its size, location, age, historic association, ecological value, aesthetics or other unique characteristics.

- (a) ~~Size: Twenty-four (24) caliper~~ Diameter at Breast Height (DBH) of 18 inches or more.
- (b) *Location:* Proximity to a thoroughfare or highly traveled area.
- (c) *Age:* Approximate-based on size.

(d) *Historic Association:* Tree is associated with a notable or local or regional historical event.

(e) *Aesthetics:* Exceptional representation of a certain species of tree because of its form or character.

~~SPECIMEN TREE. All approved trees with a caliper of 24 Diameter at Breast Height (DBH) of 18 inches or more.~~

Section 5. All ordinances or parts of ordinances in conflict herewith be, and the same are, hereby repealed.

Section 6. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 7. Specific authority and direction are hereby given to the City Clerk to codify this Ordinance.

Section 8. This Ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this ____ day of _____, 2023.

ATTEST:

Katerri Johnson, City Clerk

Shelly Petrolia, Mayor

First Reading _____

Second Reading _____

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney