

ORDINANCE NO. 34-22

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 BY AMENDING 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 FROM THE LAND DEVELOPMENT REGULATIONS; PROVIDING A CONSISTENT CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AUTHORITY TO CODIFY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Land Development Regulations ("LDRs") 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 Land Development Regulations of the Code of Ordinances of the City of Delray Beach promotes the preservation of trees and palms in all development proposals; and

WHEREAS, the City determined to modify the requirements for tree mitigation in LDR Section 4.6.19(E) of the Land Development Regulations, 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 the LDR Section 4.6.19, but rather be established through resolution; and

WHEREAS, the City is considering Resolution No. 139-22 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 to to recommend approval of the proposed text amendments, finding that the request and approval is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations; and

WHEREAS, 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.

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. 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, be and the same is hereby amended to read as follows:

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

(A) - (D) (These sections shall remain in full force and effect as adopted.)

(E) ***Vegetation removal permits.*** A Vegetation Removal Permit is required subject to the following, and trees and palms proposed for mitigation or replacement shall comply with the minimum size as defined in LDR Section 4.6.16(E):

(1) – (4) (These subsections shall remain in full force and effect as adopted.)

(5) ***Imposition of conditions.*** ~~The permit removal shall set forth mitigation of adverse impacts, included in the "conditions of approval" associated with removal or relocation~~ be rectified 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. (Ord. No. 19-17, § 1, 8-2-17)~~

~~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. (Ord. No. 19-17, § 1, 8-2-17)~~

~~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. (Ord. No. 19-17, § 1, 8-2-17)~~

- i. Tree and palm removal shall be mitigated as directed in Table 4.6.19 (E)(5)(b)(i). Mitigation trees shall not be substituted by palms; however, mitigation palms may be substituted by trees.

Table 4.6.19 (E)(5)(b)(i)			
	Condition Rating	Measurement	Replacement
Tree	50% or greater	A total diameter at breast height (DBH) inches of trees	Equivalent caliper inches of trees
	less than 50%	A number of trees	Tree-for-tree basis
Palm	50% or greater	A number of palms	Comparable or same palm species on palm-for-palm basis ¹
	less than 50%	A number of palms	Palm-for-palm basis ¹
1. Mitigation palms may be substituted by trees on one-for-one basis.			

- ii. Trees and palms designated to be preserved or relocated 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.
 - iii. If trees and palms with a condition rating of less than 50 percent cannot contain the required replacement 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).
- (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. ~~Exception to this requirement is set forth in Section 4.6.19 (E)(4)(c) & (d). except or within the guidelines established for tree replacements in connection with major storm events, 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 for mitigation, an in-lieu ~~of~~ fee shall be paid to the Development Services and 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; (Ord. No. 19-17, § 1, 8-2-17)~~
 - ~~• DBH 9 inches through 12 inches are calculated at \$650.00/ DBH inch; (Ord. No. 19-17, § 1, 8-2-17)~~

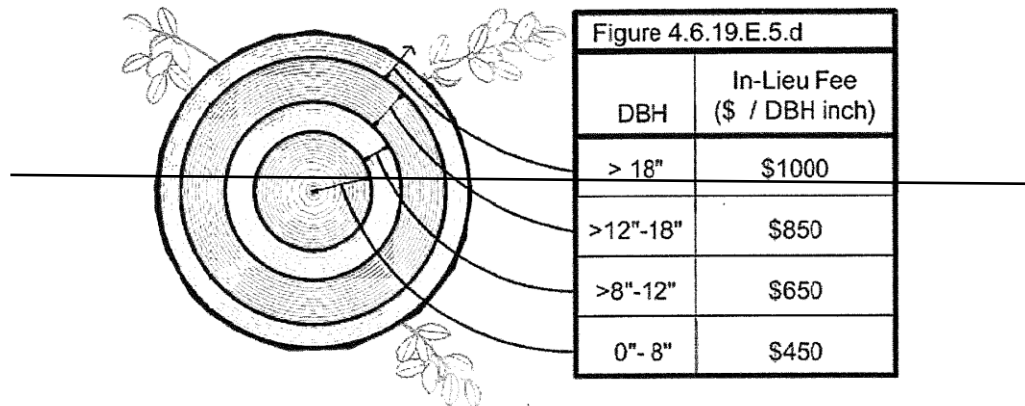
- ~~DBH 13 inches through 18 inches are calculated at \$850.00/DBH inch; (Ord. No. 19-17, § 1, 8-2-17)~~
- ~~DBH 19 inches and greater are calculated at \$1,000.00 per inch. (Ord. No. 19-17, § 1, 8-2-17)~~

~~Refer to Figure 4.6.19.E.5.d. (Ord. No. 19-17, § 1, 8-2-17)~~

Example 1: ~~The in lieu fee for a six inches DBH tree calculation would be: $(\$450.00 \times 6) = \$2,700.00$ (Ord. No. 19-17, § 1, 8-2-17)~~

Example 2: ~~The in lieu fee for a 21 inches DBH tree calculation would be: $(\$450.00 \times 8) + (\$650.00 \times 4) + (\$850.00 \times 6) + (\$1,000.00 \times 3) = \$3,600.00 + \$2,600.00 + \$5,100.00 + \$3,000.00 = \$14,300.00$ (Ord. No. 19-17, § 1, 8-2-17)~~

~~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. (Ord. No. 19-17, § 1, 8-2-17)~~



~~(Ord. No. 19-17, § 1, 8-2-17)~~

(e) (This subsection shall remain in full force and effect as adopted.)

(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. (Ord. No. 19-17, § 1, 8-2-17)~~

~~(b) a) **Nuisance tree species exception.** All trees, including nuisance trees, shall be included as a part of a Vegetation Removal Permit application. Removal of The nuisance tree plant species classified under Category I by Florida Exotic Pest Plant Council (EPPC) 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 plants 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 or mitigation shall not be required:

1. On the property of licensed tree nurseries; or
2. When work is done by the electric utility company within the city right-of-way or on city property; or
3. Within the rights-of-way of the Lake Worth Drainage District, as governed by the Interlocal Agreement with the City, approved in 2003; or
4. 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.

(7) **Permit fees.**

- (a) **Vegetation Removal Permit Fees:** Permit Fee amounts are ~~provided~~ adopted by the resolution of the City Commission, pursuant to in Section 2.4.3(K)(k)(2)(a) and (b) of the Land Development Regulations.
 - (b) **Permit Fee Waived:** Where a tree or palm has died due to natural causes, including disease, lethal yellowing, freezing, lightning or storms, or if ~~the tree it~~ it is of a 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 failure to obtain a permit shall result in a triple permit fee for each violation including each tree or palm removed.

- (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 trees removed shall be replaced with one or more trees with the equivalent number of caliper inches with 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) ***Canopy Replacement and Triple Fees for trees and palms:*** If trees are removed before obtaining authorization for removal, and the DBH size of the removed trees(s) cannot be determined from any remnants, aerial photography will be used to calculate mitigation. If palms are removed before obtaining authorization for removal, aerial photography will be used to calculate mitigation. The number of required replacement trees shall be based upon the size of canopy removed and the type of replacement trees selected by the applicant and approved by the City Development Services Director or designee. Replacement area credits shall equal the canopy removed, per Table 4.6.19(E)(8). Where the property cannot accommodate tree replacement on a canopy replacement basis, an in-lieu fee shall be paid to the Development Services and deposited into the Tree Trust Fund prior to permit approval. The in-lieu fee shall be calculated: as established by resolution of the City Commission.
- i. ~~At \$450.00 per 100 square feet for those removed trees with a canopy 400 square feet to 899 square feet. (Ord. No. 19-17, § 1, 8-2-17)~~
 - ii. ~~At \$850.00 per 100 square feet for those removed trees with a canopy 900 square feet to 1,599 square feet. (Ord. No. 19-17, § 1, 8-2-17)~~
 - 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. (Ord. No. 19-17, § 1, 8-2-17)~~

**TABLE 4.6.19.E.8. DETERMINING REQUIRED NUMBER OF REPLACEMENT TREES
(FOR TREES REMOVED BEFORE OBTAINING AUTHORIZATION BY PERMIT)**

TABLE 4.6.19(E)(8)(b) DETERMINING REQUIRED NUMBER OF REPLACEMENT TREES (FOR TREES REMOVED BEFORE OBTAINING AUTHORIZATION BY PERMIT)	
<u>Replacement Tree Type</u>	<u>Replacement Canopy Area Credit (In Square Feet)</u>
<u>Type 1 Tree</u>	<u>300</u>
<u>Type 2 Tree</u>	<u>100</u>
<u>Type 3 Tree</u>	<u>50</u>
<u>Notes:</u>	

<p><u>Type 1: Shade Tree</u> Minimum of 14 feet in height, Florida Grade #1 canopy tree at time of planting;</p> <p><u>Type 2: Tree</u> Minimum of 10 feet in height, Florida Grade #1 understory tree at time of planting;</p> <p><u>Type 3: Palm</u> Minimum of 14 feet in height, Florida Grade #1 palm tree at time of planting.</p>

- (c) **Specimen Trees and Triple Permit Fees:** The penalty 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 applied ~~a one thousand dollar fine per tree~~ in addition to mitigation for the removed tree. If ~~the DBH inches of the removed tree~~ can be calculated based on tree remnants or a tree survey, the mitigation is required per Section 4.6.19(E)(5). If ~~the DBH size inches~~ of the removed tree cannot be determined from any remnants, aerial photography ~~will be used~~ shall be used to calculate mitigation based on the 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 paid to the Development Services and deposited into the Tree Trust Fund prior to permit approval. The in-lieu fee shall be calculated, as established by resolution of the City Commission. ~~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) – (M) (These sections shall remain in full force and effect as adopted.)

Section 3. All ordinances or parts thereof or parts of the Code conflicting or inconsistent with the provisions of this Ordinance are hereby repealed.

Section 4. 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 5. Specific authority and direction is hereby given to the City Clerk to codify this Ordinance.

Section 6. 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 _____, 2022.

ATTEST:

Katerri Johnson, City Clerk

Shelly Petrolia, Mayor

First Reading _____
Second Reading _____

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney