

ORDINANCE NO. 19-17

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REPEALING SECTION 4.6.19, "TREE PRESERVATION, PROTECTION, ENFORCEMENT, AND MAINTENANCE" AND READOPTING SAME, AS REVISED IN ORDER TO PRESERVE, PROTECT, ENFORCE AND MAINTAIN TREES; PROVIDING THAT EACH AND EVERY OTHER SECTION AND SUBSECTION OF SECTION 4.6 SHALL REMAIN IN FULL FORCE AND EFFECT AS PREVIOUSLY ADOPTED; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City Commission of the City of Delray Beach, Florida desires to revise and strengthen the current regulations concerning tree preservation, protection, enforcement and maintenance in order to discourage the removal of trees and/or provide for their replacement in the community; and

WHEREAS, these amendments provide a description for the escalation of penalties and increased fines for the removal of all trees above a certain height as defined herein; and

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), the Planning and Zoning Board, sitting as the Local Planning Agency (LPA), has determined that the amendments are consistent with and further the goals, objectives and policies of the Comprehensive Plan; and

WHEREAS, pursuant to LDR Section 1.1.6, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on May 15, 2017, and voted 5 to 0 to recommend that the amendments be adopted; and

WHEREAS, the City Commission of the City of Delray Beach adopts the findings in the Planning and Zoning Staff Report; and

WHEREAS, the City Commission of the City of Delray Beach finds the Ordinance is consistent with the Comprehensive Plan.

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

Section 1. That 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 to read as follows:

Section 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. ~~It is understood that single family homes constructed prior to 1990 will not have a 'landscape plan of record', but they shall, in all other respects, comply with the terms and provisions of this ordinance.~~

(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 Section 2.4.3(C) and 4.6.16.
- (b) Prior to any tree removal or land clearing operation, a ~~tree~~ Vegetation Removal Permit, per Sec. 4.6.19(E), ~~removal permit or land clearing permit,~~ must be submitted and approved.

(2) **Enforcement:** Violations of this ~~ordinance~~ 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 injunctive relief any other means available under state or federal law, inclusive.

~~(3) **Relief:** Relief from the provisions of this Section shall only be granted through the waiver process [Section 2.4.7(B)] by the City Commission, Site Plan Review and Appearance Board or Historic Preservation Board as applicable.~~

(D) **Preservation and Promotion of Existing Plant Communities Trees and Palms:** ~~All existing native plant communities on sites proposed for development shall be preserved where possible through their incorporation into the required open space. 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 plant species. In addition, stands of trees, with or without understory plantings shall also be preserved. The following shall apply: To the fullest extent practicable, all development proposals (land development application or building permit) must provide for the protection of existing trees having a trunk 4 inch or greater diameter measured at 4 1/2~~

feet above grade (Diameter at Breast Height “DBH”) and palms having a Clear Trunk (CT) of 8 feet or more. (See Appendix “A” Definitions) 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 4 inches DBH and palms greater than 8 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, 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) **Designation/Protection of Exceptional Specimen Trees:** Where site or development plan approval is required, the approving board shall make the determination in conjunction with the Planning and Zoning Director or designee that a tree meets the designation criteria for an exceptional specimen tree. All development proposals shall protect existing trees to the fullest extent possible and shall illustrate on the site/landscape plan all new development in relation to all existing exceptional specimen trees on the site. During the Site Plan Approval process, a tree survey shall be required showing the location, diameter, species and condition of all exceptional specimen trees. A written report from a certified arborist documenting all findings including the type of tree, specification, condition and an explanation outlining the reasons for removal is also required. Every effort shall be made to incorporate exceptional specimen trees in the development plan on site without relocating them. If saving the tree in its existing location is not feasible then the tree should be relocated on site. If saving such trees severely restricts the permitted use of the property, then the tree shall be allowed to be relocated off-site. Destruction of the tree(s) is the last option which may be done upon issuance of a tree removal permit, after all other considerations have been exhausted.~~

~~(1) (2) **Preservation of Trees Protection:** During the Site Plan Approval process, a tree survey shall be required showing the location, diameter, species and condition of all trees with greater than a 4” diameter measured at 4 ½ feet above grade. All development proposals shall protect existing trees on site to the fullest extents possible and shall illustrate on the site/landscape all new development in relation to all trees on the site with a four inch (4”) or greater trunk diameter. 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 Director 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~~

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 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 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.

- ~~(a) — Trees which are to be preserved on a site shall be protected from damage during the construction process according to appropriate tree protection techniques. The “Tree Protection Manual for Builders and Developers” published by the Division of Forestry of the State of Florida, Department of Agriculture and Consumer Service, shall be the standard for determining the appropriateness of proposed techniques. All trees which are to be preserved and do not survive shall be replaced by a tree of equal size or an equivalent number of trees based on trunk diameter.~~

~~(3) —~~ **Substitution of Mature, Exceptional Specimen Trees/Specimen Trees for Required Parking:**

- ~~(a) — The City may require or the applicant may request the substitution of existing, mature, healthy, exceptional specimen/specimen trees specimens for required parking spaces in instances where the following conditions are met:~~
- ~~1. — Such trees are of a hardwood and/or deciduous variety and a minimum of eight inches (8”) in diameter measured at four and a half feet (4 ½’) above grade.~~
 - ~~2. — Such trees are free of disease and insects.~~
 - ~~3. — Every effort has been made in planning and design of parking areas to accommodate such trees in the landscape islands as required by the Land Development Regulations.~~
 - ~~4. — Such trees are protected during construction as prescribed in the Land Development Regulations.~~
- ~~(b) — The applicant shall indicate on the site plan the location of all required parking spaces and indicate those spaces that will be eliminated in order to preserve trees. The amount of parking spaces permitted to be eliminated for any project shall be determined on a case by case basis.~~

- ~~(c) The Historic Preservation Board (HPB) or Site Plan Review and Appearance Board (SPRAB), as appropriate, may approve such requests or require such preservation provided the conditions of this subsection are met.~~
- ~~(d) A decision of HPB or SPRAB disapproving a request for or requiring tree preservation may be appealed to the City Commission pursuant to LDR Section 2.4.7(E).~~
- ~~(e) All tree(s) which are to be preserved under this section and do not survive shall be replaced with the equivalent number of caliper inches or by a hardwood tree with a minimum of eighteen feet (18') in height and a ten foot (10') spread of canopy where the tree cannot be accommodated on a caliper inch-per-inch basis, and an in-lieu fee shall be deposited into the tree trust fund to make up the difference. The in-lieu fee shall be calculated at \$100.00 per caliper inch for such difference. The Planning and Zoning Director or designee shall approve such replacements.~~

(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 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 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) **Tree Vegetation Removal and Land Clearing Permits:** A Vegetation Removal Permit is required subject to the following: 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, or cause to be removed, or effectively remove through damaging any tree, in any zoning district including single family homes, with a diameter of four inches (having a DBH of 4 inches²²) or more being measured at four and one half (4 1/2' feet) feet above grade and/or any exceptional specimen tree.

- (a) ~~No land clearing or tree removal~~ Vegetation Removal Permit shall be issued for a property until the proposed development plan has received site plan approval from the ~~Planning & Zoning and Building Department, if required. This process requires the submittal of a tree survey~~ Tree Disposition Plan, indicating trees proposed to be, relocated, or removed. Any exceptional specimen trees must be identified on the tree survey required by Section 4.6.19(E)(2). Once the project has been approved by P&Z, and the Building permit applications, and attendant building permit fees have been paid, the developer may obtain permits to begin tree removal and land clearing. 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~~ Single family homes and duplexes that are located within the historic 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 4.6.16 and per 4.6.19(E)(2)(a) through (e).
- (c) ~~For all single family homes and duplexes not located in a historic overlay district, the Vegetation Removal Permit will be administratively reviewed by City Staff along with the proposed building and landscape plans, per 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 ~~tree removal or land clearing permit~~ 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 ~~which are required to receive Planning & Zoning Department approval, including single family home and duplexes within the historic or beach overlay districts. For single family homes and duplexes, a less formal plan, indicating the location of all trees with identification as to species, trunk diameter, and height can be substituted for a professional tree survey except for those single family homes that are located within historic districts, in the Beach Overlay District or are individually designed as historic; these homes must provide a tree survey.~~

- (c) ~~Designation of the disposition of all diseased trees and any trees endangering any structures, roadways, pavement, utilities, and/or utility lines. 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 identified to be relocated will require a written assessment of transplant feasibility.~~
- (d) ~~Designation of the disposition of all any trees proposed to be preserved, removed from the site, relocated on the site, or retained in their present location removed, 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 4 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 4.6.19(E)(2)(d) may be substituted for a professional tree survey. An arborist report may be required per Sec 4.6.19(E)(5)(e).~~

(3) **Procedure:** Upon acceptance of the application, the Planning, and Zoning and Building Director, or designee, shall inspect the site, ~~and~~ verify the information provided in the application, identify additional information required to complete the application, and shall identify what measures must be taken with respect to tree protection, tree removal and erosion control 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, and Zoning, and Building 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. ~~In certain cases, the Planning and Zoning Director or designee may require a written report from a certified arborist and/or a structural engineer. The report shall document all findings including the type of~~

~~tree, specifications, condition and an explanation of why root protection devices are not a viable option.~~

(4) **Issuance of Permit:**

- (a) **Normal Issuance:** Upon approval of the application ~~by the Planning and Zoning Director or designee~~, and payment of the application fee, a permit shall be issued. 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 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 Units Homes and Duplexes:** On the property of single family ~~residences~~ homes and duplexes, the owner may submit a ~~land clearing or~~ tree removal permit application to do the work himself, providing the dwelling is owner occupied and providing that the extent of the work, in the ~~opinion~~ determination of the Planning ~~and~~ Zoning ~~and Building~~ 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 ~~may~~ shall apply ~~per Sec 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 require removal without delay, verbal authorization may be given by the Planning ~~and~~ Zoning ~~and Building~~ 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 ~~‘after the fact’~~ retroactively within seven ~~(7)~~ 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 ~~sixty (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 ~~(6)~~ months to replace required trees and palms.

(5) **Imposition of Conditions:** The permit shall set forth 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 may be required to be relocated to a suitable location on the site or off site. ~~Trees with a twenty-four (24") inch caliper or less are to be relocated, if possible.~~
- (b) Mitigation: The total DBH of ~~a~~All hardwood and/or deciduous trees with a condition rating of 50% or greater removed shall be replaced with ~~one (1) or more hardwood and/or deciduous trees~~ with the equivalent number of caliper inches of replacement trees, installed at a minimum size as required by Sec. 4.6.16. with the direction of the Planning and Zoning Director or designee.

Removed palms with a condition rating of 50% 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 Sec 4.6.16. The caliper of minimum required tree sizes (Per Sec 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.

Trees and palms with a condition rating less than 50% 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 Sec 4.6.19.E.6.a.

- (c) Replacement: All replacement trees must be planted within ~~sixty (60)~~ days of the issuance of the permit, 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 replacement on a DBH/caliper inch-per-inch basis, an in-lieu of fee shall be deposited into the Tree Trust Fund for those trees with a condition rating of 50% or greater. 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 is calculated at \$350 per caliper inch for those trees with a caliper of less than eight inches (8"). The in-lieu fee shall be calculated at \$450.00 per caliper inch for those trees with a caliper of eight inches (8") or greater.

~~Trees determined to be diseased, injured, in danger of falling, or deemed to be hazardous by the Planning and Zoning Director or designee, shall be exempt from replacement on a caliper inch per inch basis and shall not be required to deposit the in-lieu of fee into the Tree Trust Fund but the applicant shall be required to plant a hardwood tree with a minimum sixteen foot (16') height and seven foot (7') spread of canopy. Palm trees do not count towards mitigation of hardwood and/or deciduous trees. The in-lieu fee shall be calculated on an escalating scale:~~

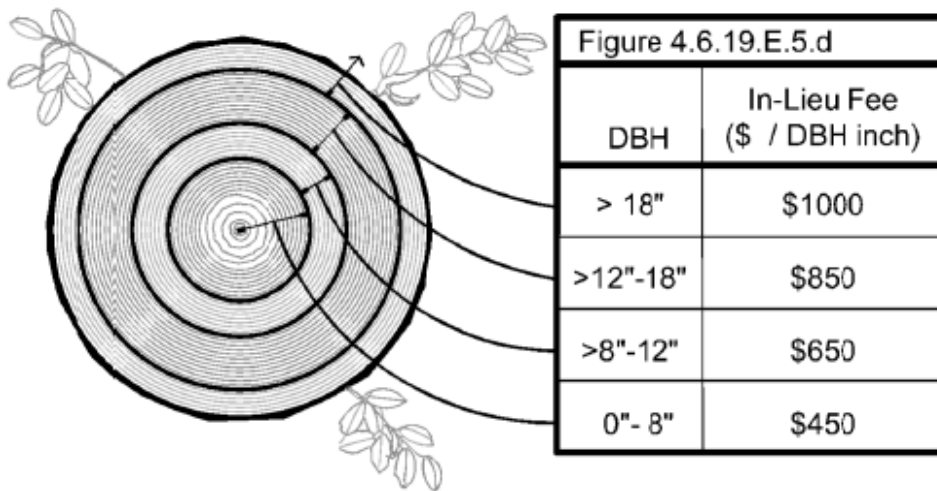
- DBH 0 inches through 8 inches are calculated at \$450/DBH inch;
- DBH 9 inches through 12 inches are calculated at \$650/ DBH inch;
- DBH 13 inches through 18 inches are calculated at \$850/DBH inch,
- DBH 19 inches and greater are calculated at \$1,000 per inch.

Refer to Figure 4.6.19.E.5.d.

Example 1: The in lieu fee for a 6 inches DBH tree calculation would be:
(\$450 X 6") = \$2,700

Example 2: The in lieu fee for a 21 inches DBH tree calculation would be:
(\$450 X 8") + (\$650 X 4") + (\$850 X 6") + (\$1,000 X 3") = \$3,600 + \$2,600 + \$5,100 + \$3,000 = \$14,300

The in-lieu fee for all palms shall be calculated at \$500 per palm. Trees and palms with a condition rating less than 50% are exempt from in lieu fees, but are required to be mitigated on a tree-for-tree or palm-for-palm basis per Sec 4.6.19.F.6.a.
For trees with a condition rating of between 25% and 50%, the in-lieu fee shall be calculated at 50% of the above escalating scale.



- (c) Existing single family homes and duplexes outside of historic or beach overlay districts, both attached and detached, are exempt from mitigation requirements so long as the tree proposed for removal has a caliper Diameter at Breast Height (DBH) of less than eight four inches (84") and the property contains the minimum number of code sized required trees per Sec. 4.6.16. on the lot (1 tree for every 2,500 square footage of lot area). Trees that are proposed for removal which have a caliper of eight inches (8") or greater cannot be removed unless life safety issues, property destruction, irreversible structural deficiencies within the tree, or incurable disease can be documented and no other tree saving options are available. A certified arborist's report is required to be submitted documenting these issues. 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. Tree removal permits apply and are required to be attained prior to removal.
- i. Mitigation is required for the removal of code-required trees that have a DBH of four inches or greater.
 - ii. Code-required trees with a DBH 4 inches or greater cannot be removed unless life safety issues, property destruction, irreversible structural deficiencies within the tree, or incurable disease can be documented and no other tree saving options are available as determined by the Chief Building Official or designee.
 - 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 4 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.
 - v. 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% 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% 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 Sec 4.6.16. The following tree species may be removed without a permit fee as they are considered nuisance trees. A permit application is required, however, to ensure the work is being done by a licensed and insured tree trimmer. When these trees are indicated on the landscape plan of record, approval shall be conditioned upon their replacement.

Australian Pine – *Casuarina Species*
Brazilian Pepper – *Schinus terebinthifolius*
Melaleuca – *Melaleuca quinquenervia*
Carrotwood – *Cupianopsis anacardioides*
Earleaf Acacia – *Acacia auriculiformis*
Schefflera – *Brassaia actinophylla*
Bischofia – *Bischofia javanica*

- ~~(b)~~ **Nuisance Tree Species Exception:** All trees, including nuisance trees, shall be included as a part of a Vegetation Removal Permit application. The nuisance tree species listed below may be removed without a permit fee and without mitigation. When these trees 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*

- ~~(b)~~(c) **Location Exceptions:** Removal permits 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) ~~Land Clearing & Tree~~ Vegetation Removal Permit Fees: ~~Permit fees for Land Clearing Permits are based on the total number of acres. An additional fee is required for each tree removed.~~ Permit Fee amounts are provided in Section 2.4.3(k)(32)(a) and (b) of the Land Development Regulations.
- (b) Permit Fee Waived: Where a tree has died due to natural causes, including disease, lethal yellowing, freezing, lightning or storms, or if the tree is of a prohibited species, there shall be no permit fee, even though inspection and permitting and replacement requirements shall be met.

(8) **Penalties:**

- (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. ~~All~~ 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, and Zoning and Building 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. The in-lieu fee shall be calculated at \$350.00 per caliper inch for those trees with a caliper of less than eight inches (8"). The in-lieu fee shall be calculated at \$450.00 per caliper inch for those trees with a caliper of eight inches (8") or greater per Sec 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. Palm trees do not count towards mitigation of hardwood and/or deciduous trees.

- (b) Canopy Replacement and Triple Fees: 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. 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. 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 deposited into the Tree Trust Fund. 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 Sec 4.6.19.E.8.c. This in lieu fee is in addition to the triple permit fee penalty.

<u>TABLE 4.6.19.E.8. DETERMINING REQUIRED NUMBER OF REPLACEMENT TREES (FOR TREES REMOVED BEFORE OBTAINING AUTHORIZATION BY PERMIT)</u>	
<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> <u>Type 1: Minimum of 14 feet in height , Florida Grade #1 canopy tree at time of planting</u> <u>Type 2: Minimum of 10 feet in height , Florida Grade #1 understory tree at time of planting;</u> <u>Type 3: Minimum of 14 feet in height , Florida Grade #1 palm tree at time of planting</u>	

- (b)(c) **Exceptional Specimen Trees and Triple Permit Fees:** The penalty for removing ~~an exceptional~~ 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 ~~five hundred (\$500.00)~~ one thousand dollar (\$1,000.00) fine per tree in addition to ~~replacement of the historic tree with one or more trees with the equivalent number of caliper inches with the direction of the Planning and Zoning~~

~~Director or designee mitigation for the removed tree. If the DBH can be calculated based on tree remnants or a tree survey, mitigation is per Sec. 4.6.19(E)(5). If the DBH size of the removed tree(s) 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 Sec. 4.6.19(E)(8)(b). Where the property cannot accommodate required tree replacement on a caliper inch-per-inch basis 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 \$350.00 \$1,000 per caliper DBH inch or \$1,000 per 100 square feet of canopy removed. for those trees with a caliper of less than eight inches (8"). The in-lieu fee shall be calculated at \$450.00 per caliper inch for those trees with a caliper of eight inches (8") or greater. This in-lieu fee is in addition to the exceptional specimen tree removal penalty and triple permit fee penalty. Palm trees do not count towards mitigation of hardwood and/or deciduous trees.~~

(F) **Shade Tree Trimming Pruning:** The purpose of pruning of trees is to allow for 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.

(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~~ 6 feet 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~~ 3 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 ~~twenty~~ (20) foot feet 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, 2 to 3 years after planting, and then every 5 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 (6)~~ feet of clear trunk, and as they mature, the clearance shall be increased to ~~seven (8)~~ 7 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% of a trees 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 Trimming 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 Trimming 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:

- (a) Trees and vegetation must be maintained so as not to interfere with traffic flow or traffic safety. This includes maintaining visibility at intersections, not obstructing traffic lights, stop signs or other traffic signage.
- (b) 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 & Palm Tree Trimming Pruning:**

- (a) Palm fronds that are dead should be removed. All coconut palms must have their coconuts removed prior to hurricane season. ~~Palm fronds that are dead should be removed.~~
- (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. 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. Encourage strong branch/trunk size relationships. Lateral branches should be no more than $\frac{1}{2}$ to $\frac{3}{4}$ 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. 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. 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. 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 trees and palms which are dead must be removed prior to hurricane season. Tree removal permits shall be required.
- (b) Trees or palms, 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 hazard and a public nuisance. The City shall retain the right to require corrective measures which may include the removal of the tree(s), or which may result in the reduction of 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~~ (6) months after the storm event.
- (c) All properties with a landscape plan of record shall be 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~~ (1) year from the storm event, and non-residential properties have ~~six~~ (6) months after the storm event. The Planning, ~~and~~ Zoning and Building Director or designee may approve additional time for replacement in instances where damage has been severe or tree replacements are unavailable.

~~(K)~~ **Avoidance of Overhead Utilities:**

~~(1) — Required perimeter landscape buffers often coincide with utility easements. Careful selection of tree species is essential to minimize conflicts as trees mature. The ultimate mature height and width of a tree to be planted should not exceed the available overhead growing space. Tree species shall be consistent with the recommendations in the most recent publication of Florida Power & Light company's "Plant the Right Tree in the Right Place" (copies available at the Building Department, which provides recommendations for tree selections or online at www.FPL.com).~~

~~(2) — The developer may also consider working with utility companies to have overhead lines placed below ground.~~

~~(L) — Avoidance of Underground Utilities & Fire Hydrants:~~

~~—— (1) — Trees and palms shall not be planted within ten (10) feet of any underground utilities, as measured from the center of the root ball, unless a root barrier is provided, in which case the root barrier must be a minimum of four feet (4') from the city water main, or sewer or other utility or service.~~

~~—— (2) — No vegetation, except grass and low ground covers below two (2) feet in height may be planted within ten (10) feet of a Fire Hydrant.~~

~~—— (3) — Trees may be permitted in utility easement only with the written permission of the utility provider(s), as part of the site plan, or landscape plan review.~~

~~(M)~~**(K) Nuisance Species Prohibited:** The following is a list of invasive and exotics nuisance species that must be removed from all properties proposed for development or redevelopment.

- (1) Australian Pine – *Casuarina Species*
- (2) Brazilian Pepper – *Schinus terebinthifolius*
- (3) Melaleuca – *Melaleuca quinquenervia*
- (4) Carrotwood – *Cupianopsis anacardioides*
- (5) Earleaf Acacia – *Acacia auriculiformis*
- (6) Schefflera – *Brassaia actinophylla*
- (7) Bischofia - *Bischofia javanica*

~~(N)~~~~(L)~~ **Prohibited Species Removed:**

All Prohibited Species shall be removed from all properties ~~by January 1, 2009~~, and tree replacements may be required if trees were used to satisfy landscape code requirements at the direction of the Planning ~~and~~ Zoning ~~and Bulding~~ 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.

~~(O)~~~~(M)~~ **Lethal Yellowing:**

(1) Lethal yellowing is ~~an incurable~~ a systemic disease of palms caused by bacterium transmitted by tropical insects. Palms considered to be highly susceptible to lethal yellowing are to be limited in use. ~~Coconut varieties which are resistant to lethal yellowing must be planted. All coconut palms must be grown from certified seed and must be documented at the time of inspection. 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) ~~Palms considered to be highly susceptible to Lethal yellowing are not permitted to be planted. Pritchardia Palm — Pritchardia and Coconut varieties not resistant to lethal yellowing are not permitted to be planted. Palm varieties resistant to lethal yellowing shall be planted in favor of palms known to be susceptible to lethal yellowing.~~

(3) 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 2. All ordinances or parts of ordinances in conflict be and the same are hereby repealed.

Section 3. 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 of this Ordinance.

Section 4. Specific authority is hereby given to codify this Ordinance.

Section 5. This Ordinance shall become effective immediately upon adoption.

PASSED AND ADOPTED in regular session on second and final reading on this the _____ day of _____, 2017.

MAYOR

ATTEST:

CITY CLERK

First Reading _____

Second Reading _____