

LDR Text Amendment- "Tree Preservation, Protection, Enforcement and Maintenance Ordinance"

Project Description: City-initiated request to revise and strengthen the existing LDR Section 4.6.19 "Tree Preservation, Protection, Enforcement and Maintenance". It was determined that the current LDRs do not adequately discourage the removal of trees and/or provide for their replacement within the community. A consultant was hired by the City to address these concerns and through this revised and strengthened ordinance, it is the intent to do the following.

- Throughout the document, an emphasis was placed on this ordinance applying to all trees greater than four (4) inch Diameter at Breast Height (DBH). (Previous ordinance emphasized protection for trees from four (4) inch to twelve (12) inch DBH and above twenty-four (24) inch DBH.) Note: Corrections were made throughout the document to change "caliper" to "DBH". (Caliper is used for nursery trees and DBH is for trees that are existing on a property.)
- Throughout the document, an emphasis was placed on, first and foremost, preserving in place, trees greater than four (4) inch DBH. Second priority would be for relocating trees on-site. Third priority would be for relocating trees off-site, to a location agreed upon by the City. Last would be for allowing mitigation for tree removal.
- Under 4.6.19D, a better description was made for palm replacements (equal to overall height).
- Under 4.6.19D(2), examples were given for "flexible site design options" to allow for the preservation of trees, through the plan review process. Such options as reduced parking, open space or green space would be considered.
- Under 4.6.19E, a description was given for performing a "condition assessment" by a certified arborist or landscape architect. This will allow for the proper determination of the condition of existing trees for preservation, relocation or removal.
- Under 4.6.19E(5)(b), a better description was given for tree mitigation, to assure replacements are made within the city standards for hardwood trees and palms. (Trees and palms shall comply with 4.6.16.)
- Under 4.6.19(5)(e), language was added to allow trees to be removed, for existing single family homes, if their location interferes with the proposed addition to an existing structure or the development of an accessory structure.
- Under 4.6.19E(8)(b), a description was added for "canopy replacement" of trees, with a graduated value for replacement, based on the size of the canopy. (Three-hundred fifty (350) dollars per 100 square feet for trees with canopy under three-hundred (300) square feet and four-hundred fifty (450) dollars per 100 square feet for trees over three-hundred (300) square feet.)
- Under 4.6.19E(8)(e), a description was added for the escalation of penalties for the removal of an "Exceptional Specimen Tree" (Twenty-four (24) inch DBH or greater or canopy size of nine-hundred (900) square feet or greater.) Fines were increased from five-hundred (500) to one-thousand (1,000) dollars. The in-lieu fee was increased from three-hundred fifty (350) to five-hundred (500) dollars per one-hundred (100) square feet of tree canopy.

SECTION 4.6.20 (D)

(E) **Criteria for Board Action:** The following criteria shall be considered, by the Site Plan Review and Appearance Board or Historic Preservation Board, in the review of plans for building permits. [Amd. Ord. 21-04 5/4/04]

If the following criteria are not met, the application shall be disapproved.

(1) The plan or the proposed structure is in conformity with good taste, good design, and in general, contributes to the image of the City as a place of beauty, spaciousness, harmony, taste, fitness, broad vistas, and high quality.

(2) The proposed structure, or project, is in its exterior design and appearance of quality such as not to cause the nature of the local environment or evolving environment to materially depreciate in appearance and value.

(3) The proposed structure, or project, is in harmony with the proposed developments in the general area, with the Comprehensive Plan, and with the supplemental criteria which may be set forth for the Board from time to time.

Section 4.6.19 “Tree Preservation, Protection, Enforcement, and Maintenance”.

Repealed in its entirety Section 4.6.19, Tree Protection and enacted a new Section 4.6.19, Tree Ordinance. [Amd. 37-06 9/19/06][Amd. Ord. 22-15 12/8/2015]

(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.

(B) **Applicability:** This section shall apply to improved and unimproved properties within the City, including single family homes. 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. [Amd. Ord. 22-15 12/8/2015]

SECTION 4.6.20 (D)

- (b) Prior to any tree removal or land clearing operation, a "Site Clearing Permit" or "Tree, Scrub and Vegetation Removal Permit", per 4.6.19.E, must be submitted and approved.

(2) **Enforcement:** Violations of this ordinance 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, or injunctive relief.

(3) **Relief:** Relief from the provisions of this Section shall only be granted through the waiver process. [Section 2.4.7(B)]

(D) **Preservation and Promotion of Existing Trees and Palms:** All development proposals shall protect existing trees on site to the fullest extent possible with a trunk four inch (4") or greater Diameter at Breast Height (DBH) measured at 4 ½ feet above grade and palms with a Clear Trunk (CT) of eight feet (8') or more. Upon making 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" DBH and palms greater than 8' 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. The following shall apply:

- (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 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 a site and be 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 in order to incorporate existing trees into the site design. In order to accommodate the site development scenarios conducive to preserving trees, the City will consider flexible site design options to land development regulations such as, but not limited to:
- i. A reduction in required parking spaces

SECTION 4.6.20 (D)

- ii. Relief to required parking lot green space requirements such as end and intermediate island spacing and a modification to head to head parking green space requirements.
- iii. A reduction to required open space

Proposed flexible site design options will be considered on a case-by-case basis and are subject to review by the Historic Preservation Board (HPB) and/or Site Plan Review and Appearance Board (SPRAB). A decision of HPB or SPRAB disapproving a site design option request for tree preservation may be appealed to the City Commission pursuant to Section 2.4.7(E).

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.

- (2) **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 permitted use of the property, then trees and palms may be relocated off-site to a location determined by the City. In order 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). Palms designated to be relocated that do not survive shall be replaced by one palm of equal overall height for each perished palm.

- (3) **Tree and Palm Removal:** A tree may be removed only when an applicant has demonstrated to the City that the proposed development cannot preserve trees in place and that relocation of trees is not feasible on site or off-site. Tree removal requires the issuance of a "Site Clearing Permit" or "Tree, Scrub and Vegetation Removal Permit". All trees removed must be mitigated per Section 4.6.19.E.5.

(E) **Tree, Scrub and Vegetation Removal and Land Clearing Permits:** A "Tree, Scrub, and Vegetation Removal Permit" or "Land Clearing Permit" is required; both are subject to the following:

SECTION 4.6.20 (D)

(1) **Permit Required**: In any zoning district which includes single family homes, 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, with a diameter of 4" or more Diameter at Breast Height (DBH) , measured at 4 ½'feet above grade.

(a) No "Land Clearing Permit" or "Tree, Scrub, and 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. This process requires the submittal of a Tree Disposition Plan, indicating trees proposed to be preserved, relocated, or removed. Application for a "Tree, Scrub, and Vegetation Removal Permit" or "Land Clearing Permit" may commence only after the site plan has been approved and the building permit fees have been paid.

(b) Those single family homes that are located within Historic Districts or in the Beach Overlay District or are individually designated as historic properties shall follow the planning and zoning process as provided in the Land Development Regulations. The land clearing and tree removal permit will be issued with the entire permit package. For all other single family homes, the land clearing permit and/or tree removal permit will be reviewed along with the proposed building and landscape plans.

(2) **Permit Application Information Required**: The following information and documentation must be provided with the tree, scrub and vegetation removal permit or land clearing 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. 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) A condition assessment for all trees performed by a certified arborist or landscape architect that describes the condition of the tree (good, fair, bad), 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.

SECTION 4.6.20 (D)

- (d) Designation of the disposition of all trees proposed to be preserved, , relocated, or 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.

(3) **Procedure**: Upon acceptance of the application, the Planning, Zoning and Building Director or designee, shall inspect the site and verify the information provided in the application and shall identify what measures must be taken with respect to tree protection and tree removal. Trees may be removed if the following conditions exist: **[Amd. Ord. 22-15 12/8/2015]**

- (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. The Planning, Zoning and Building Director or designee will require a written report from a certified arborist or landscape architect, documenting all findings including the type of tree, specifications, condition and an assessment of transplant feasibility **[Amd. Ord. 22-15 12/8/2015]**
- (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 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, Zoning and Building Director or designee will require a written report from a certified arborist, landscape architect and/or a structural engineer. The report shall document all findings including the type of tree, specifications, condition and an assessment of why root protection devices are not a viable option. **[Amd. Ord. 22-15 12/8/2015]**

(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

SECTION 4.6.20 (D)

trimmer or arborist, licensed with the City of Delray Beach. Contractors licensed simply as a landscape contractor shall not remove trees. **[Amd. Ord. 22-15 12/8/2015]**

- (b) **Issuance for Single Family Units:** On the property of single family residences, 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 of the Planning, 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 apply. **[Amd. Ord. 22-15 12/8/2015]**
- (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, 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' within seven (7) days of the verbal authorization and removal. **[Amd. Ord. 22-15 12/8/2015]**
- (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) The tree may be required to be relocated to a suitable location on the site or off site. **[Amd. Ord. 22-15 12/8/2015]**
- (b) Mitigation: The total DBH of all trees removed shall be replaced with the equivalent number of caliper inches of replacement trees, installed

SECTION 4.6.20 (D)

at a minimum size as required by Sec 4.6.16. . Removed palms shall be replaced with one palm of equal overall height or a replacement palm of 16' 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. Palm trees may not be substituted for mitigation trees. **Amd. Ord. 22-15 12/8/2015]**

- (c) 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) Where the property cannot accommodate tree replacement on a caliper inch-per-inch basis, an in-lieu of fee shall be deposited into the Tree Trust Fund. The in-lieu fee shall be calculated at three hundred fifty dollars (\$350.00) per caliper inch for those trees with a DBH of between four inches (4") and eight inches (8"). The in-lieu fee shall be calculated at four hundred fifty dollars (\$450.00) per caliper inch for those trees with a DBH of eight inches (8") or greater. Trees determined to be diseased, injured, in danger of falling, or deemed to be hazardous by the Planning, Zoning and Building Director or designee, shall be exempt from replacement on a 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 one tree with a minimum sixteen foot (16) height and seven foot (7') spread of canopy. Palms do not count towards mitigation of trees. **[Amd. Ord. 35-08 9/16/08] .[Amd. Ord. 22-15 12/8/2015]**
- (e) Existing single family homes, both attached and detached, are exempt from mitigation requirements so long as the tree proposed for removal has a Diameter at Breast Height (DBH) of less than four inches (4") and the property contains the minimum number of code sized trees on the lot (1 tree for every 2,500 square footage of lot area). Mitigation is required for trees that are proposed for removal which have a DBH of four inches (4") or greater. Trees with a DBH four (4") 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. Trees with a DBH four inches (4") or greater may be removed if their location interferes with the proposed addition to an existing structure or the development of an accessory structure. If applicable, mitigation of removed trees shall be the smaller of either the quantity of

SECTION 4.6.20 (D)

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 are required prior to removal. **[Amd. Ord. 22-15 12/8/2015]**

(6) Exceptions to Permit Requirements:

(a) **Tree Species Exceptions:** 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. No mitigation is required for the removal of these trees:

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

(b) **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 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)(2) of the Land Development Regulations.

SECTION 4.6.20 (D)

- (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 Fees:** The penalty for failure to obtain a permit shall result in a triple-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 Director or designee. Where the property cannot accommodate tree replacement on a inch-per-inch basis, an in-lieu fee shall be deposited into the Tree Trust Fund. The in-lieu fee shall be calculated at three-hundred fifty dollars (\$350.00) per Diameter at Breast Height(DBH) inch for those trees with a DBH of less than eight inches (8"). The in-lieu fee shall be calculated at four hundred fifty dollars (\$450.00) per DBH inch for those trees with a DBH of eight inches (8") or greater. This in-lieu fee is in addition to the triple permit fee penalty. [Amd. Ord. 35-08 9/16/08] [Amd. Ord. 22-15 12/8/2015]
- (b) **Canopy Replacement and Triple Fees:** If trees are removed before obtaining authorization for removal through a "Tree, Scrub, and Vegetation Removal Permit" or "Land Clearing Permit" application, and the DBH size of the removed trees(s) cannot be determined from any remnants, such value shall using aerial photography; on-site inspection; and/or review of a tree survey. 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. The canopy of the replacement trees at maturity 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 at three-hundred fifty dollars (\$350.00) per 100 square feet for those removed trees with a canopy under 300 square feet. The in-lieu fee shall be calculated at four hundred fifty dollars (\$450.00) per 100 square feet for those removed trees with a canopy 300 square feet and greater. This in-lieu fee is in addition to the triple permit fee penalty.

SECTION 4.6.20 (D)

| | |
|---|-----|
| | |
| Type 1 Tree | 300 |
| Type 2 Tree | 100 |
| Type 3 Tree | 50 |
| <p>NOTES: Type 1: Minimum of fourteen (14) feet in height , Florida Grade #1 canopy tree at time of planting Type 2: Minimum of ten (10) feet in height , Florida Grade #1 understory tree at time of planting; Type 3: Minimum of fourteen (14) feet in overall height , Florida Grade #1 palm tree at time of planting</p> | |

(c) **Exceptional Specimen Trees and Triple Fees:** The penalty for removing an exceptional specimen tree with a Diameter at Breast Height of 24” or greater or with a canopy size of 900 square feet or greater shall be a one thousand dollar (\$1000.00) fine per tree in addition to mitigation for the removed tree. Where the property cannot accommodate 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 fivehundred dollars (\$500.00) per DBH inch or 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. [Amd. Ord. 35-08 9/16/08] .[Amd. Ord. 22-15 12/8/2015]

(F) **Tree 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 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.

SECTION 4.6.20 (D)

(2) Trees shall be allowed to attain their normal size, and at a minimum attain a twenty (20) 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, 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 (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 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.

SECTION 4.6.20 (D)

(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:

- (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 Pruning:**

- (a) Palm fronds that are dead 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. 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.

SECTION 4.6.20 (D)

- 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. Watersprouts 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, Zoning and Building Director or designee may approve additional time for replacement in instances where damage has been severe or tree replacements are unavailable. [Amd. Ord. 22-15 12/8/2015]

SECTION 4.6.20 (D)

(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 easements only with the written permission of the utility provider(s), as part of the site plan, or landscape plan review.

(M) Species Prohibited: The following is a list of invasive exotics 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 – Brassia actinophylla
- (7) Bischofia - Bischofia javanica

(N) Prohibited Species Removed:

All Prohibited Species shall be removed from all properties by January 1, 2018, and tree replacements may be required if trees were used to satisfy landscape code requirements at the direction of the Planning and Zoning Director or designee. Trees shall be replaced per an approved plan on a tree-per-tree

SECTION 4.6.20 (D)

basis and not on a caliper inch basis, thereby not requiring a deposit into the tree trust fund. .[Amd. Ord. 22-15 12/8/2015]

(O) Lethal Yellowing:

(1) Lethal yellowing is 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. The following common palms are known to be susceptible to Lethal Yellowing disease:

- (a) Adonidia merrillii
- (b) Cocos nucifera
- (c) Dictyosperma album
- (f) Livistonia Chinensis
- (g) Phoenix canariensis
- (h) Phoenix dactylifera
- (d) Phoenix reclinata
- (e) Phoenix sylvestris
- (f) Syagrus schizophylla

(2) Certain palm varieties are available with a genetic resistance to lethal yellowing. Those palm varieties with lethal yellowing resistance shall be planted in favor of palms known to be susceptible to lethal yellowing..

(3) Coconut palm varieties which are resistant to lethal yellowing must be planted. Proof of the variety must be provided at the time of inspection.

Section 4.6.20 Transfer of Development Rights:

(A) **Concept and Purpose:** Through a Transfer of Development Rights (TDR), the governing body severs the development rights from the underlying fee interest in the regulated property. Permission is given to the owner of the regulated property to either transfer the development rights in that property to another parcel owned by the regulated party or to sell the development rights to owners of land in other designated areas. The TDR approach restricts development in the owner's parcel, but mitigates the overall harm of the land use control by permitting development elsewhere.

(B) **Procedure:**

(1) **Creation:** To obtain or create a transferable development right (TDR), the City or the owner of property to be regulated shall proceed through the rezoning process for the purpose of rezoning to either the Community Facilities (CF), Open Space (OS), or Conservation (CD) Zone District, as appropriate depending upon the intended use of the regulated property.

SECTION 4.6.20 (D)

(2) **Concurrent Rezoning:** When it is intended/desired to specifically determine the receiver property and its proposed development intensity at the same time as a Certificate is issued for the regulated property, a concurrent rezoning of both parcels shall be undertaken. However, such rezoning is not necessary if the receiver parcel is properly zoned and the proposed development will be consistent with the Comprehensive Plan and will meet provisions of the Land Development Regulations.

(C) **Determination of Value of Severed Development Rights:**

(1) **Value Base:** The value of the severed development rights shall be equal to current development potential of the regulated property in terms of residential dwelling units or floor area of office space less any compensation, including current and ongoing value of the current use, which is provided by the City at the time of rezoning and/or issuance of a Certificate of Development Rights.

(2) **Value Determination:** To determine the value of severed rights, the petitioner shall provide a site development plan which will comply with the City's development regulations. The intensity of the use accommodated by that site plan shall establish the base value of the property. From this base value, the ongoing value shall be subtracted. The Local Planning Agency shall determine the appropriateness of the intensity and shall certify it to the City Commission. This information shall be a part of the rezoning review and hearing record.

(3) **Equivalency:** Office floor area and residential units can be interchanged at the rate of 2,000 sq.ft. of office floor area being equal to one residential dwelling unit. A conversion from office to residential, or from residential to office, may occur at any time up to the application of the Certificate to a receiver property.

(4) **Certificate:** Within the rezoning ordinance, the value of the severed development rights shall be stated. In addition to the rezoning ordinance, the owner of the regulated land shall be issued a Certificate of Development Rights. The Certificate shall be a separate document prepared in a form as approved by the City Attorney. It shall not be issued until the regulated property is rezoned and a determination of value is made. The Certificate is transferable (it may be sold). The Certificate shall provide its owner with a development credit to be used pursuant to Subsection (D). Ownership of a Certificate is not equivalent to a demand of project approval; rather, it allows its owner to seek an increase in otherwise allowed intensity of use

(D) **Limitations:**

(1) **Limitations on Regulated Properties:** In order to be eligible for transference of development rights, the resulting use of the "to be regulated" property must be in a manner to advance goals, objectives, and policies of the Comprehensive Plan through:

SECTION 4.6.20 (D)

- (a) Preservation of historic structures and sites
- (b) Obtaining land for public facilities (e.g. fire stations, tennis courts, water storage tanks, etc.)
- (c) Preservation of designated conservation areas
- (d) Any time when a voluntary action would aide in fulfilling a policy or objective of the Comprehensive Plan.

(2) **Limitations on Receiver Properties**: In order to apply a TDR to a receiver property, it must be able to be developed in accordance with the goals, objectives, and policies of the Comprehensive Plan. Receiver properties must be located in one of the following areas:

- (a) "Redevelopment (white) Areas" delineated on the Future Land Use Map --- in these areas, land use intensities which are greater than those allowed elsewhere by the Comprehensive Plan may be allowed after adoption of, and pursuant to, the area's redevelopment plan.
- (b) Geographic Areas in which height increases are allowed pursuant to Section 4.3.4(J)(4) --- in these areas, in addition to receiving an exception to the base district height regulation, the receiver parcel may also receive an increase in development intensity up to the value of the TDR Certificate.