

Attachment A: Text Amendments to City Code Chapter 82 “Vegetation”

ARTICLE II. TREE PROTECTION AND PRESERVATION

Sec. 82-27. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section. Unless indicated below, all terms not defined herein shall be defined in accordance with International Society of Arboriculture (ISA) Best Management Practices. Where the context will permit, the definitions provided in F.S. § 1.01 shall apply.

Assisting labor means sole individuals employed directly by the property owner in the city of Coral Gables. *City tree preservation agency* means the department or agency charged by the city manager with the enforcement of the provisions of this article. The decision-making staff of this agency shall include an individual or individuals with significant local experience in the fields of botany, landscape architecture and horticulture.

Development means and refers to any proposed material change in the use or character of land, including, but not limited to, the replacement of any structure or site improvement on land. When appropriate to the context, development may refer to the act of issuing any building permit.

Developed means that point in time when the building and site have received all required final inspection approvals.

Diameter at breast height (DBH) is a method of measuring the diameter of a tree at four and one-half feet above grade.

Drip line means a vertical line running from the outer-most horizontal circumference of the tree branches extending to the ground.

Effectively destroy means to cause, suffer, allow or permit any act that will cause a tree to die or go into a period of unnatural decline within one year from the date of the act. Acts that may effectively destroy a tree include, but are not limited to, excessive pruning, changing the natural grade above the root system or around the trunk, damage inflicted on the tree permitting infection or pest infestation, application of herbicides or other chemical agents, intentional fire damage to the tree permitting infection or pest infestation, the infliction of a trunk wound or wounds that cumulatively are 20 percent or greater of the circumference of the trunk, or the removal of sufficient canopy to cause the unnatural decline of the tree.

Hazard tree means a tree with uncorrectable defects severe enough to pose present danger to people or buildings under normal conditions.

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Landscaper means someone working as landscaper maintaining commercial and residential landscaping in the City of Coral Gables who is registered as a landscape maintenance contractor with the City of Coral Gables.

Pruning means that definition of the term as set forth in both the most recent International Society of Arboriculture (ISA) Best Management Practices (BMP) on Pruning and American National Standards Institute (ANSI) A300, Part 1. At no time shall trimming, topping, tipping or flush cutting of trees be deemed a form of "pruning."

Qualified tree trimmer means a professional tree trimmer who is or works under the direction of an International Society of Arboriculture (ISA) certified arborist, or a tree trimmer licensed as a tree trimmer by a county or municipality in Florida.

Specimen tree means a healthy tree (as determined by the City) with any individual trunk which has a DBH of eighteen (18) inches or greater, but not including the following: 1) all trees listed in Section 24-49(4)(f) of the Miami-Dade County Code; 2) non-native fruit trees that are cultivated or grown for the specific purpose of producing edible fruit, including, but not limited to, mangos, avocados, or species of citrus; 3) all multi-trunk trees in the palm family, except Paurotis Palm/Everglades Palm (*Accelorrhaphe wrightii*), which have a minimum overall height of fifteen (15) feet.

Site means that parcel of land for which a tree permit is sought.

Tree means a woody or fibrous perennial plant with an upright trunk of 4 1/2 inches or more DBH or 12 or more feet in overall height. A tree species include palms, Pandanas, Traveler's trees (*Ravenella madagascariensis*) and Clerodendrum species.

Tree abuse shall include:

(1) Damage inflicted upon any part of a tree, including the root system, by machinery, construction equipment, cambium layer penetration, storage or materials, soil compaction, excavation, chemical application or spillage, or changes to the natural grade.

(2) Hatracking or topping.

a. **Pruning of fruit trees such as mango, avocado, and lychee to a height of 14-15 feet shall not be considered hatracking, topping, or tree abuse.**

(3) Girdling or bark removal.

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- (4) Pruning any tree subject to the terms of this section not in accordance with the current International Society of Arboriculture (ISA) Best Management Practices and American National Standards Institute (ANSI), A300 Standards, Part One.
- (5) Piling soil against the trunk of a tree above the root flare or placing soil over more than 25% of the roots of a tree within the drip line of the tree to a depth greater than four inches, unless done with an approved tree permit.
- (6) Flush cuts.
- (7) Piling trash or construction debris within six (6) feet of a tree.

Tree modification or modifying a tree shall include:

- (1) Pruning living or dead limbs ten inches or larger in diameter of a specimen tree.
- (2) Cutting any roots greater than two inches in diameter of a specimen tree within six feet of the trunk.
- (3) Cutting more than 25% of the roots of a specimen tree within the drip line of the tree to a depth greater than six inches.
- (4) Piling soil against the trunk of a tree above the root flare or placing soil over more than 25% of the roots of a tree within the drip line of the tree to a depth greater than four inches.

Tree root protection zone means a designated area measured from the outside of the trunk of the tree that is meant to protect the tree roots during construction activity.

Viable means a tree that, in the judgment of the enforcement agency, is capable of sustaining its own life processes, unaided by man, for a reasonable period of time.

Yard area means an open space on the same lot with a building, said space being unoccupied and unobstructed from the ground upward, with the exception of trees and other vegetation

Sec. 82-29. Permits generally.

- (a) *Required.* No person shall, unless otherwise permitted by the terms of this article, directly or indirectly modify, cut down, destroy, remove or move, or effectively destroy through damaging, or authorize the modifying, cutting down, destroying, removing, moving or damaging of any tree without first obtaining a permit under this article. No city official shall issue a permit provided for herein in violation of the requirements of this article.

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- (b) *Application forms; fees.* Permits for the modification, removal, relocation or replacement of trees covered herein shall be obtained by submitting an application, on a form prescribed by the city tree preservation agency. The permit fee shall be established by the city commission. No fee shall be charged for trees that are relocated or that lie within a utility easement and are required to be removed in order to provide utility service to the property. Governmental agencies and applications for tree modifications or removals in areas dedicated to public use shall be exempted from permit fees, but shall be subject to all other provisions of this article. With the exception of the tree trust fund contained herein, funds collected as permit fees pursuant to this article shall be deposited in the general fund.
- (c) *Tree abuse.* Tree abuse is prohibited and shall constitute a violation of this section. Any act of tree abuse that renders a tree nonviable or effectively destroyed shall constitute "effective removal" and shall compel the owner to fully comply with the terms of this article as if the tree was removed prior to issuance of a permit.
- (d) *Pruning of trees on private property.* Pruning tree limbs ten inches or more in diameter on private property requires a tree permit from the tree preservation agency. Pruning of branches four (4) inches in diameter or greater must be done by a qualified tree trimmer. Pruning of trees may also be done by the property owner with assistance as needed by assisting labor.
- (e) *Pruning of trees on public property and rights-of-way.* The pruning of any trees on public property and rights-of-way is prohibited unless expressly approved by the tree preservation agency in advance.

Sec. 82-30. Application procedure for tree modification, relocation, or removal in conjunction with proposed development for which a development review committee's review, board of architects' review, separate building permit, building site determination or tentative plat approval is required.

- (a) *Preliminary review.* As a precondition to the filing or receiving of any application for a development review committee, board of architects' review, building permit, building site determination or tentative plat with the appropriate municipal department, the applicant shall make application for (on a form provided for by the city tree preservation agency) and receive a preliminary approval from the tree preservation agency. The preliminary review procedure shall guarantee that the applicant has taken all steps reasonably necessary to preserve existing trees and to otherwise enhance the aesthetic appearance of the development by the incorporation of trees into the design process.
 - (1) Applicants seeking a preliminary approval as a precondition to the review by the development review committee, board of architects, or issuance of a building permit, building site determination or tentative plat shall submit, as an attachment to their application, two copies of a legible reproducible site plan, drawn to scale, and indicating the following information for the entire site:

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- a. Location, shape and spatial arrangement of all existing and proposed buildings, walls, improvements and structures.
 - b. Identification of uses on adjacent properties.
 - c. Location, shape and spatial arrangement of all parking areas and access road.
 - d. Existing and proposed utility services.
 - e. Existing and proposed elevations.
 - f. Setbacks, yard requirements and easements.
 - g. Existing and proposed wells.
 - h. All sink holes, solution holes, rock outcroppings and historical sites.
 - i. A certified tree survey overlaid directly upon the site plan, and indicating the location, referenced to structures, of all existing trees meeting the dimensions set forth in section 82-27. The survey shall be prepared by a licensed professional surveyor and mapper in coordination with a certified arborist to distinguish the centerline of existing tree location, within the property and adjacent right-of-way, proposed to be modified, removed, relocated, replaced, preserved at their present location, or introduced into the development from an off-site source. All trees shall be identified by a certified arborist to determine species, common name, DBH, canopy diameter, height and condition. Elevations and site plans of proposed structures and improvements depicting their relationship with existing trees and proposed mitigation measures are required where applicable.
 - j. Applicants of smaller projects as determined by the tree preservation agency and applicants who qualify for an owner/builder permit, as provided under section 24-49(4)(b)(ii) of the Miami-Dade County Code or Chapter 489 of the Florida Statutes, may prepare their own tree survey. Groups of trees less than three feet apart, may be designated as clumps, provided that any tree with a trunk circumference of 30 or more inches must be specifically designated. For sites on which development or tree removal activity is to occur on less than the entirety of the site, the tree preservation agency may provide that the tree survey exclude those portions of the site which it determines will not be affected by the development activity.
- (2) The tree permit may be approved where the tree preservation agency has verified that no tree removal activity is involved in a proposed development.
 - (3) An application to modify, move or remove a tree whose trunk is located at the property line and shared between two (2) or more properties as indicated by a survey shall require the consent of all affected property owners.
- (b) *Application review.* Upon receipt of a proper application, the tree preservation agency shall review the application, which review may include a check of the site and referral of the application for recommendation to other appropriate administrative departments or agencies.

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The tree preservation agency shall render a decision on the application (assuming the application is complete upon its submission). Specimen trees shall be preserved whenever reasonably possible. Upon receipt of a tree application, the tree preservation agency shall consider the following factors in evaluating said application:

- (1) Size and configuration of the property.
- (2) Size and configuration of any proposed development.
- (3) Location of all existing and proposed trees relative to any existing and proposed development.
- (4) Whether or not the tree can be preserved under the proposed plan or any alternative plan.
- (5) Health, condition and aesthetic qualities of the tree.
- (6) Whether the tree poses a threat to persons or property.
- (7) Location of utility systems.
- (8) Whether the tree impedes on the visibility triangle pursuant to Sec. 5-1406 of the Coral Gables Zoning Code.

(c) *Circumstances justifying issuance.* Tree permits under this section may be issued only after the applicant has provided documentation, as may be required by the tree preservation agency, that the following sequence of actions has been taken to determine whether to:

- (1) Step 1: Preserve the existing specimen tree on-site: The applicant shall make reasonable efforts to design the improvements, including but not limited to the structure, driveway and septic drain field, that accommodate the natural growth of the existing tree. The design may include the consideration of any necessary variances pursuant to this article. In all options, the tree preservation agency may reasonably require root barrier as a mitigation measure to address future potential root damage concerns.
- (2) Step 2: Modify the existing specimen tree: The applicant may modify the existing specimen tree by root pruning or tree pruning that would cause minimum harm to the tree as determined by the tree preservation agency, while redesigning the improvements, including but not limited to the structure, driveway and septic drain field, to accommodate the natural growth of the existing tree. The pruning of tree limbs and roots shall be in accordance with the current American National Standards Institute (ANSI), A300 standards.
- (3) Step 3: Relocate the existing specimen tree on-site: The applicant shall provide documentation justifying the relocation of the existing specimen tree elsewhere on-site at a location that can accommodate the natural growth of the relocated tree. The applicant shall utilize best practices in the horticultural industry in accordance with the current ANSI A300 standards to relocate the existing specimen tree to another location on-site.

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- (4) Step 4: Remove the existing specimen tree: The applicant shall provide documentation pursuant to subsection (d) justifying the removal of the existing specimen tree. If preservation of the specimen tree and any alternate design pursuant to subsection (d) consistent with the scope and intent of the initial plan are mutually exclusive, then the tree preservation agency may issue a permit to remove the specimen tree in accordance with the requirements, criteria and procedures in subsections (d), (e) and (f).
- (d) *Alternate design.* If, upon review of the factors enumerated in Section 82-30(b), the applicant determines that a specimen tree cannot reasonably be preserved under the proposed plan, the tree preservation agency may require that the applicant provide an alternate plan which shall include preservation of the specimen tree and design alternatives of removing the specimen tree. The alternate plan that includes the specimen tree may depict the site constraints and design limitations due to the specimen tree, which may include any or a combination of the following: an adjustment of the building orientation, requests for potential variances; or a reduction of developable area. The applicant bears the burden of proving hardship why the preservation of the specimen tree at its present location is not reasonable by utilizing the evaluation factors enumerated in Section 82-30(b).
- (e) *Procedures for determining specimen tree replacement requirements.* The tree preservation agency shall determine the total number and type of replacement trees required for the issuance of a tree removal permit according to the following procedural steps:
- (1) *Determining existing specimen tree canopy coverage on-site.* The area of existing tree canopy coverage removed by the applicant's proposed development shall be determined by the tree preservation agency based on a site plan and completed tree permit application, using one or any combination of the following methods: review of aerial photography; on-site inspection; and review of a tree survey. The tree preservation agency may require the applicant to submit a tree survey for the purpose of this determination.
- (2) *Determining number of replacement trees required to be planted.* The total number of trees required for replacement shall be based on canopy loss as reviewed and confirmed by the tree preservation agency and the category of replacement tree selected by the applicant. Each replacement tree shall compensate for a portion of the tree canopy lost in the impact area. The following table shall be used as a standard for determining the required number of replacement trees. (For example, four (4) large tree species of 15 feet overall height will mitigate an existing tree of 2,000 square feet of tree canopy coverage.) If the calculation of canopy credit results in a fraction of 500 square feet, the canopy credit shall round up to the next 500 square feet. For a specimen tree of DBH of 24 inches or larger, the tree

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preservation agency may require up to twice the amount of tree canopy replacement, or replacement trees of equal environmental value.

TABLE 82-1
REPLACEMENT TREE CANOPY CREDITS

| <u>Replacement Tree</u> | <u>Minimum Height</u> | <u>Canopy Credit</u> |
|--------------------------|------------------------|----------------------|
| Large Tree Species* | 15 feet Overall Height | 500 square feet |
| Medium Tree Species | 12 feet Overall Height | 300 square feet |
| Small Tree Species | 10 feet Overall Height | 200 square feet |
| Large Palm Tree Species | 10 feet Clear Trunk | 300 square feet |
| Medium Palm Tree Species | 6 feet Clear Trunk | 200 square feet |
| Small Palm Tree Species | 6 feet Clear Trunk | 100 square feet |

* Additional credit for canopy mitigation may be granted at the discretion of the tree preservation agency for large tree species exceeding 20 feet in height.

If tree canopy cannot be determined, the applicant may use a DBH calculation method at a 6:1 ratio as demonstrated in the following example: an 18 inch DBH tree may be replaced with three (3) trees. Such replacement trees shall be at a minimum four (4) inch DBH and minimum of 15 feet overall height. If a calculation of required replacement trees results in a fractional tree, the number of required trees shall be rounded up to the next whole number.

TABLE 82-2
EXAMPLES OF TREE AND PALM TREE TYPES IN EACH CATEGORY*

| <u>Replacement Tree</u> | <u>Examples of Tree/Palm Tree Types</u> |
|-------------------------|--|
| Large Tree Species | Live Oak, Mahogany, Black Olive 'Shady Lady' , Royal Poinciana, Verawood, Floss Silk, Wild Tamarind, Gumbo Limbo, Ficus Saurea , |

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| | |
|--------------------------|---|
| | <u>Ficus Citrifolia</u> |
| Medium Tree Species | Bridal veil, Leopard tree, Satin Leaf, Pigeon Plum, Orange Geiger, Green Buttonwood |
| Small Tree Species | <u>Simpson Stopper, Spanish Stopper</u> , Silver Buttonwood, Cassia species, Tabebuia speies, Lignum Vitae, Crabwood, <u>Jamacian Caper, Ligustrum Lucidum.</u> |
| Large Palm Tree Species | Royal palm, Canary Island Date palm, Medjool Date palm, Bismarck palm, Coconut palm |
| Medium Palm Tree Species | Sabal palm, Satakentia palm, <u>Copernica alba, Latania Palm</u> |
| Small Palm Tree Species | Florida Thatch palm, Solitaire palm, Montgomery palm, Christmas palm, Teddy Bear palm |

* Category of species not listed shall be determined by tree preservation agency based on equivalent ecological and horticultural value.

All replacement trees shall have a minimum quality of a Florida No. 1 grade or better following the current Florida Grades and Standards for Nursery Plants.

- (3) *Location of replacement tree.* Specific placement of replacement trees on-site shall be determined by the applicant. If the site cannot accommodate the required replacement trees because of insufficient planting area as determined by the tree preservation agency, then the applicant shall be required to plant replacement trees at an off-site location subject to the tree preservation agency’s approval, or, as an alternative, shall provide an equitable contribution to the city tree trust fund to compensate for those replacement trees that cannot be accommodated on-site.
- (4) *Minimum species diversity standards.* When more than ten trees are required to be planted in accordance with the provisions of this article, a diversity of species shall be required. The number of species to be planted shall be based on the overall number of trees required. The applicant shall be required to meet the following minimum diversity standards:

TABLE 82-3
NUMBER OF TREE SPECIES REQUIRED

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| Required Number of Trees | Minimum Number Species |
|--------------------------|------------------------|
| 11—20 | 2 |
| 21—50 | 4 |
| 51 or more | 6 |

Applicants shall not be required to plant in excess of six (6) species. The number of trees of each species planted shall be proportional to the number of species required. A minimum of 50 percent of all replacement tree canopy planted shall be native to the county, and no more than 30 percent of the replacement tree canopy shall be palms. Whenever a native tree is removed, its replacement canopy shall be of a native tree species. As an alternative to the minimum species diversity required herein, an applicant may propose an alternative species diversity in an alternative tree mitigation plan described in these regulations, subject to the approval of the tree preservation agency.

- a. **If applicants are requesting a permit and mitigation plan for work done without proper authorization the tree preservation agency may require up to twice the amount of tree canopy replacement or replacement trees, as well as increased minimum height of replacement trees.**

- (5) *Requirements for a tree removal and mitigation plan.* A tree removal and mitigation plan shall be submitted to the tree preservation agency by the applicant whenever replacement canopy is required. A tree removal and mitigation landscape replacement plan shall meet the following minimum standards:
- a. *Number, species, and size of trees.* The number of trees by species, number of species of trees, and size of trees (i.e. overall tree height and canopy) proposed for planting shall be consistent with provisions of these regulations.
 - b. *Site plan.* The applicant shall submit a site plan that includes the proposed location of all replacement plantings, all property lines, and all proposed and existing structures, drain fields, driveways and utility easements.
 - c. *Canopy.* The canopy spread of any tree that is proposed for preservation shall be shown on the plan. Where a portion of the canopy of a tree or trees will be removed without removal of the trees, a notation shall be made on the plan. Where applicable, the tree preservation agency may require an elevation that depicts the positioning and proximity of tree limbs in relation to the proposed development.
 - d. *Tabulation.* A table showing the total area of lost canopy, total canopy required to be replaced as may be determined by the tree preservation agency, and the total canopy area of proposed replacement trees.

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(6) *Illegal Tree Relocation, Removal or Modification.* The relocation, removal or modification of a tree without a tree permit shall be a violation of this section and is subject to a fine pursuant to Sections 82-38 and 82-39 or tree mitigation or both a fine and tree mitigation in accordance with this section up to twice the tree coverage.

(f) *Time limitation.* A tree permit issued under this article shall be subject to the same time limitation rules as are applicable to its accompanying building permit.

(g) *Permit cards.* Upon the issuance of a tree permit under this article, a copy of the permit shall be prominently displayed on the site, prior to the modification, removal, relocation or replacement of any trees. Tree permits issued in conjunction with building permits shall be included with the building permit card and shall be displayed alongside it on the site. (h) *Final inspection.* No final certificate of occupancy shall be issued nor electrical power cut-in authorization given until the relocation or replacement of trees, as required by the tree permit has been completed, and the final tree inspection approval has been given by the tree preservation agency. Trees relocated from one portion of the site to another, which do not survive transplantation within 12 months of the tree preservation agency's inspection of the transplantation, shall be replaced with a suitable replacement tree as specified by the tree preservation agency. Sec. 82-31. Application procedure for tree permit unrelated to building permit applications.

(a) *Applicability.* Tree permits, not sought in conjunction with building permits, shall be obtained by making application therefor on a form prescribed by the city tree preservation agency, prior to the modification, removal, relocation or replacement of trees from public or private right-of-way or property.

(b) *Information to be supplied by applicants.* Applicants seeking tree permits under this section shall submit as an attachment to their application a tree survey of the site prepared pursuant to Sec. 82-30(a)(1)i. Such survey shall show the location of all existing trees upon the site and adjacent right-of-way, which meet the dimensional requirements of section 82-27. Tree information shall be summarized in a legend form and shall contain tree number, species, common name, identification number, DBH, height, canopy diameter, condition rating, tree root protection zone radius referenced to structures of all trees shown on the survey. Groups of trees less than three feet apart may be designated as clumps, with the exception that any tree with a trunk DBH of 18 inches or more must be specifically designated. For sites on which tree removal, modification, relocation, replacement or clearing activity is to occur on

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less than the entirety of the site, the tree preservation agency may provide that the tree survey exclude those portions of the site determined not to be affected. This information should follow the ANSI A300 Standards for Tree, Shrub, and Other Woody Plant Management – Standard Practices (Management of Trees and Shrubs During Site Planning, Site Development, and Construction). This information and process should also follow the International Society of Arboriculture (ISA) Best Management Practices – Managing Trees During Construction. A Tree Resource Evaluation by a certified arborist may be required by the tree preservation agency. Replacement trees must be Florida No. 1 grade or Florida Fancy following the current Florida Grades and Standards for Nursery Plants. Upon installation replacement trees should be structurally pruned in accordance with the ISA Best Management Practices. Landscape maintenance contractors should follow the current ANSI Z133 American National Standard for Arboricultural Operations – Pruning, Repairing, Maintaining, and Removing Trees, and Cutting Brush – Safety Requirements.

- (c) *Application review.* Upon receipt of a proper application, the tree preservation agency shall review the application, which review may include a check of the site and referral of the application for recommendation to other appropriate administrative departments or agencies. The tree preservation agency shall make every reasonable effort to render a decision on the application within ten working days of its receipt (assuming the application is complete upon its submission). **For applications related to a historic landmark or a property located in a historic district, approval from the Historical Resources and Cultural Arts Department is also required.**
- (d) *Circumstances justifying issuance.* Tree permits under this section may be issued pursuant to Sec. 82-35.
- (e) *Relocation, replacement or modification.* As a condition to the granting of a tree permit under this section the applicant may be required to:
- (1) Relocate those trees which would otherwise be destroyed to another location upon the site; or
 - (2) Replace those trees which will be destroyed with suitable replacement trees elsewhere within the site. In determining the required relocation, replacement or root pruning of trees, the tree preservation agency shall consider the needs of the intended use of the property, including all lands dedicated to public use, together with an evaluation of the following:
 - a. Existing tree coverage on the site and in the immediate surrounding area.
 - b. Number of trees to be removed on the entire site.
 - c. The type, size and condition of the tree to be removed.
 - d. The feasibility of relocating the particular tree or trees.
 - e. Topography and drainage of the site.

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- f. The extent to which the tree contribute to the aesthetic, economic and environmental integrity of the surrounding area.
 - g. The nature of the existing and intended use of the property.
- (f) *Permit issuance; permit card.* Upon approval of an application made under this article and the payment of the required fee, as required under section 82-29(b), the tree preservation agency shall issue a permit therefor. With each such permit, the tree preservation agency shall issue a permit bearing all pertinent information thereon. Such permit shall be maintained in a conspicuous place on the front of the premises affected thereby during the entire time that the work authorized by the tree permit is in progress.
- (g) *Time limitation.* Permits issued under this section shall be subject to the following time limitations:
- (1) Permits shall expire and become null and void if work authorized by such permit is not commenced within 180 days from the date of the permit, or if such work when commenced is suspended or abandoned at any time for a period of 180 days, which may be extended at the discretion of the tree preservation agency. A permit related to a nuisance abatement case may require lesser time as specified by the city.
 - (2) If work has commenced and the permit becomes null and void or expires because of lack of progress or abandonment, a new permit covering the proposed tree removal activity shall be obtained before proceeding with the work.
 - (3) This provision shall not be applicable in case of civil commotion, or when such work is halted due to legal action.
 - (4) The fee for renewal of a permit after work has commenced and the fee for reissuance of a permit before work has commenced and after the original permit has become void shall be as established by the city commission.
 - (5) Permits issued after work has commenced shall be two times the normal fee plus fine as established by the City Commission.

Sec. 82-32. Tree protection/relocation standards.

- (a) During site development and construction all reasonable steps necessary to prevent tree abuse or the destruction or damaging of trees shall be taken. Trees destroyed or receiving major damage must be replaced by trees of equal environmental value as specified by the tree preservation agency before occupancy or use unless approval for their removal has been granted under a tree permit. Tree root protection zones are required for all trees that remain in place on site and for any trees relocated within the site. As a condition of approval of the site plan for this project and of the tree removal and relocation activities for a subject property, the following tree protection, root pruning, and tree relocation specifications shall be followed. Site plans shall be modified to provide for the protection of as much of the existing intact tree root systems and canopies as is possible. All permit/construction drawings of the site shall show the tree root protection zones, as prescribed by the tree preservation agency, as shaded areas and shall be further labeled as such on the drawings. This information shall be shown on all drawings that show any underground utility

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installations, including, but not limited to, irrigation, plumbing, electrical, or telecommunication lines, and aboveground walkways. Approval of the tree protection agency as related to these issues is a requirement for permitting. A copy of these specifications shall be provided by the city and shall be made part of the permit set plans and specifications associated with any permits issued for a project, and a copy shall be provided to all contractors or subcontractors working on the site. No permits shall be issued in conflict with these requirements without the written consent of the tree protection agency. Tree protection requirements for trees designated for preservation shall include, but not be limited to, the following:

- (1) Protective barriers shall be placed around each tree, cluster of trees, or the edge of the preservation area no less than six feet in radius from the trunk of any protected tree cluster or preservation area unless a lesser distance or alternative layout is specified by the tree protection agency. The goal of the protective barriers is to protect as much of the root zone within the drip line of the tree as possible and to protect the trunk of the tree from damage. Protective barriers shall be placed around each palm tree at no less than three feet in radius from the trunk of the palm. However, the tree root protection zone is based on the height of the palm, and a taller palm may require a larger protection zone, as determined by the tree preservation agency. If root pruned, appropriate bracing of the palm is required. In situations where trees have been transplanted to the planting site, the protective fencing shall be placed no closer to the tree than a point one to two feet outside the root ball. Protected areas shall be extended where necessary to encompass the protection of tree canopies as well. If trees are to be preserved in place and root pruning will be performed to accommodate new construction, then the root pruning locations shall be identified and approved by the tree protection agency and fencing shall be installed one to two feet outside of the root cut locations. The installation of the fencing shall be coordinated with any phased root pruning that must occur. Tree maintenance measures such as irrigation must be in place prior to any root pruning or transplanting. The tree preservation agency shall be called for an inspection of the installed fence prior to commencement of any activity on the site. Protective barriers shall be a minimum of four feet aboveground level shall be constructed of two (2) inch by four (4) inch wood posts and cross members with orange or yellow plastic construction fencing attached, which shall remain in place until development is completed and the tree preservation agency has authorized their removal. On private property, two inch by four inch wood cross members may be omitted for larger protection areas at the discretion of the tree protection agency. All protective barriers shall remain in place throughout all phases of construction starting prior to the start of any construction or site development including tree removal or land clearing activities and continuing up to final site landscaping activities. Prior to removal of the fencing, a site inspection by the tree preservation agency will be required. A review of the plans will be made at this point in order to insure that all

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activities forthcoming will not violate the tree root protection zone as previously established. Only hand digging and grading activities will be permitted within the tree root protection zone. All surrounding areas must be graded to a point that meets the outside of the tree root protection zone. The tree root protection zone should be a minimum 1-foot away from the trunk for every 1-inch of trunk radius and at the discretion of the tree preservation agency. For example, a 24-inch DBH tree should have a minimum 12-foot radius tree root protection zone. No more than 25% of roots in this zone should be cut at one time. Additional cutting of more than 25% of the roots in this zone requires approval by the tree preservation agency and done under the directive of a certified arborist.

Signs of rigid durable construction (minimum size of 8.5 inches by 11 inches) shall be placed so as to be clearly visible at 15 foot intervals or closer (in no case fewer than four signs) encircling the perimeter of each tree root protection zone fence, to read as follows:

Tree Root Protection Zone

No work, no vehicles and no dumping.

Contact person responsible for the site for information at _____.* * * * *

Sec. 82-34. Tree variances.

The preservation of trees may be considered as a peculiar hardship for the granting of a variance from the literal application of the provisions of the zoning or subdivision regulations. An administrative variance not to exceed 20% of the minimum code requirement may be granted by the development review official for the purposes of preserving a specimen tree on site, provided that the applicant has demonstrated that the variance request is the minimum required to allow reasonable use of the property; that all other design alternatives have been explored pursuant to this article; and that the variance request will not negatively impact the peaceable enjoyment of adjacent property owners. Examples of an administrative variance may include setback, building height and ground area coverage, so long as the applicable maximum square foot floor area of the structure is not exceeded. As any variance granted will be serving the public purpose of tree preservation, there will be no fee associated with the granting of an administrative variance for such purpose.

Sec. 82-35. Decision by the tree preservation agency.

Notwithstanding the provisions contained herein, a tree permit may be denied by the tree preservation agency if the subject specimen tree is relatively healthy, is not damaged to the extent that will inhibit its potential growth, and any of the following is determined:

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- (a) The subject specimen tree plays an important role in the specimen tree canopy, public welfare or ecology of the city's urban forest.
- (b) The subject specimen tree is a part of an important heritage to the community.
- (c) The subject specimen tree is a part of an established streetscape and that its removal will diminish the established tree-lined character if not replaced with an appropriate species of similar quality.
- (d) A modification to the specimen tree consistent with International Society of Arboriculture (ISA) Best Management Practices is feasible and will not cause future damage to the public and structures in the area.
- (e) **For historic landmarks or properties located in a historic district, the removal of the specimen tree will negatively affect the historic character established for the property or district.**

In addition, the tree preservation agency will also consider and weigh the criteria outlined in Sec. 82-36 against the subsections above in deciding whether to approve or deny a permit for tree removal or relocation. Mitigation may also be ordered in appropriate circumstances.

Sec. 82-36. Appeals from decisions by the tree preservation agency.

(a) Appeals of a decision of the tree preservation agency hereunder in the enforcement of any terms or provisions of this article may be taken by filing within 10 days after the date of the decision, on a form prescribed by the city, a written notice of appeal thereof which shall set forth concisely the decision appealed from and the reasons or grounds for the appeal. Appeals of a decision of the tree preservation agency related to a tree on public property may be appealed to the city manager or the city manager's designee, whose decision may be appealed within 10 days to the city commission. Only an applicant denied a permit is an affected party that may file such an appeal. The city manager may review any decision of the tree preservation agency related to a tree on public property *sua sponte* and the city manager may place any related tree preservation decision on the city commission agenda. An appeal related to a tree on public property is not a quasi-judicial proceeding and does not prevent the City from removing a tree on public property without adjacent owner consent when warranted. The City retains sovereign immunity in all decisions related to trees on public property.

Appeals of a decision of the tree preservation agency related to a tree on private property may be appealed to the board of adjustment pursuant to Sec. 3-604 of the Zoning Code, **and in the case of a tree located on a historic landmark or a property in a historic district, to the historic preservation board** pursuant to Sec. 3-113 of the Zoning Code. **Appeals shall be heard at the next regularly scheduled meeting of the board of adjustment or historic preservation board.** Only the city manager or the property owner where the tree is located is an affected party that may file such an appeal. A tree whose trunk is located at the property line and shared between two (2) or more properties as indicated by a survey pursuant to Sec. 82-30(a)(1)i. may be appealed by any

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affected property owner. The board of adjustment **and historic preservation board** shall consider all of the following criteria:

- (a) The natural growth of the subject specimen tree is causing clear and present damage to the structures in the area to the point that any modification to the tree may cause irreparable harm to the tree or pose greater risk to the immediate structures.
- (b) The subject specimen tree poses an inordinate burden to allow reasonable development of the property in accordance to these regulations.
- (c) The subject specimen tree was planted at a location that will preclude its natural healthy growth due to site constraints.
- (d) The subject specimen tree poses a potential threat to the health, safety and welfare of the public.
- (e) The subject specimen tree has been documented by qualified professionals such as a certified arborist as diseased and its existence will cause potential property damage during an extreme weather event.
- (f) The subject specimen tree is overcrowding other trees in the area and its removal serves as a greater overall horticultural benefit.
- (g) The subject specimen tree does not contribute to the aesthetic, economic and environmental integrity of the surrounding area.
- (h) **For historic landmarks or properties located in a historic district, the removal of the specimen tree will negatively affect the historic character established for the property or district.**

The board of adjustment or **historic preservation board** may affirm, reverse or modify the decision appealed from, provided that the board of adjustment shall not take any action which conflicts with or nullifies any of the provisions of this article. The word "decision" as used herein shall not include the filing of any action by the tree preservation agency in any court. The board of adjustment or historic preservation board's approval of an appeal that overrides the decision of the tree preservation agency may be subject to the board's approval of a tree replacement and mitigation plan that consists of tree replacement on or off site, or money contribution into the tree trust fund in compliance with this section, or both a tree replacement on or off site and money contribution into the tree trust fund in compliance with this section.

Appeals of the board of adjustment or **historic preservation board's** decision are subject to Sec. 3-606 of the Zoning Code. This code shall be interpreted so as not to cause a taking or an inordinate burden on a landowner. The City Attorney may give opinions regarding takings and inordinate burdens and act accordingly.

(b) Administrative Challenges to Enforceability of Section 82. Should any property owner believe that any regulation in Section 82 has been preempted, a property owner may appear before the Board of Adjustment and explicitly state what provisions of this Code the property owner believes

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have been preempted. The property owner's argument shall be heard in the first instance by the Board of Adjustment, with review by the City Commission for final decision making. Any appeal of the City Commission's decision as to the preemption of Section 82 shall be heard on appeal to the Circuit Court. Any challenges to the validity of Section 82 regulations, facially or as applied, shall follow the procedure outlined above.

Sec. 82-37. - Enforcement.

The City may request a hearing regarding the enforcement of these regulations before any of the following adjudicative bodies:

- (a) A court of competent jurisdiction;
- (b) The City of Coral Gables Code Enforcement Board, pursuant to Ch. 2, Art. 3, Division 2 of the Code of Ordinances of the City of Coral Gables; and
- (c) The Code Enforcement Hearing Officer, pursuant to Ch. 2, Art. 3, Division 2A of the Code of Ordinances of the City of Coral Gables.

Sec. 82-38. - Penalty.

Upon conviction in court of competent jurisdiction, a violator of any provision of this chapter shall be subject to a fine not to exceed \$5,000.00 or by imprisonment in the county jail for a period not to exceed 60 days, or by both such fine and imprisonment, in the discretion of the court of competent jurisdiction and each tree cut down, destroyed, removed or moved shall constitute a separate offense. For instances where there is a willful act to cause permanent injury or move a specimen tree located in city property or right-of-way without prior city approval, the fine would be up to \$15,000, the city may sue for the monetary value of said tree that has been lost and is entitled to attorney's fees. Upon conviction in court, a violator may be subject to imprisonment in the county jail for a period not to exceed 60 days.

Sec. 82-39. - Civil remedies.

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In addition to any other remedies provided by this article, the city shall have the following judicial remedies available for violations of this chapter or any permit condition promulgated under this chapter the city may institute a civil action in a court of competent jurisdiction to:

- (1) Establish liability and to recover damages for any injury caused by the removal of trees, shrubs, orchids, or vines in contravention of the terms of this chapter.
- (2) Impose and recover a civil penalty for each violation in an amount of not more than \$5,000.00 per offense, and in the case of willful action to cause permanent injury or move a specimen tree located in city property or right-of-way without prior city approval, the fine would be up to \$15,000 per offense. However, the court may receive evidence in mitigation. Each tree, shrub, orchid, or vine unlawfully removed under the provisions of this chapter shall constitute a separate offense hereunder.
- (3) Seek injunctive relief to enforce compliance with this chapter to enjoin any violation thereof; and to seek injunctive relief to prevent irreparable injury to the trees, shrubs, orchids, or vines or properties encompassed by the terms of this chapter. Any such action shall be expedited by the court.
- (4) The City shall be entitled to an award of its attorney's fees and costs for enforcement of this Chapter, including for any civil suit in which it is the prevailing party.

Sec. 82-39. Tree trust fund.

- (a) *Creation of the tree trust fund.* There is hereby created a city tree trust fund, the purpose of which is to acquire, protect and maintain natural forest communities in the city and to plant trees on public property.
- (b) *Tree mitigation contribution in lieu of or in addition to tree mitigation.* For tree mitigation not otherwise provided in this Article, the city shall charge and collect trust fund contributions at \$1,500 for every 500 square feet or portion thereof of replacement tree coverage, which amount may be amended by separate resolution by the city commission. The total amount of tree mitigation contribution may be adjusted by the tree preservation agency based on factors such as the condition and age of the tree(s) considered for removal or the tree mitigation plan proposed, subject to approval by the tree preservation agency, board of adjustment, city manager or designee.
- (c) *Disbursement and maintenance of the tree fund.* Monies obtained for the tree trust fund shall be disbursed for the acquisition, maintenance, management and protection of natural forest communities, or for planting trees on public property, or for creating the infrastructure to plant trees on public property. The appropriation and disbursement from the tree trust fund

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shall require city manager, or designee, approval and is fully subject to all procurement and budget policies, provided, however, that any funds received pursuant to the conditions of any tree permit shall be used as required by the permit conditions.

Sec. 82-40. Immunization.

All city staff and agents are immunized from civil or criminal liability for enforcement of any terms or provisions of this article, or any actions taken pursuant to the authority provided herein.

Cwu/Tree Ord. Att. A.docx