ORDINANCE 2017-

AN ORDINANCE RELATING TO TREE PROTECTION; AMENDING CHAPTER 38, VEGETATION, OF THE CODE OF ORDNANCES OF THE CITY OF NAPLES, BY DELETING ARTICLE I. IN GENERAL, AND DELETING ARTICLE II. TREE PROTECTION AND REPLACING WITH A NEW ARTICLE I. IN GENERAL AND A NEW ARTICLE II. TREE PROTECTION; IN ORDER TO UPDATE AND STRENGTHEN REGULATIONS FOR PROTECTION OF TREES, TO REMOVE OUTDATED REGULATIONS, AND TO PROVIDE METHODS OF ENFORCEMENT AND PENALTIES; PROVIDING FOR CONFLICT AND SEVERANCE; PROVIDING A REPEALER PROVISION; PROVIDING AN EFFECTIVE DATE FOR IMPLEMENTATION OF FEE ADJUSTMENTS; AND AN EFFECTIVE DATE.

WHEREAS, the City of Naples is endowed and forested by a wide variety of trees, which give the City a unique visual character and enhance property values; and

WHEREAS, the preservation and maintenance of healthy City-owned trees is important to preserving Naples distinctive character and culture; and

WHEREAS, the purpose and intent of this ordinance is to establish regulations governing the protection and management of protected trees and City-owned trees and for the management of diseased trees; and

WHEREAS, in 2015, City Council requested the Community Services Advisory Board, serving as the City Tree Board, to review Chapter 38 of the Code of Ordinances and recommend revisions to Chapter 38 to better protect City-owned trees; and

WHEREAS, the Community Services Advisory Board, serving as the City Tree Board, unanimously endorsed the proposed amendments to Chapter 38 and Appendix A – Fees and Charges Schedule of the Code of Ordinances on March 14, 2017.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA:

Section 1. That Chapter 38, Vegetation, of the Code of Ordinances of the City of Naples is hereby amended to read as follows (with underlining indicating additions and strikethroughs indicating deletions):
Chapter 38 - VEGETATION

ARTICLE I - IN GENERAL

Sec. 38-1. - Tree board.

(a) Definitions. As used in this section the following words terms and phrases shall have the meanings ascribed to them in this subsection:

City street trees means trees on rights-of-way lying between property lines and paved streets within the city that have been planted or adopted by the city for care and maintenance.

Park trees means trees located on land within public park boundaries owned by the city or to which the public has free access as a public park.

Street trees means trees on public rights-of-way lying between property lines and paved streets within the city that have not been planted or adopted by the city for care and maintenance.

(b) Creation and establishment of board. The city hereby establishes a city tree board for the purposes of enforcement of this chapter. Members of this board shall be appointed pursuant to resolution or ordinance enacted by the city council. The community services board shall act ex officio as the tree board.

(c) Compensation. Members of the city tree board shall serve without compensation.

(d) Duties and responsibilities.

(1) It shall be the responsibility of the tree board, hereinafter referred to as the "board," to develop, and recommend for city council approval, a written plan for the care, preservation, pruning, planting, replanting, removal, or disposition of parks trees and city street trees. Such plan will be presented annually, in December, to city council and, upon their approval, shall constitute the comprehensive city tree plan for the city. The board shall also be responsible for developing and recommending regulations for maintenance of street trees. Such regulations shall be presented to city council and, upon adoption, shall be incorporated into the Code of Ordinances and enforced by the code enforcement board, as established by chapter 2.

(2) The board, when requested by the city council, shall study, investigate, and make findings, reports, and/or recommendations upon any special matter or question coming within the scope of its work.
(3) The board shall recommend policies for city council approval that may require property owners, adjacent to public rights-of-way, including canals and waterways, to trim or remove trees determined to be a hazard or obstruction to vehicular, vessel, or pedestrian traffic. The board shall also recommend policies that may require the treatment or removal of any tree located on public or private property that is determined to be infectious due to insect infestations and/or diseases that could spread to other noninfected trees.

(e) Review of actions by city council. The city council shall have the right to review any actions of the board. Any person may appeal any ruling or order of the board to the city council, who may hear the matter and make a final decision.

Sec. 38-2. - Public tree care.

(a) The city manager is responsible for the care and protection of city street trees and park trees. The city manager shall make reports and requests for funds for the maintenance and protection of city street trees and park trees to city council as part of the annual budget approval process.

(b) The city manager is responsible for maintaining city street trees only as defined in section 38-1(a)(2). Care and maintenance of all other street trees, as defined in section 38-1(a)(1), is the responsibility of the adjacent property owner, under the regulations referred to in section 38-1(d).

(c) Property owners must make a written request for permission to trim or remove any city street tree, with the trimming or removal to be performed by a contractor licensed to operate within the city. Fronds and branches that pose a public hazard may be removed without prior permission.

Sec. 38-3. - Pruning standards.

(a) Purpose. The purpose of this section is to prevent the use of incorrect pruning techniques, which are known to result in increased susceptibility to disease, parasitic infection, and ultimately, tree death.

(b) Applicability. These standards shall apply to city street trees and to park trees.

(c) Definition. For the purpose of this section, prune means to cut or remove living or dead branches from a tree or shrub, in order to improve its appearance or growth. Pruning does not include "topping or hatracking," as defined in section 38-4.
(d) **Pruning standards.** Trees shall be properly pruned in accordance with the pruning standards of the National Arborist Association.

Sec. 38-4. - Tree topping or hatracking.

It shall be unlawful for any person or firm to top or hatrack any city street tree or park tree. Topping or hatracking is defined as the cutting of limbs, larger than 3 inches in diameter, to stubs within the tree's crown, to such a degree as to remove normal canopy and disfigure the tree. Trees damaged by storms or other causes, certain trees under electric power transmission and other utility lines or other obstructions, and certain species of trees may be exempted from this prohibition, as determined by the tree board.

Sec. 38-5. - Pruning for corner, sign and signal clearance.

Trees obstructing the visibility of corners, street signage, directional signage, and/or traffic signals within the city shall be pruned so the branches do not obstruct the visibility of pedestrians or vehicles. City street trees shall be the responsibility of the city manager. Street trees shall be the responsibility of the owner of the property adjacent to the street right-of-way.

Secs. 38-6—38-30. - Reserved.

**ARTICLE II. - TREE PROTECTION**

**DIVISION 1. - GENERALLY**

Sec. 38-31. - Alteration of protected trees.

(a) Purpose. The purpose of this section is to establish protective regulations for certain native trees and certain vegetative assemblages or associations that occur within the city. These trees or assemblages are of special concern because of their increasing rarity in the city and their established role in providing habitat for a diverse community of plants and animals, including threatened and endangered species.

(b) Definitions. As used in this section the following words, terms and phrases shall have the meanings ascribed to them in this subsection:

*Alter* or *alteration* means to remove, defoliate or destroy by any means.

*Cypress* means any specimen of the species *Taxodium distichum* (bald cypress) or *T. ascendens* (pond cypress).

*Diameter at breast height (DBH)* means the diameter of a tree's trunk measured at a point 4.5 feet above the surface of the ground.
**Protected tree** means any cypress or sand pine/dwarf oak scrub association; any tree with a DBH of 4 inches or greater located on undeveloped land that is zoned for uses other than single-family residential and undeveloped single-family residential land that is unplatted.

**Sand pine/dwarf oak scrub association** means the xeric community or assemblage of plants characterized by the presence of a combination of the following species: *Pinus clausa* (sand pine), *Quercus chapmanii* (Chapman oak), *Q. laevis* (turkey oak), *Q. myrtifolia* (myrtle oak), *Q. geminata* (sand live oak), *Ceratiola ericoides* (rosemary), *Ilex glabra* (gallberry), *Lyonia ferruginea* (staggerbush), *Myrica cerifera* (southern wax myrtle) and *Serenoa repens* (saw palmetto).

**Trim** means to cut branches, twigs, limbs, and foliage, but not to alter, by removing, defoliating, or destroying, the protected trees.

(c) **Prohibitions.** Alteration, without prior issue of a permit, of any protected tree is prohibited.

(d) **Exemptions.** No approvals under this section shall be required for:

1. Alteration by a Florida licensed land surveyor in the performance of duties, provided such alteration is the minimum necessary and is limited to a swath 3 feet or less in width.
2. Alteration by a property owner who desires to alter protected trees that were voluntarily planted, provided that the voluntary nature of the planting is documented and provided that such planting was not required for mitigation or as part of any prior development approval.
3. Alteration by a property owner who desires to trim away freeze-damaged or dead plant tissue, provided such trimming occurs a minimum of 9 months after the freeze and provided the trimming is limited to removal of the said freeze-damaged or dead plant tissue.
4. Maintenance of existing utility and drainage systems, provided that no other alternative exists and that the alteration will be the minimum necessary.
5. Trimming of protected trees.

(e) **Permit procedures.**

1. **Application.**
   a. Prior to formal permit application, a person desiring to alter any protected tree shall communicate with the city manager to schedule a pre-application site conference.
b. Following the site conference, a permit application shall be submitted to the city manager. The following information is required for permit processing:

1. The name, address, and telephone number of the property owner for whom the permit is being requested.
2. The address and legal description of the property where the tree alteration is proposed.
3. The name, address, and telephone number of the firm or individual to perform the work related to the permit.
4. A survey or sketch of the site showing the locations of all structures, landscaping, and the specific trees to be altered.
5. A detailed description of the proposed work, including a description of the methods to be used, and a justification for the need to alter protected trees.
6. Copies of permits and approvals required by other government agencies.
7. The fee, as set forth in appendix A to this Code.

(2) Application review.

a. After receipt of an application or receipt of additional information, the city manager shall examine the application or information and notify the applicant of any apparent errors or omissions, and request such additional information as may be necessary for processing the application.

b. After the application has been determined to be complete by the city manager, the city manager shall take one of the following actions:

1. Approve the application with or without specific conditions reasonably necessary to assure compliance with this section.
2. Deny the application with an explanation of what changes, if any, in the application are necessary for approval of the application.
3. Deny the application with reasons clearly stated.

c. Any approval issued pursuant to this section shall expire within 60 days, unless otherwise specified in the conditions of approval.

(3) Standards for approval or denial of application.

a. No approval shall be granted for the alteration of any protected trees which contain active nests of migratory birds, bird species listed as species of special concern, rare, threatened, or endangered by the Florida Fish and Wildlife Commission, or which are a breeding area for a colony of birds.

b. No approval shall be granted for the alteration of protected trees by mechanical, chemical, or other means except as provided below.

c. An approval shall be granted for the removal and/or alteration of protected trees to provide vehicular access to property or when such removal and/or alteration is necessary to make any
reasonable use of the property, and the applicant has demonstrated that no other alternatives exist.

d. An approval shall be granted for the removal and/or alteration of protected trees within a dedicated utility easement or road right-of-way to provide utilities with reasonable access subject to the following guidelines:

1. The width of protected tree area affected by the accessway shall not exceed 8 feet.

2. The applicant must demonstrate that no other access or alternatives exist and the utility controlling the easement has confirmed this in writing.

3. The accessway should be designed and located in such a manner that the least amount of damage to the protected trees is assured.

4. The applicant must submit a proposal for mitigation or replacement of the altered trees.

(f) Enforcement and penalties.

(1) Any person who violates this section shall be subject to the enforcement provisions set out in article VII of chapter 2.

(2) Each individual protected tree unlawfully altered under the provisions of this section shall constitute a separate offense.

(3) In addition to other penalties provided by law, appropriate reforestation shall be required for violation of this section.

(4) No development orders shall be issued to any violators of this section until the violation has been properly abated to the satisfaction of the city.

Secs. 38-32—38-60. Reserved.

DIVISION 2. LETHAL YELLOWING OF PALMS

Sec. 38-61. Applicability.

This division shall apply to and be enforced in all areas of the city.

Sec. 38-62. Definitions.

The following words, phrases or terms, as used in this division, shall have the following meanings, unless the context clearly indicates otherwise:

Christmas palms means all palms of the species Adonidia merrillii.

Coconut palms means all varieties of palms of the genera Cocos nucifera.
Emergency means any occurrence or imminent threat thereof, whether natural or caused by humans, which results in or may result in substantial damage to and/or loss of property.

Public nuisance means any tree infected with a plant disease known as the lethal yellowing disease, including, without limitation, all species of coconut palm and any tree that is a carrier of the disease.


Sec. 38-63. — Declaration of lethal yellowing emergency.

Pursuant to F.S. ch. 252, which authorizes the waiver of procedures and formalities otherwise required of political subdivisions in order to take whatever prudent action is necessary to ensure the health, safety and welfare of the community in the event of a state of emergency, the mayor of the city, or the vice-mayor in the mayor's absence, or the city manager in the absence of the mayor and vice-mayor, is hereby designated and empowered to declare a local state of emergency in the event the threat of the lethal yellowing disease is imminent and a quorum of the city council is unable to meet. The determination that such an emergency exists in the case of lethal yellowing shall be made upon the recommendation of the city manager.

Sec. 38-64. — Extent of state of local emergency.

Upon declaration, the state of emergency from the lethal yellowing disease shall continue until the person authorized to declare a local state of emergency determines that the threat or danger no longer exists and terminates the local state of emergency. The declaration or termination of a local state of emergency is subject to ratification or rejection by the city council at the next regularly scheduled meeting after the declaration or termination occurs.

Sec. 38-65. — Emergency measures.

In addition to any other powers conferred by law, the mayor of the city, or the vice-mayor in the mayor's absence, or the city manager in the absence of the mayor or vice-mayor, may order and promulgate all or any of the following emergency measures to be effective during the period of such declared emergency, and with such limitations and conditions as may be deemed appropriate to protect against damage or loss of property by lethal yellowing:

(1) — Require the mandatory inoculation of all coconut palm trees in all areas designated by the city manager for inoculation.
(2) — Require removal of palm trees found to be affected by, or a carrier of, lethal yellowing disease by the property owner within 5 days from
the date the trees are found to be diseased or as determined by the
city manager.

(3) Utilize all available resources of the city government as reasonably
necessary to cope with the emergency, including expenditures, as
budgeted for the survey of the existing coconut palm tree population,
the inoculation of city-owned coconut palms, the inoculation of
privately owned coconut palms found not to be in compliance with
this division, the removal of infected trees on city-owned property and
on private property when the owner has failed to comply with
mandated inoculation, removal, and make other reasonable
expenditures in implementing this division.

(4) Have suspected trees inoculated or have such trees removed in lieu
of mandating inoculation or removal by the landowner, based on a
cost-benefits analysis.

(5) Curtail the transportation of coconut palms into or out of the city.

Sec. 38-66. — Designation of areas of mandatory inoculation.

The areas in which mandatory inoculation is required shall be designated
on the basis of the presence of trees infected by the lethal yellowing disease or the
imminent threat of infection from lethal yellowing as determined by the city
manager. The city manager shall set the boundaries for the areas requiring
mandatory inoculation.

Sec. 38-67. — Unlawful activities during state of emergency; mandatory
inoculation requirements.

(a) Upon declaration of a state of local emergency, it shall be unlawful for any
owner of any parcel of land within the city and within an area designated for
mandatory inoculation to keep or maintain any coconut palms, Christmas
palms or carriers of the lethal yellowing disease without providing
inoculation and treatment of same as approved by the city manager.

(b) If inoculation by the owner is mandated, it shall be the duty and the
responsibility of the owner of any such property or parcel of land to have
inoculated all such trees with an antibiotic approved by the city manager.

(c) Inoculations shall be performed 3 times a year, every 100 to 120 days, with
inoculations to begin within 15 days of public notification of mandatory
inoculation. Trees which were inoculated within 90 days prior to public
notification of the state of local emergency may continue inoculations at
intervals of 100 to 120 days from the last inoculation, provided proof of that
inoculation is given to the city manager within 30 days after public
notification. This schedule may be modified by the city manager as
necessary.

Sec. 38-68. — Public notice.
At least 15 days prior to the mandating inoculation periods, the city manager shall place a public notice in a newspaper of general circulation published within the city to inform property owners of their duties and responsibilities under this division.

Sec. 38-69. - Liability of owner for costs.

(a) Within the time period referred to in section 38-67 for mandated inoculation, the owner of the parcel of land on which said trees are located must inoculate or make provision for inoculation of trees by persons who have been approved by the city manager to provide the treatment necessary to abate the lethal yellowing disease.

(b) If the owner fails to provide for inoculation, the city may inoculate or have its agent inoculate such trees and the owner shall be liable for the expenses incurred by the city, its agents or contractors, in treating the affected coconut palm tree or trees. The expenses of inoculation shall constitute a lien on the real property upon which the inoculation has taken place in accordance with the procedures set forth in section 38-73.

Sec. 38-70. - Inoculation by owner.

(a) A property owner may at any time inoculate the property owner's trees; provided, however, if any such inoculation is required, the antibiotic and treatment procedures used must be approved by the city manager.

(b) Property owners who inoculate trees after the city manager has determined such inoculation is required must, within 10 days of having the treatment performed, submit to the city manager written proof of purchase for materials and equipment used in this treatment, and certification of compliance.

Sec. 38-71. - Determination of compliance with mandatory inoculation.

(a) All contractors approved by the city manager to inoculate affected palms and participating in inoculation must submit a list of inoculated trees within 5 days of inoculation to the city manager. These lists should include the name of the property owner, address, number of palms located on the property, and the number of palms inoculated. Failure to notify the city manager of all inoculations may result in loss of inoculation certification for that contractor.

(b) After the 15-day time period described in section 38-67 for compliance with provisions for inoculation, the city manager may make a determination of, and compile a list of, those persons owning land or parcels of property within the city upon which susceptible palm trees are located and who have not
complied with the requirements of this division or have not submitted a certificate of compliance.

Sec. 38-72. — Disposal of infected trees.

(a) It shall be unlawful for any owner of any parcel of land within the city to permit to remain on said property any tree infected with lethal yellowing disease. Trees determined to be infected with lethal yellowing by the city manager must be removed and disposed of by burial at the county landfill within 5 days after notification to the owner.

(b) If infected trees have not been removed by owner within 5 days after notification, the city shall abate the nuisance and shall, through its employees, servants, agents or contractors, be authorized to enter upon the property and take steps as are reasonably required to effect abatement.

Sec. 38-73. — Assessment for abating nuisance.

(a) After abatement of the nuisance by the city, the city manager shall calculate the cost of abatement, including administrative costs actually incurred by the city with respect thereto. Such assessments shall be legal, valid, and binding obligations upon the property against which made, until paid. The assessment shall become due and payable 30 days after receipt of any written form of actual notice of assessment, or posting such notice on the property, after which interest shall accrue at the rate of 10 percent per annum on any unpaid portion.

(b) The city manager shall mail a notice to the record owner or owners of each of said parcels of land described in the resolution, at the last available address for such owner or owners.

(c) If the owner fails to pay such assessment within 30 days after said assessment has been made, the city manager shall cause a certified copy of the assessment resolution to be filed in the office of the county clerk of courts, and the assessment shall constitute a lien against the property as of the date of filing such copy with the clerk and shall be collectible in the same manner as liens for nonpayment of property taxes.

(d) Collection of such assessments, with interest and a reasonable attorney's fee, may also be made by proceedings in a court to foreclose the lien on the assessment in the manner in which a lien for mortgages is foreclosed under the laws of Florida; and it shall be lawful to join in any complaint for foreclosure of 1 or more lots or parcels of land, by whomever owned, if assessed under the provisions of this section.

Sec. 38-74. — Right to hearing on assessment.
Within 30 days of the date of assessment, any owner shall have the right to request a hearing before the city manager to contest the assessment or imposition of the liens.

**Sec. 38-75. -- Service of notice.**

Notices under this division shall be issued in the same manner as notices for code enforcement are issued.

**Sec. 38-76. -- Introduction of diseased trees or carriers prohibited.**

No person shall knowingly sell, offer for sale, transport into the city for sale, plant or cause to be planted trees with lethal yellowing disease or trees that are carrying the disease. The city manager is authorized to conduct reasonable inspections to verify that this section is not being violated. The source of the trees must be submitted, in writing, to the city manager before trees are brought into the city.

**Sec. 38-77. -- Penalties; additional remedies.**

(a) In addition to any remedies and penalties contained elsewhere in this division, any person who violates any of the provisions of this division, upon a finding of such violation, shall be subject to the remedies and penalties contained in section 1-15. Each day of continued violation or noncompliance shall be considered as a separate offense.

(b) Additionally, the city may take such other lawful action in any court of competent jurisdiction as it is necessary to prevent, remedy or abate any violation, noncompliance or nuisance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

(c) All remedies and penalties provided for in this section shall be cumulative and independently available to the city and the city shall be authorized to pursue any and all remedies set forth in this section to the full extent then allowed by law.

**Secs. 38-78—38-100. -- Reserved.**

**DIVISION 3. -- CANOPY TREES**

**Sec. 38-101. -- Findings.**

The city council hereby makes the following findings:

(1) The city is endowed and forested by a wide variety of trees which give the city a unique visual character and enhance property values.
(2) Preservation and maintenance of healthy trees that provide a street canopy will maintain their aesthetic and environmental value.

(3) Preservation of these trees along streets is important for the following reasons:

a. To increase the economic value of properties and neighborhoods and encouraging quality development and redevelopment.

b. To protect the environment of the city.

c. To aid in the reduction of air pollution by protecting the capacity of trees to produce oxygen and sequester carbon dioxide.

d. To help reduce potential damage from wind.

e. To provide shade and act as a noise barrier.

f. To conserve, protect and enhance the aesthetic and scenic beauty of the city.

Sec. 38-102. - Purpose of division.

The purpose of this division is to:

(1) Designate, preserve, promote, and protect canopy trees on canopy streets in the city.

(2) Provide definitions and regulations that will protect canopy streets in the city and encourage property owners to maintain these trees.

Sec. 38-103. - Definitions.

As used in this division, the following words shall have the meanings set out herein unless some other meaning is plainly intended:

*Border tree* means a tree which has any part of its trunk (the part defined as between 12 inches to 54 inches above the ground surface), growing on the line established as the outer perimeter of the canopy street zone.

*Canopy* means the branchy layer of protected trees or bushes tending to arch near or over a public street, street, alleyway or alameda, or other sidewalk located within the canopy street zone.

*Canopy street* means a public road, street, alleyway or an alameda so designated by the council by appropriate legislation in accordance with the criteria set forth in this division.
Canopy street zone (CSZ) means a designated section of city right-of-way designated as a canopy street and the adjacent private property extending the designated width of the right-of-way from the roadway centerline to the private property line.

Clear zone means a canopy above the travelway trimmed to 14 feet above the road surface for vehicle clearance or a canopy above pedestrian zones trimmed to 8 feet above the ground surface and 2 feet laterally from the edge of the sidewalk.

Diameter at breast height (DBH) means the diameter of the trunk measured at 4.5 feet above the ground.

Disturbance means any action by a person, which causes irreparable harm to a protected tree. Actions which disturb a protected tree include, but are not limited to, damage inflicted upon the root system by heavy machinery, excessive trimming, 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, infliction of a trunk wound, measured at its greatest dimension, that is 50 percent or greater of the diameter of the tree, or removal of sufficient canopy to cause unnatural decline of the tree.

Drip line means an imaginary vertical line running from the outermost branches or portion of the tree crown to the ground.

Emergency means any human-made or natural disaster, which is specifically declared an emergency by resolution, geographically defining the emergency area, and adopted by the city council.

Flush cut or final cut means a cut that completes the removal or reduction of a branch or stub.

Invasive plant means any nonindigenous plant that grows aggressively enough to crowd out native plants.

ISA means International Society of Arboriculture.

Lion’s tailing means the removal of an excessive number of inner lateral branches from parent branches.

Native plant means an indigenous plant.

Naturalized plant means a plant that is not native to an area but has colonized without being aggressive.

Person means any individual, corporation, partnership, association, firm, trust, or other legal entity.
Private property means any property not owned by the government including all agricultural, residential, commercial, industrial, office, professional, institutional, or recreational property in incorporated Naples.

Protected tree means a tree of 4 inches DBH or greater with sustaining root system and crown and potential to provide shade over travelways.

Remove a tree means to relocate, cut down, poison, or in any other manner destroy, or cause to be destroyed, a tree as defined in this section. It includes topping, damage, or any other action that causes irreparable injury.

Stub cut means an undesirable short length of a branch remaining after a break or incorrect pruning cut is made.

Tree means a living woody, self-supporting plant, which has or can have a mature diameter of greater than 4 inches measured at 4.5 feet above the ground, more or less upright in growth habit, generally having 1 stem but may be multi-stemmed.

Tree location survey means a 1 inch equals 200 feet or less scale drawing which provides the following information: location of all trees, plotted by accurate techniques, common name of all trees, and diameter at breast height (DBH), printed on the proposed site plan. A site plan printed on an aerial photograph may be substituted if it is approved by the city manager prior to submittal and if it is a recent, legible aerial photograph that reflects existing site conditions (scale: 1 inch equals 200 feet or less).

Tree removal and protection permit means the legal authorization to remove trees and/or the requirements to protect the trees from disturbance on a lot, pursuant to the provisions of this division.

Sec. 38-104. - Exemptions.

This division shall not apply to:

(1) A street or street segment not designated as a canopy street by the city council by appropriate legislation designating canopy streets.

(2) Governmental personnel or agencies in the performance of their official duties.

(3) Tree removal necessary for the construction of public roads, utilities, stormwater facilities, or other government uses only where no reasonable alternative exists to preserve the protected tree.
The demolition of structures where the demolition does not require the destruction or have an impact within the drip line of any protected tree.

Pruning required to restore electric service during severe weather events or other electrical emergency situations.

Persons engaged in routine arboricultural maintenance or clear zone pruning for vehicles, pedestrians, signs, or other roadside appurtenances provided that such maintenance and pruning conforms to current American National Standards Institute (ANSI) A-300 standards, a copy of which will be made available at the city manager’s office, and does not compromise the integrity of the canopy to shade the street.

Brazilian pepper (Schinus terebinthifolius), melaleuca (Melaleuca quinquenervia), Australian pines (Casuarina spp.), except as otherwise designated, carrotwood (Cupaniopsis anacardioides), or any tree species prohibited in section 22-35(c), pertaining to control of specific noxious plants.

Sec. 38-105. — Canopy street designation.

The city council may designate streets as canopy streets and set standards for the implementation of this division by appropriate legislation after an advertised public hearing. Residents, the city council and the city manager may make requests for additional canopy streets. Requests will be coordinated and brought to the city council by the city manager for approval.

Canopy streets have the characteristics set forth in this division.

Canopy streets shall have appropriate signage defining the limits of the canopy street.

Sec. 38-106. — Authorization for removal or disturbance of protected trees in designated canopy street zones.

Restrictions. No permit shall be granted for the removal of any trees where the applicant has failed to design the proposed improvements to minimize the impacts on the canopy street zone, consistent with the permitted use of the property under the land development code. It shall constitute a violation of this section for any person to remove or disturb any protected tree within a canopy street zone unless it has been determined that such protected tree:
(1) Poses a safety hazard to people, buildings, structures, or vehicles;
(2) Is classified as an invasive species;
(3) Is diseased or so weakened by age, storm or other injury so as to pose a danger to persons, property, utilities, or improvements; or
(4) Unreasonably prevents a development of a lot, parcel, or other lands or the physical use thereof.

(b) Petition for authorization; tree location survey. When authorization for protected tree removal or disturbance is required, a petition meeting the requirements of this section shall be submitted for review by the city manager. The city manager shall issue a written authorization for removal, disturbance, or pruning of trees only when it is determined that the action proposed is necessary, and will not be contrary to this division. The written petition shall constitute a written authorization for city staff to enter the property to conduct inspections to determine if the applicant is in compliance with the provisions of this section. A tree location survey for the lot must be submitted with the petition. The tree location survey shall show the information required in subsection (c) of this section at a scale sufficient to enable the determination of matters required under these regulations. Any authorization for tree removal or disturbance shall specify the location approved, the species of tree, the action allowed to be performed, the duration of the approval, and any other requirement deemed necessary by the city manager to regulate the disturbance or removal of canopy street trees in the city, in accordance with this division.

(c) Permitting procedure. For the removal of trees in a canopy street zone, a tree removal and protection permit is required before any tree removal within the canopy street zone occurs. A petition meeting the requirements of this section shall be submitted to the city manager for review and recommendation, prior to or concurrent with the subdivision plans or an individual site and development plan or an application for a building permit, whichever is first required. Where development requires approval under the land development code, said tree removal and protection permit shall not be issued until after the preliminary subdivision plan or site and development plan is approved.

(1) Requirements for canopy street zone tree protection permits:
   a. The petitioner shall submit a plan showing the proposed scope of work to include protected trees by species and DBH, the scaled location of the canopy street zone, and the proposed location of the tree protection barricades.
   b. If encroachments into the canopy street zone are proposed, a plan will be required to be prepared by an ISA certified arborist, an ASCA certified consulting arborist, a landscape architect, or other specialist in the field of arboriculture specifying the methods to be utilized to preserve the vegetation. This plan shall address protection of the root...
system, crown, and stems of the trees, a means of supplying water and essential elements to the root system, and the proposed location of the tree protection barricades. This plan shall be subject to approval by the city manager.

(2) **Pre-petition inspection service.** The city manager shall be available for pre-petition conferences or inspections of the site involved.

(3) **Approval or denial.** Upon receipt of the complete petition, the city manager will conduct a field inspection to determine if the information is sufficient for review, and if the proposed plan is in compliance with the provisions of this section. Upon completion of the review, the city manager will notify the petitioner that the petition is either insufficient, does not comply with the provisions of this section, or that the permit is approved, or approved with stipulations.

(4) **Notification and inspection when protected tree dies.** If a protected tree dies after a tree removal and protection permit has been issued and prior to the issuance of a certificate of occupancy or completion, the petitioner shall notify the city manager and request an inspection, prior to the removal of the dead tree. An inspection shall be made within 2 days of the notification by the petitioner. Failure to notify the city manager prior to the removal of any canopy street zone protected tree constitutes a violation of this section.

(5) **Final inspection.** All permits will require a final inspection to ensure compliance with the provisions of this section. Final inspections shall be scheduled by the petitioner after completing the project.

(d) **Maximum trimming.** Trimming shall be limited to 14 feet clearance over the travelway for vehicles and 8 feet over walkways for pedestrian clearance unless exempt by section 38-104.

(e) **Border trees.** Border trees shall be included in the canopy street zone.

Sec. 38-107. — Protection of canopy street trees.

(a) **Requirements for utility pruning.** Utilities must conform to current ANSI A-300 standards when performing line clearing work in canopy street zone to balance the requirement to preserve the canopy and maintain safe, reliable electric service.

(1) Franchised utilities must notify the city manager by e-mail or mail 30 business days prior to any maintenance utility line clearing work in canopy streets.

(2) Franchised utilities must have an ISA certified arborist directing the pruning of trees in a canopy street.

(3) Utility pruning should only provide minimum safe clearance to protect energized power lines with consideration for the combined movement of the conductors near trees in severe weather, the species of the tree, and the voltage of the conductor.
(b) *Location of protected trees.* All protected trees which will be disturbed by proposed activities shall be physically located on-site and shown on the site plan submitted for any project or site development and as part of the tree removal request in the tree removal and protection permit petition.

(c) *Drip line preservation.* During development, construction activity, and utility construction, all areas surrounding the trunk of a protected tree within a minimum of 50 percent of the radius of the drip line shall be protected from activities that may disturb or injure the tree (such as cut and fill activities, building pad placements, road bed construction, construction material storage, driving or parking of equipment, or trenching, etc.), except where specific arboricultural analysis is provided by the applicant to demonstrate that there is no likelihood of adverse impact to the tree.

(d) *Canopy and root pruning.* When activities affect the protected tree so that more than 25 percent of the area within the drip line is disturbed, or when pruning must be performed on the crown of a protected tree, the following arboricultural techniques are required:

1. When more than 25 percent of the area within the drip line will be disturbed, the affected roots must be severed by clean pruning cuts where the activity impacts the roots. Roots can be pruned by utilizing trenching equipment that is specifically designed for this purpose or by hand digging a trench and pruning roots with a chain saw, pruning saw or other equipment designed for tree pruning. Roots within the drip line must be pruned to a depth of 12 inches below existing grade or to the depth of the disturbance if less than 12 inches from the existing grade. When underground utilities are to be installed through the drip line, root pruning requirements may be waived if the lines are installed via tunneling or directional boring as opposed to trenching.

2. All pruning of protected trees shall conform to the current ANSI A-300 standards and be supervised by an ISA certified arborist. There shall be no flush cuts, stub cuts, or lion's tailing of the crown of the tree.

3. It shall be a violation of this section to perform the techniques of topping or other pruning techniques that remove the vertical leader stems or other pruning which results in an unnecessary reduction of shade of protected trees in the permit area. Topping shall be considered as cutting a major branch or stem to a stub or lateral branch not sufficiently large enough to assume the terminal role.

(e) *Tree protection barrier requirements and canopy street zone protection.* During development activities or any other potential disturbance that will impact the area within the drip line of any protected tree, protective barriers shall be placed around each protected tree to prevent the destruction or
damaging of roots, stems, or crowns of such trees. Barriers shall remain in place and intact until the work is completed, however, barriers may be removed temporarily to accommodate construction needs, provided that the manner and purpose for such temporary removal will not harm the tree and is approved by the city manager. The following are the minimum requirements for protective barriers and CPZ protection:

(1) Protective posts shall be placed so as to protect all areas within a minimum of 50 percent of the distance from the trunk to the drip line boundary for each protected tree, except in right-of-way or utility placement areas where posts shall be placed so as to protect a minimum of 50 percent of the area within the drip line where approved by the city manager.

(2) Posts shall be a minimum of 2 inches by 4 inches or larger wooden post, 2 inches outer diameter or larger or other post material of equivalent size; shall be connected with a minimum of at least a 1-inch by 4-inch wooden board; and shall be clearly flagged. The maximum distance allowed between upright posts is 8 feet. Other similar methods, such as construction fencing, may be permitted if approved in writing by the city manager in advance of installation.

(3) Posts shall be implanted deep enough into the ground to be stable and extend a minimum height of 4 feet above the ground.

(4) Where development activity is permitted within 50 percent of the radius within the area of the drip line of a protected tree (as measured by the longest radius from trunk to drip line), the city manager may require additional tree protection provisions to be incorporated in the activity permit.

(5) No storage or movement of equipment, store material, debris, or fill soil is allowed within 50 percent of the area within the drip line of any protected tree, (as measured by the longest radius from trunk to drip line).

(6) No equipment shall be cleaned, or waste materials such as paints, oils, solvents, asphalt, concrete, mortar, or any other material shall be stored, within 50 percent of the area within the drip line on any protected tree (as measured by the longest radius from trunk to drip line).

(7) No damaging wires, signs or permits shall be fastened to any protected tree.

(8) Silt barriers, hay bales, or similar effective erosion silt control barriers will be required in any area where erosion or siltation may cause damage to protected trees.

(9) Where elevation changes are proposed within 50 percent of the area within the drip line of any protected tree (as measured by the longest radius from trunk to drip line), the applicant will be required to install retaining walls or drain tiles unless the cost of such walls/tiles exceeds the replacement
value of the trees. The applicant shall have the choice of the type or design. These root protection measures shall be in place prior to the deposition of fill, or excavation of soil from the drip line.

(f) **Inspections.** The city manager shall conduct periodic inspections of the site during the permitted activity in order to ensure compliance with this section.

**Sec. 38-108.** Emergency tree removal.

When it is necessary to expedite the removal of damaged or destroyed protected trees in the interest of the public safety, health, and general welfare following high winds, storms, hurricanes, tornadoes, floods, or other human-made or natural disasters, the city council may, by resolution, suspend the requirements of this division during the period of any declared emergency.

**Sec. 38-109.** Appeals.

Any person aggrieved by the administration or interpretation of any of the terms or provisions of this division by the city manager may appeal to the tree board, which, after a hearing, with notice to the aggrieved person, may reverse, affirm, or modify, in whole or in part, the order, requirement, decision, or determination as ought to be made, and to that end shall have the powers of the city manager or official from whom the appeal is taken. Any action pursuant to this section shall not stay any enforcement proceedings. Appeals from the tree board shall be brought within 30 days before the city council pursuant to article I of this chapter.

**Sec. 38-110.** Prohibitions.

Unless exempt under provisions of this division, it shall constitute a violation of this division for any person to remove a tree or trees or cause a tree or trees to be removed or to prune in canopy street designated areas, except in accordance with the tree removal and protection permit issued by the city manager pursuant to the provisions of this division.

**Sec. 38-111.** Penalties; additional remedies.

Violation of the provisions of this division or failure to comply with any of its requirements shall be punishable as provided in section 1-15, and in addition or in the alternative:

(1) The city shall withhold the issuance of any required certificate of occupancy, permit or inspection on any property until the provisions of this division, including all conditions of any permits issued under this division, have been complied with.
(2) If any tree, not meeting the removal criteria provided in this division, has been removed in violation of the provisions of this division, said tree shall be replaced on a DBH inch-for-inch basis. The term “inch-for-inch” shall mean that for each DBH inch of tree improperly removed or destroyed, replacement trees having the minimum replacement tree size described in this division shall be required and the total DBH in inches of all replacement trees shall equal or exceed the combined DBH inches of all trees improperly removed. If the applicant can demonstrate that the planting of replacement trees on a property would be impractical due to the existence of other trees of a species protected by this division within 30 feet of all available land for the planting of trees on said property, the number of replacement trees may be reduced, and the applicant shall be required to pay to the city’s tree bank account the sum of $100.00 for each inch of DBH of those replacement trees which are not required to be planted as a result. Additionally, for each tree improperly removed a fine of $100.00 shall be deposited into the tree bank account. The tree board may grant variances from this subsection, subject to the standards specified in this chapter, and take into consideration whether the applicant meets the very low and low income standards as published by the city manager.

(3) If any tree has been removed in violation of this division, and the property owner of the property from which said tree was removed can demonstrate that said tree was at the time of removal eligible for removal under this division, a fine of $200.00 per tree removed shall be deposited into the tree bank account.

(4) If a permit was not obtained as required pursuant to this division, the required permit may be issued after the tree work has been commenced by the property owner, and the fee for the same shall be $100.00. Nothing contained herein shall be construed to authorize the commencement of any tree work under this division without required permit for same.

(5) In addition to the remedies provided in this section, this division may be enforced as otherwise provided in this Code for the enforcement of any Code violation.

(6) The violator shall pay all costs and expenses involved in the case. Each day violation continues shall be considered a separate offense. Nothing contained in this division shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

Sec. 38-112. -- References to other regulations.

Where any provision of this division refers to or incorporates another provision, section, statute, rule, regulation, policy, official publication, or other
Chapter 38 – TREE PROTECTION.

ARTICLE I. - IN GENERAL

Sec. 38-1. - Purpose and intent.

The purpose and intent of this article is to establish regulations governing the protection and management of protected trees and city-owned trees, and for the management of diseased trees. Trees are a valuable community resource that serve to improve air and water quality, reduce soil erosion, reduce noise and glare, provide habitat for wildlife, moderate the climate and enhance community livability and property values.

Sec. 38-2. – Definitions.

For the purposes of this article, unless otherwise stated, the following terms or words used herein shall be interpreted as follows:

*Alter or Alteration* means to cut, remove, defoliate or destroy a tree, above or below ground level, by any means.

*ANSI* means the American National Standards Institute, Inc.

*Arborist* means a professional who practices arboriculture and focuses primarily on the health and safety of plant and tree species.

*Building Official* means the director of the department of building as established in section 2-371 of the Code of Ordinances.

*Caliper* means the diameter of any tree trunk as measured at a predetermined point of measurement. Caliper for trees up to four inches shall be measured six inches above the soil line. Trees greater than four inches in caliper shall be measured 12 inches above the soil line. Caliper measurements shall be used when measuring for replacement trees.

*Canopy* means the above ground portion of a tree or plant community formed by the plant crown.
**Canopy Street** means a public road, street, alleyway or an alameda so designated by the city council by appropriate legislation in accordance with the criteria set forth in section 38-104.

**Canopy Street Zone** means a section of a public road, street, alleyway or an alameda so designated by the city council by appropriate legislation in accordance with the criteria set forth in section 38-104.

**Canopy Tree** means a tree, usually with one vertical stem or main trunk, that naturally develops a more or less distinct and elevated crown and provides at maturity a minimum shade crown of 30 feet in diameter or greater. Trees may be grouped to achieve the 30-foot canopy spread.

**City Tree** means any tree, including any palm, located in whole or in part within any public right-of-way; lying between property lines and streets, medians, cul-de-sacs, alleys, and traffic islands; located in any parks; and any other tree that has been planted or accepted by the city for ownership, care and maintenance.

**Clear Zone** means canopy above the travel way trimmed to 17 feet above the road surface for vehicular clearance or above pedestrian zones trimmed to eight feet above the ground surface and two feet laterally from the edge of the sidewalk. City council may designate lower clearance above road surface, by appropriate legislation, to protect the canopy of historic trees or private trees where the canopy extends over the road, provided said road is posted as a low clearance road.

**Clearance Pruning** means the pruning of a tree that is required to avoid damage or danger related to structures, power distribution and property, as defined in the current ANSI A300 standards.

**Critical Root Zone** means a circle on the ground corresponding to the drip-line of the tree.

**Crown** means the branches, leaves, fronds, and reproductive structures extending from the trunk or main stem of a tree or plant community.

**DBH (diameter at breast height)** means a standard measurement of a tree trunk diameter as measured at a predetermined point of measurement. Trunks of existing trees shall be measured at four feet, six inches above the soil line. For multi-trunked trees, the DBH means the cumulative diameter of the two largest trunks measured at four feet, six inches above the soil line.

**Dead** means more than 50 percent of the tree is dead, is a hazardous tree as defined herein, or in a state of irrecoverable decline.
**Department** means the community services department.

**Deteriorated Tree or Deterioration** means a tree that is degenerated by age, storm damage, vehicular accidents or disease to the point that death of the tree is inevitable.

**Development Order** means any order granting, denying, or granting with conditions, an application for a development permit.

**Disturbance** means any action by a person that causes irreparable harm to a protected tree. Actions that disturb a tree include, but are not limited to, damage inflicted upon the root system by heavy machinery, excessive trimming, changing the natural grade above the root system or around the trunk, damage allowing infection or pest infestation, application of herbicides or other chemical agents, infliction of a trunk wound, measured at its greatest dimension, that is 50 percent or greater than the diameter of the tree, or removal of sufficient canopy to cause unnatural decline of the tree.

**Drip-Line** means a vertical line from the horizontal extremity of the canopy of a tree to the ground. For trees with canopies set off-center, the drip-line will be projected based upon the average diameter of the existing drip-line using the tree trunk as its point of origin.

**Emergency** means any occurrence or imminent threat thereof, whether natural or caused by humans, which results in or may result in substantial damage to and/or loss of property.

**Exempt Tree** means a tree that does not require a permit for its removal.

**Florida Exotic Pest Plant Council’s List of Invasive Plant Species Category 1** refers to a list of invasive exotic trees and plants, identified by the Florida Exotic Pest Plant Council, that are altering native plant communities by displacing native species, changing community structure or ecological functions, or hybridizing with natives. [The most current list may be found at the Florida Exotic Pest Plant Council website: http://www.fleppc.org/list/list.htm.]

**Hazardous Tree** means a tree irreparably diseased or one that presents a danger of falling and cannot be controlled or remedied through reasonable preservation and/or preventative procedures and pesticides such that the public health or safety requires its removal.
Hatracking means the removal of 30 percent or more of a canopy.

Historic Tree means any city tree that is 36 inches in DBH or greater and any city tree designated as a historic tree by the city council because of its size, age, historic association, unique character or ecological value. A historic tree may also be known as a heritage tree.

Infected Tree means any tree infected with a disease that is lethal to the host tree or a species of tree.

Invasive Plant means any nonindigenous invasive exotic tree or plant that grows aggressively enough to crowd out native trees or plants and is listed on the Florida Exotic Pest Plant Council’s List of Invasive Plant Species - Category 1 and 2.

ISA refers to the International Society of Arboriculture.

ISA Certified Arborist refers to an arborist who has current credentials issued by the ISA verifying the arborist has met all professional requirements for certification and therefore is proficient in managing the health and safety of plants and trees.

Lions-tailing means the removal of an excessive number of inner lateral branches from parent branches.

Native Plant means an indigenous plant.

Permit means a tree alteration permit.

Protected Tree means any cypress or sand pine or dwarf oak scrub association; any tree with a DBH of four inches or greater located on undeveloped land that is zoned for uses other than single-family residential and undeveloped single-family residential land that is not platted.

Pruning means removing or reducing tree limbs to benefit the overall health and safety of a tree.

Pruning Standards means pruning in accordance with current standards established by the ANSI A300.

Public Nuisance, as related to trees, means any tree infected with a plant disease known as the lethal yellowing disease, including, without limitation, all species of coconut palm and any tree that is a carrier of the
disease; or any other disease that has been declared a public nuisance by the state.

**Removal of a Tree** means either actual removal of a tree from the ground in which it grew, transplanting a tree, or effectively removing a tree by damaging the trunk, topping, damaging or removing major limbs, roots, or enough canopy volume so that the tree dies, declines beyond recovery, or becomes a hazard to public safety and must be removed.

**Replacement Tree** means any tree planted as a condition of approval of a tree removal permit, as a requirement for violating this ordinance by altering a city tree or protected tree without a permit, or as may be required to meet the conditions of this ordinance.

**Right-of-way** means a public right-of-way, public easement, highway, street, bridge, roadway, or alley for which the city has jurisdiction and control and may lawfully grant access pursuant to applicable law, and includes the ground surface, the air space over the ground surface and the area below the ground surface. Right-of-way also means a strip of land dedicated as an easement or deeded in fee simple ownership to the public and accepted by the city, with such land being occupied or intended to be occupied by a street, driveway, access road, crosswalk, railroad, electric power line, oil or gas pipeline, street sign, street light, traffic signal, storm drainage system, water main, sanitary or storm sewer main, sidewalk, bicycle path, shared use path, or any similar conventional or special use or public infrastructure and facilities. Right-of-way shall not include private property with the exception of public easements.

**Size** means the size of a city tree as determined by the DBH or caliper.

**Stop Work Order** means a notice issued by the city manager or building official to cease work or other activity on any site for which a permit has been issued or is subject to issuance.

**Stub Cut** means an undesirable short length of a branch remaining after a break or an incorrect pruning cut is made.

**Top and Topping** means the removal of 30 percent or more of a tree’s canopy.

**Tree** means a living, self-supporting plant, that has or can have a mature diameter of greater than four inches measured at four and one-half feet above the ground, more or less upright in growth habit, generally having one stem but may be multi-stemmed and shall include palm trees.
Tree Board means the community services advisory board that has been designated as the City of Naples Tree Board by the city council.

Tree Alteration Permit means the legal authority that must be obtained from the department before any person alters, disturbs or trims a city tree or protected tree.

Tree Protection Area means an area surrounding a tree encompassed by the drip-line or projected drip-line of a tree.

Tree Protection Barrier means a suitable structure installed as close as possible to the perimeter of the tree protection area prior to construction, land clearing, or demolition.

Trim means to cut branches, twigs, limbs, or foliage, but not to alter, by removing, defoliating, or destroying protected trees or city trees.

Sec. 38-3. – Tree Board.

(a) Creation and establishment of a city tree board. The city hereby establishes a tree board for the purposes of enforcement of this chapter. The community services advisory board shall act ex-officio as the tree board.

(b) Compensation. Members of the city tree board shall serve without compensation.

(c) Duties and responsibilities.

(1) It shall be the responsibility of the tree board to develop, recommend for city council approval, and to keep updated, a written plan for the care, preservation, pruning, planting, replanting, removal, or disposition of city trees and protected trees. Such plan with any amendments, shall be presented to city council and, upon approval, shall constitute the comprehensive city tree plan for the city. The board shall also be responsible for developing and recommending regulations for maintenance of city trees. Such proposed regulations shall be presented to city council and, upon adoption, shall be incorporated into the Code of Ordinances and enforced, as set out in this chapter or in section 1-15.
(2) The board, when requested by the city council, shall study, investigate, and make findings, reports, and/or recommendations upon any special matter or question coming within the scope of its work.

(3) The board shall recommend policies for city council approval that may require property owners, adjacent to public rights-of-way, including canals and waterways, to trim or remove trees determined to be a hazard or obstruction to vehicular, vessel, or pedestrian traffic. The board shall also recommend policies that may require the treatment or removal of any tree located on public or private property that is determined to be infectious due to insect infestations and/or diseases that could spread to other noninfected trees.

(4) The board shall hear appeals arising from a city manager decision to deny a tree alteration permit application as set forth in this chapter.

(d) Review of actions by city council. The city council shall have the right to review any actions of the board. Any person seeking a permit concerning a city tree upon or adjacent to the person’s property may appeal any ruling or order of the board to the city council, which may hear the matter and make a final decision.

Sec. 38-4. – Public tree care.

(a) The city manager is responsible for the care, maintenance and protection of city trees. The city manager shall make reports and requests for funds for the maintenance and protection of city trees to city council as part of the annual budget approval process.

(b) Property owners must submit a completed tree alteration permit application to the city manager for permission to alter or trim any city tree or protected tree. Any approved alteration or trimming must be performed by a contractor licensed, registered, certified or otherwise qualified to operate within the city.

Sec. 38-5. – Pruning standards.

City trees shall be properly pruned in accordance with ANSI standards.

Sec. 38-6. - Tree topping or hatracking.
It shall be unlawful and prohibited for any person or firm to top or hatrack any city tree. Trees damaged by storms or other causes, certain trees under electric power transmission and other utility lines or other obstructions, and certain species of trees may be exempted from this prohibition, as determined by the city manager.

Sec. 38-7. - Pruning for corner, sign and signal clearance.

City trees obstructing the visibility of corners, street signage, directional signage, or traffic signals within the city shall be pruned so the branches do not obstruct the visibility of pedestrians or vehicles.

Secs. 38-8—38-30. - Reserved.

ARTICLE II. - TREE PROTECTION

DIVISION 1. – THREATENED AND ENDANGERED TREE PROTECTION.

Sec. 38-31. - Alteration of protected trees.

(a) Purpose. The purpose of this section is to establish protective regulations for certain native trees and other protected trees within the city. These trees are of special concern because they are considered threatened and endangered species.

(b) Prohibitions. Alteration, without prior issuance of a permit, of any protected tree is prohibited.

(c) Exemptions. Approvals under this section are not required for:

1. Alteration by a Florida licensed land surveyor in the performance of duties, provided such alteration is the minimum necessary and is limited to a swath, three feet or less in width. The tree removals shall require a permit.

2. Alteration by a property owner of protected trees that were voluntarily planted, provided that the tree is less than four inches at DBH, the voluntary nature of the planting is documented, and provided that such planting was not required for mitigation or as part of any prior development approval.

3. Alteration by a property owner who desires to trim away freeze-damaged or dead plant tissue, provided such trimming occurs a minimum of nine months after the freeze and provided the
trimming is limited to removal of the said freeze-damaged or dead plant tissue.

(4) Removal of trees listed on the Florida Exotic Pest Plant Council’s List of Invasive Plant Species Category 1. [The most current list may be found at the Florida Exotic Pest Plant Council website: http://www.fleppc.org/list/list.htm]

(d) Permit procedures:

(1) Application. A tree alteration permit application shall be submitted, by the owner of a property upon which the protected tree is located, in writing to the city manager through the designated department. The application must be completed in full and the permit fee, as set forth in appendix A to this code, must be paid before the application can be processed.

(2) Application review.

a. After receipt of a completed permit application and application fee or receipt of additional information, the department shall examine the application or information and notify the applicant of any apparent errors or omissions, and request such additional information as may be necessary for processing the application.

b. After determining the application is complete, the department shall take one of the following actions:

1. Approve the application with or without specific conditions reasonably necessary to ensure compliance with this section.

2. Deny the application with an explanation of what changes, if any, in the application are necessary for approval of the application.

3. Deny the application with reasons clearly stated.

c. Any approval issued pursuant to this section shall expire within 60 days, unless otherwise specified in the conditions of approval.

(3) Standards for approval or denial of application.

a. No approval shall be granted for the alteration of any protected trees that contain active nests of migratory birds, bird species listed as species of special concern, rare,
threatened, or endangered by the Florida Fish and Wildlife Commission, or that are a breeding area for a colony of birds.

b. No approval shall be granted for the alteration of protected trees by mechanical, chemical, or other means except as provided below.

c. An approval shall be granted for the removal or alteration of protected trees to provide vehicular access to a property or when such removal or alteration is necessary to make any reasonable use of the property, and the applicant has demonstrated that no other alternatives exist.

d. An approval shall be granted for the removal and/or alteration of protected trees within a dedicated utility easement or road right-of-way to provide utilities with reasonable access subject to the following guidelines:

1. The width of protected tree area affected by the access way shall not exceed eight feet.

2. The applicant must demonstrate that no other access or alternatives exist, and the utility controlling the easement has confirmed this in writing.

3. The access way should be designed and located in such a manner that the least amount of damage to the protected trees is ensured.

4. The applicant must submit a proposal for mitigation or replacement of the altered trees and this proposal must be accepted by the city.

Secs. 38-32—38-60. - Reserved.

DIVISION 2. - LETHAL TREE DISEASE

Sec. 38-61. Applicability.

This division shall apply to and be enforced in all areas of the city.

Sec. 38-62. Declaration of lethal disease emergency.

Any tree in which a lethal disease is present is declared a public nuisance and eradication is declared an emergency. Pursuant to F.S. ch. 252, that authorizes the waiver of procedures and formalities otherwise required of political subdivisions in order to take whatever prudent action is necessary to ensure the health, safety and welfare of the community in the event of a state of emergency, the mayor of the city, or the vice-mayor in the mayor's absence, or the city manager in the absence of the mayor and vice-mayor, is hereby designated and empowered
to declare a local state of emergency in the event the threat of the lethal disease is imminent and a quorum of the city council is unable to meet. The determination that such an emergency exists in the case of lethal disease shall be made upon the recommendation of the city manager after the city manager has received written opinions from two ISA certified arborists that lethal tree disease is present within the city's boundaries or surrounding areas and warrants the declaration of a lethal disease emergency to protect the city's urban forest.

Sec. 38-63. Extent of state of local emergency.

Upon declaration, the state of emergency from the lethal disease shall continue until the person authorized to declare a local state of emergency determines that the threat or danger no longer exists and terminates the local state of emergency. The declaration or termination of a local state of emergency is subject to ratification or rejection by the city council at the next regularly scheduled meeting after the declaration or termination occurs.

Sec. 38-64. Emergency measures.

In addition to any other powers conferred by law, the mayor of the city, or the vice-mayor in the mayor's absence, or the city manager in the absence of the mayor or vice-mayor, may order and promulgate all or any of the following emergency measures to be effective during the period of such declared emergency, and with such limitations and conditions as may be deemed appropriate to protect against damage or loss of property by lethal disease:

(1) Require the mandatory treatment of all species affected by lethal disease in all areas designated for treatment by the city manager.

(2) Require removal of species found to be affected by, or a carrier of, lethal disease by the property owner within five days from the date the trees are found to be diseased or as determined by the city manager.

(3) Utilize all available resources of the city government as reasonably necessary to cope with the emergency, including expenditures, as budgeted for the survey of the existing species population, the treatment of city-owned species, the treatment of privately-owned species found not to be in compliance with this division, the removal of infected trees on city-owned property and on private property when the owner has failed to comply with mandated treatment and/or removal, and make other reasonable expenditures in implementing this division.

(4) Have suspected species treated or have such species removed in lieu of mandating treatment or removal by the landowner, based on
a cost-benefits analysis.

(5) Curtail the transportation of species into or out of the city.

Sec. 38-65. Designation of areas of mandatory treatment.

The areas in which mandatory treatment is required shall be designated based on the presence of species infected by the lethal disease or the imminent threat of infection from lethal disease as determined by the city manager. The city manager shall set the boundaries for the areas requiring mandatory treatment.

Sec. 38-66. Unlawful activities during state of emergency; mandatory treatment requirements.

(a) It shall be unlawful for any owner of any parcel of land within the city and within an area designated for treatment to keep or maintain any species or carriers of the lethal disease without providing treatment of same as approved by the city manager.

(b) If treatment by the owner is mandated, it shall be the duty and the responsibility of the owner of any such property or parcel of land to have treated all such species with pesticides approved by the city manager.

(c) Treatment shall be determined based on lethal disease, to include amount of product, dosage amount of product, application rate, and duration of treatment. This schedule may be modified by the city manager as necessary.

Sec. 38-67. Public notice.

Prior to the mandating treatment periods, the city manager shall place a public notice in a newspaper of general circulation published within the city to inform property owners of their duties and responsibilities under this division.

Sec. 38-68. Liability of owner for costs.

(a) Within 15 days of mandated treatment, the owner of the parcel of land on which said trees are located must treat or make provision for treatment of trees by persons who have been approved by the city manager to provide the treatment necessary to abate the lethal disease.

(b) If the owner fails to provide for treatment, the city may treat or have its agent treat such trees and the owner shall be liable for the expenses incurred by the city, its agents or contractors, in treating the affected species. The expenses of treatment shall constitute a lien on the real property upon which the treatment has taken place in accordance with the procedures set forth in section 38-73.
Sec. 38-69. Treatment by owner.

(a) A property owner may at any time treat the property owner’s trees; provided, however, if any such treatment is required, the pesticide and treatment procedures used must be approved by the city manager.

(b) Property owners who treat trees after the city manager has determined such treatment is required must, within ten days of having the treatment performed, submit to the city manager written proof of purchase for materials and equipment used in this treatment, and a certification of compliance.


(a) All contractors approved by the city manager to treat affected species and participating in treatment must submit a list of treated species within five days of treatment to the city manager. These lists should include the name of the property owner, address, number of species located on the property, and the number of species treated. Failure to notify the city manager of all treatment may result in loss of treatment certification for that contractor.

(b) After the 15-day period for compliance with provisions for treatment, the city manager may make a determination of, and compile a list of, those persons owning land or parcels of property within the city upon which susceptible species are located and who have not complied with the requirements of this division or have not submitted a certificate of compliance.

Sec. 38-71. Disposal of infected species.

(a) It shall be unlawful for any owner of any parcel of land within the city to permit any tree infected with lethal disease to remain on said property. Trees determined by the city manager to be infected with lethal disease must be removed and disposed of in a proper and approved method as determined at the time of the declaration within five days after notification to the owner.

(b) If infected species have not been removed by owner within five days after notification, the city shall abate the nuisance and shall, through its employees, servants, agents or contractors, be authorized to enter upon the property and take steps as are reasonably required to effect abatement.

Sec. 38-72. Assessment for abating nuisance.

(a) After abatement of the nuisance by the city, the city manager shall calculate the cost of abatement, including administrative costs incurred by the city
with respect thereto. Such assessments shall be legal, valid, and binding obligations upon the property, until paid. The assessment shall become due and payable 30 days after receipt of any written form of actual notice of assessment, or posting such notice on the property, after which interest shall accrue at the rate of 10 percent per annum on any unpaid portion.

(b) The city manager shall mail a notice to the record owner or owners of each of said parcels of land described in the assessment resolution, at the last available address for such owner or owners.

(c) If the owner fails to pay such assessment within 30 days after said assessment has been made, the city manager shall cause a certified copy of the assessment resolution to be filed in the office of the county clerk of courts, and the assessment shall constitute a lien against the property as of the date of filing such copy with the clerk and shall be collectible in the same manner as liens for nonpayment of property taxes.

(d) Collection of such assessments, with interest and reasonable attorney fees, may also be made by proceedings in a court to foreclose the lien on the assessment in the manner in which a lien for mortgages is foreclosed under the laws of Florida.

Sec. 38-73. Right to hearing on assessment.

Within 30 days of the date of assessment, any owner shall have the right to request a hearing before the city manager to contest the assessment or imposition of the liens.

Sec. 38-74. Service of notice.

Notices under this division shall be issued in the same manner as notices for code enforcement are issued.

Sec. 38-75. Introduction of diseased trees or carriers prohibited.

No person shall knowingly sell, offer for sale, transport into the city for sale, plant or cause to be planted, species with lethal disease or species that are carrying the disease. The city manager is authorized to conduct reasonable inspections to verify that this section is not being violated. The source of the species must be submitted, in writing, to the city manager before species are brought into the city.

Secs. 38-76--38-100. Reserved.

DIVISION 3. – City Tree Protection
Sec. 38-101. - Findings.

The city council hereby makes the following findings:

(1) The city is endowed and forested by a wide variety of trees that give the city a unique visual character and beauty and enhance property values.

(2) Preservation and maintenance of healthy trees that provide a street canopy will maintain their aesthetic and environmental value and the city’s unique visual character.

(3) Preservation of city trees along streets is important for the following reasons:
   a. To increase the economic value of properties and neighborhoods and encourage quality development and redevelopment.
   b. To protect the environment of the city.
   c. To aid in the reduction of air pollution by protecting the capacity of trees to produce oxygen and sequester carbon dioxide.
   d. To help reduce potential damage from wind.
   e. To provide shade and act as a noise barrier.
   f. To conserve, protect and enhance the aesthetic and scenic beauty of the city.

Sec. 38-102. - Purpose of division.

The purpose of this division is to:

(1) Preserve, promote, and protect city trees and other protected trees.

(2) To designate, preserve and protect canopy streets and historic trees that enhance the verdant character of the city.

(3) Establish permit procedures for the alteration, disturbance or trimming of city trees.

Sec. 38-103. - Exemptions.

This division shall not apply to:

(1) The demolition of structures where the demolition does not require the destruction or have an impact within the drip-line of any protected tree and, no materials or vehicles will be stored or parked at any time during the demolition of structures.
(2) Pruning required to restore electric service during severe weather events or other electrical emergency situations.

(3) Removal of trees listed on the Florida Exotic Pest Plant Council’s List of Invasive Plant Species Category 1, as it may be amended from time to time; however, no removal of a suspected invasive exotic tree shall occur until the city manager, through the designated department, has confirmed the species of tree and that no permit is required. [The most current list may be found at the Florida Exotic Pest Plant Council website: http://www.fleppc.org/list/list.htm.]

Sec. 38-104. - Canopy Street designation.

The city council may designate streets as canopy streets or canopy street zones and may revise the designation by ordinance. Residents, city council and the city manager may petition the city council to designate a street or section of a street as a canopy street. Requests will be coordinated and brought to the city council by the city manager for approval.

(a) Petitioners or applicants must submit a canopy street designation application to the city manager for consideration. The city manager, after reviewing the application, will submit the application to the tree board for review. The tree board will review the application and provide the city manager with a recommendation to approve or deny the application. Once the city manager has the tree board and staff recommendations, the application will be submitted to city council for consideration.

(b) To be eligible for city council designation, canopy trees must form a unique visual character along or over a public roadway.

(c) Canopy streets may have a clear zone of less than 17 feet above the roadway surface to protect the canopy of historic trees or private trees with a canopy extending over the road, provided said roadway is posted as a low clearance road.

Sec. 38-105. - Authorization for removal or alteration of City Trees

(a) Restrictions. No permit shall be granted for the removal of any trees where the applicant has failed to design the proposed improvements to minimize the impacts on the canopy street zone, consistent with the permitted use of the property under the land development code. It shall constitute a violation of this section for any person to remove or disturb any protected tree within a canopy street zone unless it has been determined that such protected tree:

(1) Poses a safety hazard to people, buildings, structures, or vehicles;

(2) Is classified as an invasive species;

(3) Is diseased or so weakened by age, storm or other injury so as to pose a danger to persons, property, utilities, or improvements; or
(4) Unreasonably prevents a development of a lot, parcel, or other lands or the physical use thereof.

(b) Permit procedures.

(1) Application.

a. A tree alteration permit application shall be submitted in writing to the city manager, through the designated department, by the property owner adjacent to a city tree. The application must be completed in full and the permit fee, as set forth in appendix A to this code, must be paid before the application can be processed.

b. If encroachments into a historic tree or a canopy tree are proposed, a plan, prepared by an ISA certified arborist, shall be submitted with the permit application specifying the methods to be utilized to protect and preserve the tree. This plan shall address protection of the root system, crown, and stems of the trees, a means of supplying water and essential elements to the root system, and the proposed location of the tree protection barriers.

(2) Application review.

a. After receipt of a completed permit application, receipt of an application fee or receipt of additional information, the department shall examine the application or information and notify the applicant of any apparent errors or omissions, and request such additional information as may be necessary for processing the application.

b. After the application has been determined to be complete, the department shall take one of the following actions:

1. Approve the application with or without specific conditions reasonably necessary to ensure compliance with this section.

2. Deny the application with an explanation of what changes, if any, in the application are necessary for approval of the application.

3. Deny the application with reasons clearly stated.

c. Any approval issued pursuant to this section shall expire within 60 days, unless otherwise specified in the conditions of approval.

(3) Standards for approval or denial of an application.

a. No approval shall be granted for the alteration of any city tree that contains active nests of migratory birds, bird species listed as species of special concern, rare, threatened, or
endangered by the Florida Fish and Wildlife Commission, or which are a breeding area for a colony of birds.

b. No approval shall be granted for the alteration of protected trees by mechanical, chemical, or other means except as provided below.

c. An approval shall be granted for the removal and/or alteration of city trees to provide vehicular access to property or when such removal and/or alteration is necessary to make any reasonable use of the property, and the applicant has demonstrated that no other alternatives exist.

d. An approval shall be granted for the removal or alteration of city trees within a dedicated utility easement or road right-of-way to provide utilities with reasonable access subject to the following guidelines:

1. The applicant demonstrates that no other access or alternatives exist and the utility controlling the easement has confirmed this in writing.

2. The access way should be designed and located in such a manner that the least amount of damage to the protected trees is ensured.

3. The applicant must submit a proposal for mitigation or replacement of the altered trees.

(4) Final Inspection. All permits shall require a final inspection to ensure compliance with the provisions of this section. Final inspections shall be scheduled with the department by the permit holder after completing the project.

Sec. 38-106. - Protection of City Trees.

(a) Requirements for utility pruning. Utilities must conform to current ANSI A300 standards when performing line clearing work in canopy street zones to balance the requirement to preserve the canopy and maintain safe, reliable electric service.

1. Franchised utilities must notify the department by e-mail or mail 30 business days prior to any maintenance utility line clearing work in canopy streets.

2. Franchised utilities must have an ISA certified arborist directing the pruning of trees in a canopy street.

3. Utility pruning should only provide minimum safe clearance to protect energized power lines with consideration for the combined movement of the conductors near trees in severe weather, the species of the tree, and the voltage of the conductor.
(4) The city recognizes that Florida Power and Light (FPL) has a right and responsibility, as provided by Florida State Statute and Electric Tariff Rules, to clear vegetation away from power lines in order to ensure the safe transmission of electricity to customers and the above listed provisions are intended to be cooperative efforts between the city and FPL. This section does not apply to the extent preempted by F.S ch. 163.3209.

(b) Location of City Trees. All city trees that may be disturbed by proposed activities shall be physically located on-site and shown on the site plan submitted for any project or site development and as a part of the tree removal request in the tree alteration permit application process.

(c) Drip-line preservation. During development, construction activity, and utility construction, the critical root zone of a city tree shall be protected from activities that may disturb or injure the tree (such as cut and fill activities, building pad placements, road bed construction, construction material storage, driving or parking of equipment, trenching, etc.). The permit applicant may provide specific arboricultural analysis to demonstrate that there is no likelihood of adverse impact to a city tree; however, the department shall make the sole determination of where tree protection barriers shall be placed around a tree.

(d) Canopy and root pruning. When activities disturb the area within the drip-line of a city tree, or when pruning must be performed on the crown of a city tree, the following arboricultural techniques are required:

(1) When the tree roots within the drip-line may be disturbed, the affected roots must be severed by clean pruning cuts where the activity impacts the roots. Root pruning shall be completed by an ISA certified arborist. Roots can be pruned by utilizing trenching equipment that is specifically designed for this purpose or by hand digging a trench and pruning roots with a chain saw, pruning saw or other equipment designed for tree pruning. Roots within the drip-line must be pruned to a depth of 12 inches below existing grade or to the depth of the disturbance if less than 12 inches from the existing grade. When underground utilities are to be installed through the drip-line, root pruning requirements may be waived if the lines are installed via tunneling or directional boring as opposed to trenching.

(2) All pruning of protected trees shall conform to the current ANSI A300 standards and be completed by an ISA certified arborist. There shall be no stub cuts, or lions-tailing of the crown of the tree.

(3) It shall be a violation of this section to perform the techniques of topping or other pruning techniques that remove the vertical leader stems or other pruning that results in an unnecessary reduction of shade of protected trees in the permit area.
Tree protection barrier requirements. During development activities or any other potential disturbance that will impact the area within the drip line of any city tree, protective barriers shall be placed around each city tree, by the applicant, to prevent the destruction or damaging of roots, stems, or crowns of such trees. Barriers shall remain in place and intact until the work is completed, however, barriers may be removed temporarily to accommodate construction needs, provided the city approves the temporary removal in writing and that the manner and purpose for such temporary removal will not harm the tree. The city reserves the right to deny the temporary removal of tree protection barriers. The following are the minimum requirements for protective barriers:

1. Protective posts shall be placed so as to protect all areas within the drip-line boundary for each city tree affected, except in right-of-way or utility placement areas where space to install the barricade may be limited, posts may be placed so as to protect a minimum of 50 percent of the area within the drip-line approved by the city manager.

2. Posts shall be a minimum of two inches by four inches, or larger, wooden post, two-inch outer diameter or larger or other post material of equivalent size; shall be connected with a minimum of at least a one inch by four inches wooden board rail; and shall be clearly flagged. The maximum distance allowed between upright posts is eight feet. Wooden posts and boards shall be painted forest green once installed.

3. Posts shall be implanted deep enough into the ground to be stable and extend a minimum height of four feet above the ground.

4. Where development activity is permitted within 50 percent of the radius within the area of the drip-line of a protected tree (as measured by the longest radius from trunk to drip-line), the department may require additional tree protection provisions be incorporated in the activity permit.

5. No storage or movement of equipment, material, debris, or fill soil is allowed within the drip-line of any city tree.

6. No equipment shall be cleaned, or waste materials such as paints, oils, solvents, asphalt, concrete, mortar, or any other material shall be stored, within the drip-line of any city tree.

7. No damaging wires, signs or permits shall be fastened to any city tree unless approved by the department.

8. Silt barriers, hay bales, or similar effective erosion silt control barriers shall be required in any area where erosion or siltation may cause damage to city trees as determined solely by the department.

9. When elevation changes are proposed within the drip-line of any city tree, the applicant shall be required to install retaining walls or drain tiles. The applicant shall have the choice of the type or design. These
root protection measures shall be in place prior to the deposition of fill, or excavation of soil from the drip-line.

(10) Should a private party conduct work within the drip-line of a city tree and fail to install the required tree protection barrier, the city reserves the right to install the required tree protection barrier and charge the private party conducting the work for the city’s materials and labor associated with the installing of the barricade. A sample tree protection barricade is set out below.

(f) **Inspections.** The department shall conduct periodic inspections of the site during the permitted activity in order to ensure compliance with this section.

(g) The city manager is authorized to allow a variation from the strict requirements of this section where an equivalent or superior method of preserving a tree is clearly demonstrated.

**Sec. 38-107. - Emergency tree removal.**
When it is necessary to expedite the removal of damaged or destroyed city trees or protected trees in the interest of the public safety, health, and general welfare following an accident, high winds, storms, hurricanes, tornadoes, floods, or other human-made or natural disasters, the mayor of the city, or the vice-mayor in the mayor's absence, or the city manager in the absence of the mayor and vice-mayor may permit the removal of a city tree. A city arborist shall provide professional advice concerning the threat to public safety, whenever possible, before a city tree or protected tree is removed.

Sec. 38-108-38-120. – Reserved.

DIVISION IV. – APPEALS AND ENFORCEMENT.

Sec. 38-121. - Appeals.

Any person denied a permit under this chapter, or who disagrees with conditions of a permit; and any adversely affected person who is aggrieved by the administration, decision or interpretation of any of the terms or provisions of this chapter, by the city manager may appeal to the tree board, after the interpretation or decision is issued or permit is denied or granted with conditions. The tree board, with notice to the person whose permit was denied or issued with conditions, and to any adversely affected person who has timely filed the appeal, and after a hearing may reverse, affirm, or modify, in whole or in part, the order, requirement, decision, or determination as it ought to be made. Any person aggrieved by the decision or interpretation of any of the terms or provisions of this division by the tree board may appeal to the city council after the tree board’s decision. Any action pursuant to this section shall not stay any enforcement proceedings. Appeals must be submitted in the following manner:

a. **Appeal to tree board** – An appeal application form must be completed by the adversely affected person and submitted to the city manager within 30 days after receiving the city manager’s interpretation or decision.

b. **Appeal to city council** – An appeal application form must be completed by the adversely affected person and submitted to the city manager within 30 days after receiving the tree board’s administration, interpretation or decision.

Each appeal shall be conducted in a quasi-judicial manner so as to allow presentation of evidence.

Sec. 38-122. - Prohibitions.

Unless exempt under provisions of this chapter, it shall constitute a violation of this chapter for any person to:

a. Alter, trim, disturb or remove a city tree or protected tree, except in accordance with the conditions of a tree alteration permit issued by the department pursuant to the provisions of this ordinance;
b. Fail or refuse to treat, or where ordered, fail or refuse to remove and properly dispose of, a lethally diseased tree;

c. Plant or maintain privately planted trees in a city right-of-way without permission from the city;

d. Transport, sell, install or maintain any lethally diseased or unpermitted tree; or

e. Conduct any other activity prohibited in this chapter.

Sec. 38-123. – Enforcement, penalties; additional remedies.

Violation of the provisions of this chapter or failure to comply with any of its requirements shall be punishable as provided in section 1-15, and in addition to or in the alternative:

(a) The city manager may, unless otherwise prohibited by law, withhold the issuance of any required certificate of occupancy, permit or inspection on any property until the provisions of this division, including all conditions of any permits issued under this division, have been complied with.

(b) The city manager may issue a stop work order to any person, firm, owner, contractor or agent performing construction work upon the property upon which a protected tree is located.

(c) The city manager may issue a stop work order to any person, firm, owner, contractor or agent performing any work on a city tree or upon the critical root zone of a city tree which violates or fails to comply with any provision of this ordinance.

(d) The city manager may prosecute criminally if the violation is found to be willful or intentional or where the violator ignores or disobeys a stop work order or an order to treat or remove a lethally diseased tree or an order to cease and desist from selling or installing unpermitted or diseased trees.

(e) Each individual city tree or protected tree unlawfully altered or caused to die shall constitute a separate offense.

(f) Each day of violation is a separate offense.

(g) Each individual city tree or protected unlawfully altered or caused to die is presumed to be an irreparable or irreversible harm.

(h) The city manager may order mitigation. If any city tree, not meeting the removal criteria provided in this division, has been removed in violation of the provisions of this division, said tree shall be replaced on a caliper inch-for-inch basis. The term "inch-for-inch" means that for each caliper inch of tree improperly removed or destroyed, replacement trees having the minimum replacement tree size
described in this division shall be required and the total caliper in
inches of all replacement trees shall equal or exceed the combined
caliper inches of all trees improperly removed. If the applicant can
demonstrate that the planting of replacement trees on a property
would be impractical due to the existence of other trees of a species
protected by this division within 30 feet of all available land for the
planting of trees on said property, the number of replacement trees
may be reduced, and the applicant shall be required to pay to the city
tree bank account the sum of $200 for each inch of caliper of those
replacement trees that are not required to be planted as a result.
Additionally, for each tree improperly removed, a fine of $500 shall
be deposited into the tree bank account. If a permit was not obtained
as required pursuant to this division, the city may issue a stop work
order until the required permit has been issued, and the fee for same
shall be $100. Nothing contained herein shall be construed to
authorize the commencement of any tree work under this division
without required permit for same.

(i) In addition to the remedies provided in this section, this division may
be enforced as otherwise provided in this code for the enforcement
of any code violation.

(j) The violator shall pay all costs and expenses involved in the case.
Each day the violation continues shall be considered a separate
offense. Nothing contained in this division shall prevent the city from
taking such other lawful action as is necessary to prevent or remedy
any violation.

(k) Additionally, the city may take such other lawful action in any court
of competent jurisdiction as it is necessary to prevent, remedy or
abate any violation, noncompliance or nuisance. Such other lawful
actions shall include, but shall not be limited to, an equitable action
for injunctive relief or an action at law for damages.

(l) All remedies and penalties provided for in this section shall be
cumulative and independently available to the city and the city shall
be authorized to pursue any and all remedies set forth in this section
to the full extent then allowed by law.

Section 2. That if any word, phrase, clause, subsection or section of this ordinance
is for any reason held unconstitutional, invalid, or ineffective, the same
shall not affect the validity of any remaining portions of this ordinance.
In such event, the pre-existing word, phrase, clause, subsection or
section, shall be revived.

Section 3. That all sections or parts of sections of the Code of Ordinances, all
ordinances or parts of ordinances, and all resolutions or parts of
resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

Section 4. This ordinance shall take effect immediately upon adoption.

APPROVED AT FIRST READING AND PUBLIC HEARING THE 17th DAY OF MAY, 2017.


Attest:

Patricia L. Rambosk, City Clerk

Bill Barnett, Mayor

Approved as to form and legality:

for Robert D. Pritt, City Attorney

Date filed with City Clerk:___________