

Sec. 48-63. - Tree protection.

(a) *Intent and purpose.* The purpose and intent of this article is to establish protective regulations for trees in the city and the planting of an acceptable tree in another place on the same property or in a public place. This article also encourages the protection of trees which the city has recognized, and which the city stands to lose unless protective measures are taken. It shall be unlawful to cut down, remove, damage, poison, detrimentally alter or in any other manner destroy or cause to be destroyed any trees covered by this article, except in accordance with the provisions of this article.

(b) *Definitions.* The following words, terms, and phrases when used in this article shall be defined as follows:

Arborist means a professional arborist recognized and certified by the International Society of Arboriculture (ISA) as an ISA certified arborist municipal specialist (preferred) or an ISA certified arborist.

Clearing means the removal of a tree by digging, pushing, or cutting, or the effective removal through damage.

Dead or beyond recovery means more than 50 percent of the tree is dead, is a hazardous tree as defined herein, or in a state of irrecoverable decline.

Diameter breast height (DBH) means the diameter, in inches, of a tree measured at four and one-half feet above the existing grade.

Dripline means an imaginary line on the ground defined by vertical lines which extend from the outermost tips of the tree branches to the ground.

Hazardous tree means a tree irreparably diseased or presents a danger of falling that cannot be controlled or remedied through reasonable preservation and or preventative procedures and pesticides such that the public health or safety requires its removal.

Public tree means any tree existing or proposed on city owned property.

Private tree means any tree existing in privately held land.

Removal of a tree means either actually removing a tree from the ground in which it grew, transplanting a tree, or effectively removing a tree through damage to 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. Tree stump must be removed to a depth of six inches below the surface of the ground. Once removal begins it must be completed within 60 days.

Tree means any living, woody, self-supporting perennial plant which normally grows to a minimum height of 15 feet.

Trees, stand of, means a naturally occurring grouping of five or more trees forming a canopy of vegetation which results in a single unified dripline.

(c) *Exceptions and exemptions.*

(1) *Exceptions.* The requirements of this section shall apply to all property in the city except those used for the following purposes:

- a. Commercial plant nursery or tree farm;
- b. Public right-of-way or easement; and
- c. A residential property owner who obtains documentation or a report from an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect that the tree presents a danger to persons or property, provided that the residential property owner provides a copy of the documentation or report to the city within ten days of receipt of the documentation or the report. The city may, at the city's expense, have the city's arborist review the documentation or report and inspect the tree(s) set forth therein for verification purposes.
- d. A residential property owner that is exempted under subsection (c) is not required to replant a tree that was pruned, trimmed, or removed in accordance with this section, nor is that residential property owner required to contribute to the city's tree fund so long as the documentation or report complies with subsection (c).

(2) *Exemptions.* In the case of an emergency such as a hurricane, flood or other disaster, or agricultural diseases, the city manager or the city manager's designee may waive the requirements of this section so as to not hamper public and/or private work to restore order.

(d) *Requirements.*

(1) No tree with a DBH of six inches or greater, shall be removed from any developed property; and

(2)

Land clearing for development shall occur in the city without the owner first obtaining a permit from the city. The city manager or the city manager's designee may issue a tree removal permit.

- (3) *Review fee; survey information.* The owner of the property shall submit a review fee, set by the city council, a tree removal permit application, and a tree survey consisting of the following information:
- a. A scaled aerial photograph or drawing (minimum one inch equals 300 feet);
 - b. Property boundaries;
 - c. Identify location, names and heights of all stands of trees;
 - d. Identify location, DBH, names and height of all individual trees, which are six inches DBH or greater;
 - e. Indicate which trees are proposed for removal and identify the tree with a direction and distance from a fixed landmark;
 - f. Reason for removal; and
 - g. If applicable, the name of the commercial tree removal service that will be used to remove the tree(s).
 - h. All trees scheduled for removal shall be marked with red paint. In addition, prior to the issuance of a permit, the city manager, or the city manager's designee, will meet with the developer or owner representative and be shown the trees designated to be removed according to the site plan. The city representative will take a photo, or video, of the tree(s) to be removed. At the project completion, the city representative will return to the site to verify the correct trees have been removed. For new developments, no certificate of occupancy will be issued until the city has verified the correct trees have been removed.

In the event the city manager or city manager's designee is unable to determine whether the criteria for removal are met, an additional fee, to be established by city council, shall be required for review by an arborist. In lieu of paying the additional fee, the property owner, at their own expense, may provide an independent arborist's opinion; provided, however, that said arborist shall not be employed by the tree removal service hired by the property owner, if any. Any person denied a permit for removal by the city manager may within five working days after issuance of the denial by the city manager file a written request for an appeal of the decision before the tree board. Hearing the appeal shall be set at a regular or special meeting of the tree board to be held not earlier than seven working days or later than 30 days after the filing of such request. The person appealing the city manager's decision shall be given at least five working days' written notice of the time and place of the meeting. At the completion of the meeting, the tree board shall decide whether or not the permit denial was justified and whether or not the denial should be upheld. In the event the tree board overturns the city manager's decision, the permit shall be issued. The decision of the tree board is final.

- (4) *Use of unregistered tree removal service and/or landscape architect prohibited.* No commercial tree removal service shall be used by the owner or occupant of the property unless the service has first registered with the city. A violation of this subsection (d)(4) may be brought before the city code enforcement magistrate pursuant to section 14-31, et al., as an irreversible violation subject to imposition of a fine not to exceed \$5,000.00 per violation.
- (5) *Registration requirements for tree removal service and/or landscape architect.* Any commercial tree removal service which desires to provide tree removal services within the city must first register with the city by providing its business name, local business tax receipt number, contact person, address and telephone number. Upon registration, the tree removal service shall be provided information regarding the city's permitting requirements as set out in this section 48-63. A list of those tree services registered with the city will be available in the city clerk's office. The city keeps a list of businesses that are allowed to operate in the city. This list is to assist in providing residents with a variety of choices for a service or product. Any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise, is not an endorsement or recommendation by the city or its employees. Further, the city does not endorse or recommend any commercial products, processes, or services. The city will not recommend one tree service over another to residents. In the event any registered tree removal service is determined by the city manager or designee to have violated the city's requirements for tree removal, that service shall be removed from the list of registered services with written notice mailed to the service. Any tree removal service that has been removed from the list may make a request in writing to the city clerk for a hearing before city council to appeal the removal.
- (6) *Criteria for recommended tree removal.* Tree removal may be approved where design modifications are not feasible or reasonable and one or more of the following circumstances exist:
- a. The location of the tree restricts the opening of a street or road right-of-way.
 - b. The location of the tree restricts the construction of utility lines or drainage facilities.
 - c. The location of the tree restricts access to the property.

- d. The location of the tree restricts a use of the property consistent with all other city regulations.
- e. The tree constitutes a hazard to life or property which cannot be mitigated without removing the tree.
- f. The tree is dying or dead such that its restoration to sound condition is not practical, or it has a disease which can be expected to be transmitted to other trees and endanger their health.
- g. The selective removal of up to 25 percent of existing trees, with a DBH of six inches or less, to provide increased light and air circulation.
- h. Removal of the tree is required, in writing, by the homeowners' insurance company or proposed insurance company.

(7) *Replacement of trees.* Trees with a DBH of up to four inches and/or restricted trees, regardless of DBH, that are approved for removal shall not require replacement. All replacement trees should have a minimum DBH of four inches.

DBH—Removal Tree	Number of Replacement Trees
4" up to but not including 12"	1 tree
12" up to but not including 18"	2 trees
18" or greater	3 trees

(8) *Suggested and restricted trees.*

- a. *Suggested trees.* The city council, by resolution, will adopt a list of trees for planting. This suggested tree list will be on file in the city clerk's office and on the back of the tree removal permit.
- b. *Restricted trees.* The city council will adopt, by resolution, a list of restricted trees which will be kept on file in the city clerk's office and on the back of the tree removal permit.

(9) *New developments.*

- a. *Subdivisions.* The information required in subsection (d)(1) shall be submitted as part of the preliminary plat for all new residential and nonresidential subdivisions. The final plat approval shall constitute a tree removal permit for the purposes of this section.
- b. *Site plans.* The information required in subsection (d)(1) shall be submitted as part of the site plan for all new commercial, professional-office, industrial and multifamily residential developments. The building permit shall constitute a tree removal permit for the purposes of this section.
- c. *Tree protection during construction.*
 - 1. Following development approval, it shall be unlawful for any person, during the construction of any structures or other improvements, to place solvents, material, construction machinery or temporary soil deposits within the dripline of any tree designated to remain.
 - 2. It shall be the responsibility of the developer or applicant to ensure that any tree designated to remain be protected. The property owner shall guarantee survival of retained or replacement trees for one year from the acceptance of the subdivision improvements by the city or the issuance of a certificate of occupancy for site plans, whichever is later.
 - 3. If posts are used as protective barriers, they shall be placed at points not closer than one-half the radius of the dripline of the protected tree. Each section of the barrier shall be clearly visible (flagged with brightly colored plastic tapes or other markers). No attachments or wires other than those of a protective or nondamaging nature shall be attached to any tree.
 - 4. The city may conduct periodic inspections of the site. It is the responsibility of the applicant to ensure that all provisions of this section are met.

(10) *Spacing.* Trees with the capability of exceeding 30 feet in height must not be planted less than 25 feet from a property line; except in special plantings designed or approved by a landscape architect.

(11) *Distance from curb and sidewalk.*

- a. The distance trees may be planted from curbs or curb lines and sidewalks must have a 4-foot setback.
- b. The use of root barriers is required and determined at the discretion of the city manager.

(12) *Distance from street corners and fireplugs.*

- a. No tree shall be planted closer than 35 feet from any street corner, measured from the point of nearest intersecting curbs or curb lines. No tree shall be planted closer than ten feet from any fireplug.
- b. No tree which may reach a height of 15 feet or more may be planted less than 25 feet from the foundation of any public or commercial structure.
- c. The use of root barriers is required and determined at the discretion of the city manager.

(13) *Utilities.*

- a. No trees may be planted under or within ten lateral feet of any overhead utility wire, or over or within five lateral feet of any underground water line, sewer line, transmission line or other utility.
- b. The use of root barriers is required and determined at the discretion of the city manager.

(14) *Public tree care.*

- a. The city shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds and city rights-of-way, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.
- b. The city may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest. This section does not prohibit the planting of trees by adjacent property owners providing that the selection and location of said trees is in accordance with subsection (8)(a) of this section.
- c. It is unlawful for any person to:
 - 1. Fasten a carriage, animal, bike, motor vehicle of any kind to any tree, shrub, tree guard or tree support.
 - 2. Authorize or procure any gas, hot water, brine, oil, herbicide, pesticide, chemicals, dye, or other substance detrimental to tree life to lay, pour, flow, leak, or drip into the soil about the base of a tree in any public highway, street, avenue, public right-of-way, or public place.
 - 3. Allow a tree on public right-of-way to be injured or removed during the erection, repair, removal or alteration of any building or structure.
 - 4. Build or kindle a fire near any tree or any public right-of-way, as to endanger the trunk, limb, or foliage of such tree.
 - 5. Attach any advertisements to any tree or shrub in any street, highway, avenue or public right-of-way.
 - 6. Lay any pavement within three feet of the base of the trunk of any tree on public right-of-way or deposit any stone, gravel, cement, lumber, or other materials in such a way as to obstruct the free access of air and water to the roots of any tree in such right-of-way.
 - 7. Attach or keep attached to any public tree any ropes, wires, chains, or other device whatsoever, except that the same may be attached to any tree as support or protection thereof. This prohibition shall not apply to the seasonal attachment of holidays lights.
 - 8. During the erection, repair, alteration or removal of any building, sidewalk, or structure, it is unlawful for the person in charge of such erection, repair, alteration or removal to leave any public tree in the vicinity of such building or structure without good and sufficient guard or protector as to prevent injury to such tree or its roots arising out of, or by reason of such erection, repair, alteration or removal.
 - 9. Abuse, destroy or mutilate any public tree.
 - 10. Perform any minor tree work on any public tree without a permit.

(15) *Tree topping and/or hat racking.* It shall be unlawful for any person, firm, or city department to top and/or hat rack any tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Hat racking is defined as the destructive

act of improperly trimming a tree, leaving stubs, tears, stripped branches, unnecessary wounds and other irreparable damage. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the city manager.

(16) *Pruning and corner clearance by private property owners and by utilities.*

- a. Every owner of any tree overhanging any street or right-of-way within the city shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of 14 feet above the surface of the street and eight feet above the surface of the sidewalk. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a hazard to the safety of the public. The city shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign.
- b. Pruning for or by utility will require the franchise to obtain a written permit from the city. A city franchised utility maintaining its utility system in the street may prune or cause to be pruned, in accordance with this chapter and using proper arboricultural practices in accordance with the permit, any tree located in or overhanging the street which interfered with any light, pole, wire, cable, appliance or apparatus used in connection with or as part of a utility system. The permit may be issued as a city-wide permit valid for one year if the utility adequately demonstrates the ability to meet the performance requirements of this chapter and to consistently apply proper arboricultural practices to the pruning of trees.
- c. The utility shall provide the city written notice of any pruning work at least three working days prior to the start of the work.
- d. In those cases where a tree cannot be pruned in such a manner as to preserve the physical or aesthetic integrity of the tree, the tree may be removed and replaced by the utility at its own expense and in compliance with the replacement provision of this chapter.

(17) *Dead or diseased tree removal on private property.* The city shall have the right to cause the removal of any dead or diseased trees on private property within the city, when such trees constitute a hazard to life and property, or harbor insects or disease which constitutes a potential threat to other trees within the city. The city will notify in writing the owners of such trees. Removal shall be done by said owners at their own expense within 60 days after the date of service of notice. In the event of failure of owners to comply with such provisions, the city shall have the authority to remove such trees and charge the cost of removal on the owner's property tax notice.

(18) *Removal of stumps.* In addition to the standards of the national arborist association, all stumps of street and park trees shall be removed to a depth of six inches below the surface of the ground.

(19) *Sidewalk, walkway, curbing or roadways damaged by roots.* Any street and park trees whose roots have damaged any sidewalks, curbing, roadways and the owner is unable to remove the hazard by root grinding the tree will be removed at city expense and replaced with a recommended tree species. The owner of the property will be given a choice of not less than three tree species for replacement. Replacement will take place within one year of removal at the convenience of city and owner.

(20) *Interference with city.* It shall be unlawful for any person to prevent, delay or interfere with the city, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any trees on private grounds, as authorized in this ordinance.

(21) Tree replacement must be completed within 12 months of the approved removal application.

(e) *Penalties.*

(1) Violations of this section shall be subject to the following:

- a. Where violations of this section have occurred, remedial action shall be taken to restore the property consistent with a restoration plan approved by the city manager or the city manager's designee. The restoration plan shall require tree replacement according to the following:

DBH—Removal Tree	Number of Replacement Trees
4" up to but not including 12"	1 tree
12" up to but not including 18"	2 trees

18" or greater	3 trees
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- b. No certificate of occupancy or certificate of completion shall be issued for any development or project until all applicable permit or restoration plan conditions have been accomplished. For developed properties, failure to take the remedial action required by the restoration plan shall constitute a continuing violation of this section, and shall be referred to the code enforcement magistrate for enforcement as provided by chapter 14, article II of this code; and
- c. Any person or persons found in violation of this section shall be fined by an amount set by the city council.
- d. Any person or persons who violate any of the provisions of this chapter shall be required to reimburse the city for any costs incurred for treatment or removal and replacement of the tree or repair of the box or casing around the tree, including total personnel services, costs, materials and an additional charge of ten percent for administrative overhead.
- e. If, as the result of the violation of this chapter, the injury, mutilation, or death of a public tree or vegetation located in a right-of-way is caused, the cost of care, repair or replacement of a similar size tree or vegetation shall be borne by the party in violation. Replacement cost includes the cost of tree or vegetation and stump removal will be determined by the market intrinsic value.
- f. For new development, the developer, or property owner is responsible to insure the planted trees and shrubs have the proper care for a period of one year after the project close-out. The developer may be required to issue a performance bond, or place a deposit, with the city in the event the trees need to be replaced within the one-year period.
- g. Any person or persons who have previously been found in violation of this section may be required to post additional assurances in the form of performance bond, cash, or any other financial vehicle acceptable to the city.

(2) *Tree trust fund.* In lieu of tree replacement as required by subsection (d)(5), the city manager may approve the payment by the owner in an amount set by the city council per tree removed but not replaced to be paid into a tree trust fund. The tree trust fund shall be established from all monies collected pursuant to this section 48-63. The tree trust fund shall be used to plant trees of the recommended species on public property, such as, but not limited to, public parks and rights-of-way. The tree trust fund may also be used to fund grants to private individuals who establish financial need to replace trees that are removed pursuant to this section.

(Ord. No. 92-6, ch. V, art. B, § 2, 12-15-1992; Ord. No. 04-14, 9-7-2004; Ord. No. 07-03, § 1, 3-6-2007; Ord. No. 08-26, § 1, 11-5-2008; Ord. No. 08-30, § 1, 1-6-2009; Ord. No. 18-02, § 1, 2-5-2019; Ord. No. 20-01, 3-3-2020; Ord. No. 21-08, § 3, 8-17-2021)