

## Raquel Lozano

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**From:** J. Giffin Chumley <JGC@fishbacklaw.com>  
**Sent:** Monday, February 26, 2024 12:42 PM  
**To:** Raquel Lozano  
**Cc:** Dan Langley; Sonia Cifuentes; Anne Knights-Borel  
**Subject:** RE: City of Belle Isle - Request for Legal Opinion - Tree Protection Ordinance and State Preemption

Raquel,

- If the Code can **require** residents to replant a tree (should they seek to remove a healthy tree without a certified Arborist Report available);
  - A. Yes. § 163.045(2), Florida Statutes, only protects an individual if that person has documentation from a certified arborist or landscape architect. If there is no documentation, then the statute would not apply.
- If the City can **require** a 48-hour notice for tree removals (should they possess a certified Arborist Report).
  - A. No. § 163.045(2), Florida Statutes, expressly states that the city cannot require a “notice, application, approval, permit, fee, or mitigation” for the pruning, trimming, or removal of a tree on residential property if the property owner possesses documentation by a certified arborist (or landscape architect) that the tree poses an unacceptable risk to persons or property.
- Under section 48-63(D)(7), the Code currently states, “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.” Here is a link to the section: [https://library.municode.com/fl/belle\\_isle/codes/code\\_of\\_ordinances?nodeId=SPBLADECO\\_CH48ENRE\\_ARTIIC\\_O\\_S48-63TRPR](https://library.municode.com/fl/belle_isle/codes/code_of_ordinances?nodeId=SPBLADECO_CH48ENRE_ARTIIC_O_S48-63TRPR)
  - A. I believe this section is merely intended to implement a policy whereby smaller trees or undesirable trees (likely species that have been determined to be invasive) need not be replaced and that any replacement trees be of a minimum size. I am not aware of this causing any issues unless the Council wants to revise it.
- To review the attached Tree Permit form for legal definitions for Tree Removal requirements;
  - A. I do not see any issues with the permit form other than that it calls for an arborist’s or landscape architect’s report. Again, if they have a report (stating that it poses an unacceptable risk to persons or property), we cannot require them to have a permit or provide notice. However, I can see how it could be required if the arborist or landscape architect is speaking to something other than an “unacceptable risk to persons or property.”
- To determine if the City can implement policies to better control tree removals;
  - A. Yes. The City can implement policies to better control tree removals (Winter Park has some great examples of this); however, there is not much the City can do if a resident obtains document from a certified arborist or landscape architect stating that the tree poses an unacceptable risk to persons or property.
- To determine if a “stop-gap” can be instituted on newly purchased properties to ensure that no trees are removed without city approval or city notice; and
  - A. Maybe. The City can likely do this for persons who do not have the triggering documentation under § 163.045, Florida Statutes, but if the resident has the documentation, such a measure would not apply.

- To determine if the City can require a Tree Permit submission, even if the applicant has an Arborist Report available.
  - A. No. The City cannot require a tree permit submission per § 163.045(2), Florida Statutes, if the person removing the tree has the requisite documentation. Absent the documentation, however, the city may require such.

If you have any additional questions, please let me know.

Thanks,

**J. Giffin Chumley, B.C.S.**

*Partner*

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**From:** Dan Langley <[dlangley@fishbacklaw.com](mailto:dlangley@fishbacklaw.com)>

**Sent:** Friday, February 23, 2024 2:17 PM

**To:** J. Giffin Chumley <[JGC@fishbacklaw.com](mailto:JGC@fishbacklaw.com)>

**Subject:** FW: City of Belle Isle - Request for Legal Opinion - Tree Protection Ordinance and State Preemption

Giffin:

Can you handle this matter?

Daniel W. Langley

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