

# NEW FLORIDA TREE LAW – CHAPTER 2019-155

Recent legislative action, CHAPTER 2019-155, Committee Substitute for House Bill No. 1159, has charged ISA Certified Arborists with the authority to advise residential tree owners about the potential risk their tree(s) pose to people and/or property prior to pruning or removal. Click on information and updates below:

- [Florida Chapter ISA Position Paper](#)
- [The Ethics of Arboriculture](#)
- [Press Release 9-2019](#)
- [Florida House Speaker Oliva statement on new Tree Law](#)
- [First Florida Tree Law Court Challenge](#)

Share this article



# Florida Chapter ISA

FLORIDA LAW - CHAPTER 2019-155  
Committee Substitute for House Bill No. 1159

## Position Paper

Recent legislative action, CHAPTER 2019-155, Committee Substitute for House Bill No. 1159, has charged ISA Certified Arborists with the authority to advise residential tree owners about the potential risk their tree(s) pose to people and/or property prior to pruning or removal.

For most of our existence, arborists have toiled in virtual anonymity, largely regarded by society as ‘tree cutters’ lacking an understanding of tree science. The ISA Certified Arborist program came along in 1992 and in less than 30 years elevated a small (about 15%) but important segment of those ‘trees cutters’ into a credentialed and respected green industry. The Florida Legislature including the house, senate, and governor, with support from the insurance and construction industries, now trust ISA Certified Arborists more than local government and any other Florida green industry group to help residents make the right decision with regard to their trees. This is an enormous societal evolution for many reasons but most importantly it will produce a positive impact on public safety while preserving our urban forest.

The Florida Chapter ISA (Chapter) understands the significance of this responsibility and will aid our members and ISA Certified Arborists (CAs) with this important task. The Chapter is a not-for-profit 501(c)3 Florida Corporation and, as such, is limited in the ability to lobby. The Chapter is, however, quite adept at education. We plan to use this strength and this unique opportunity to educate our Chapter members, CAs and Florida residential tree owners regarding this new law and its impact on one of Florida’s most valuable assets, our urban forest.

The Chapter plans to do the following:

1. Public Awareness Campaign – Residential Tree Owners  
Action: Provide press releases that will go out state-wide on a regular basis.
  - a. Teach tree owners that trees are not inherently dangerous. Trees can have or can develop defects that may cause trees or tree parts to fail. Trees should be assessed in order to identify defects and make mitigation recommendations to reduce the risks of failure.
  - b. Help residential tree owners acquire the services of a CA that has the qualifications to assess the risk their tree(s) may pose.
  - c. Make residential tree owners aware of the Tree Risk Assessment Qualification (TRAQ) and its benefits.
2. Member Awareness Campaign – Chapter Members and CAs  
Action: Develop presentations including subjects related to ethics and professionalism. These presentations will be incorporated into our existing scheduled continuing education seminars, starting in August of 2019. The presentations will teach:

- a. “Just Because you Are Certified, Doesn’t Mean You are Qualified” – Assisting CAs to determine if they have the knowledge necessary to determine if a tree is “dangerous” or a risk.
  - b. Continue to inform CAs about the importance of TRAQ and how to obtain the qualification.
- 3. Violation Procedures
  - Action: Send press releases for the public that will go out state-wide on a regular basis as well as broad educational efforts geared towards CAs.
  - a. Residential Tree Owners – Teach consumers of tree services how our credentialing programs function and encourage them to pursue violators using International ISA’s existing Ethics and Integrity Violations program.
    - i. Examples of violations
    - ii. Reporting procedures
  - b. Chapter Members and CAs – Remind our members of International ISA’s existing Ethics and Integrity Violations program and how to use the program to self-police our industry.
    - i. Examples of violations
    - ii. Reporting procedures
    - iii. Branding and Style Guide rules and procedures

The next six months to a year are going to be tumultuous in Florida, but the dust will settle and a new normal will become accepted. However, the long view of all this change tells a very different story and it is monumental for ISA and our credentialing programs. We believe, in the final assessment a few years from now, that ISA Certified Arborists will be judged the right group to provide these needed professional services.

# The Ethics of Arboriculture

Norm Easey, CEO, Florida Chapter ISA

As many Florida arborists are aware, a new Florida law was recently adopted that alters local governments' ability to control tree removal and pruning on residential property in Florida. The new Florida law ([CHAPTER 2019-155, 163.045, F.S.](#)) now restricts local governments from requiring a permit or mitigation for pruning or removal of a tree on residential property, provided that the property owner obtains documentation from an ISA Certified Arborist® that the tree presents a danger to people or property.

This is a significant acknowledgement and trust that the Florida Legislature and Governor has placed on our segment (ISA Certified Arborists®) of the tree care industry. And it has the potential to be transformative for ISA Certified Arborists®. The success of this transformation is now up to us to earn. Will we rise to this occasion and act professionally, or will avarice permit us to compromise our ethics and behave unprofessionally? Only time will tell.

So, what does it mean to act “professionally” as an arborist, and who decides if we have done so? There are many aspects to being a professional, including honesty, integrity, fairness, fiduciary, objectivity, confidentiality, ethical conduct, dignity, courtesy, competence through continuing education and diligence, etc. Below are a few definitions for key ethical aspects important to our industry and this law.

- **Competence** - Competence means obtaining and maintaining a high level of knowledge and skill and to apply that knowledge and skill for a client's benefit. Competence also requires knowing when to refer a client to others because the specific knowledge necessary to accomplish the task is beyond your level of expertise. This is often the hardest professional aspect to live up to and recognize. Remember the ISA Certified Arborist® credential is a very broad credential, in that it examines your knowledge in many aspects of arboriculture, including the topic addressed in this law, ‘risk assessment’, but it does so at a fundamental level. Just because you passed a fundamental exam does not mean that you only possess fundamental knowledge. You likely know much more about some aspects of arboriculture and less about others. One of them may be risk assessment. Only you know, and only you can decide whether you have the knowledge necessary to provide this service. Fortunately, if you lack risk assessment expertise, ISA offers a more advanced qualification, the Tree Risk Assessment Qualification (TRAQ), that you can earn. TRAQ will not only teach this topic at a higher level, it will provide you a credential that will attest to your higher-level risk assessment knowledge base.
- **Integrity** - Integrity requires honesty which can never be subordinated to personal gain or advantage. Professionals distinguish themselves by providing their clients what they need and not necessarily what they want. There will always be people, not many thankfully, that have unreasonable fears of trees. Your objective as a professional arborist is to find a solution to reduce (not eliminate) risk posed by a tree to a level of risk that is acceptable to the tree owner. There will always be people for whom ‘low risk’ (our lowest rating in the Tree Risk BMP) is not low enough and will insist on the removal of the tree. What you do in this situation will be the deciding factor for our acceptance as

professionals or as the ‘tree cutters’ from whom we have worked so hard to distinguish ourselves. If we acquiesce to giving our clients what they want versus what they need we will not have earned the distinction to call ourselves professionals.

- **Fairness** - Fairness is the subordination of one’s own feelings and desires. It requires impartiality and intellectual honesty.
- **Confidentiality** – Confidentiality is your duty as a professional to protect all client information. A relationship of trust is built on the confidence that a client’s information will remain confidential. The documentation that the new Florida law requires should be given only to your client. Only your client can decide who should have access to the information.

So, who decides if our segment of the tree industry (ISA Certified Arborists®) has achieved a successful level of following professional standards to be deemed a professional group? In truth we all do. There is no formal process for such things, there is only a social process whereby society generally agrees that an industry or industry segment is deserving of such a distinction. By putting ethics first when following this law, ISA Certified Arborists® will ultimately rise to the occasion and be deemed a professional group worthy of the respect the Florida Legislature and Governor has given them.

### **Violations**

It is the Florida Chapter ISA’s intent to assist our credential holders and the public to vigorously pursue violations of both arboricultural standards and trademark infractions. To accomplish this, we will need the cooperation of ISA Certified Arborists® and the public to report violations. Press releases will be sent out state-wide to ask residents to be aware and report arborists claiming to be ISA certified but are not listed on our web site. Self-policing by credential holders is also an important component of assuring professional compliance. ISA International maintains tools to facilitate reporting and processing both trademark and standards violations. Use these links to learn how to report violations: [Ethics violations process](#), and [trademark violations process, trademark reporting application](#).

### **Standards Compliance**

Remember too, that as an ISA Certified Arborist you signed and agreed to follow a [Code of Ethics](#) that guides your conduct as a professional practicing arborist. The ISA Code specifically states: “It is meant to define our organization’s mission, values and principles, linking them with principles of professional conduct and industry standards. The Code of Ethics is an important communication tool with customers. It also helps maintain consistency around the world and create an even playing field for all ISA Certified Arborists®. The Code of Ethics policy is part of the application process for all incoming applicants. This effort will reduce poor professional conduct and practices because ISA Certified Arborists® will be held accountable for their actions and in turn will improve their business relations within their community and among their peers.”

Florida ISA wishes to thank Lori Ballard and the Florida Chapter Ethics Task Force for their contributions to this article.

**FOR IMMEDIATE RELEASE**



**Contact:**  
**Norm Easey**  
941.342.0153  
neasey@floridaisa.org

## **Florida Alters Local Tree Law**

**SARASOTA, Fla. (September 13, 2019)** — A new law in Florida bans local governments from requiring a permit or mitigation for pruning or removing a tree on residential property. Under the new legislation ([CHAPTER 2019-155, 163.045, F.S.](#)), property owners must obtain documentation from an International Society of Arboriculture (ISA) Certified Arborist® confirming the tree presents a risk to people or property.

This article will help Florida residents become more familiar with ISA's credentialing program. Headquartered in Atlanta, Georgia, ISA is a nonprofit organization whose guiding principles include: research, public awareness, membership, professional development, promotion and safety for the arboriculture industry around the world. As part of ISA's dedication to the care and preservation of shade and ornamental trees, it offers the only internationally recognized and accredited personal certification program in the arboriculture industry. ISA has over 33,000 credential holders in 47 countries worldwide.

The ISA credentialing program includes the following six certifications and qualification: ISA Board Certified Master Arborist®, ISA Certified Arborist®, ISA Certified Municipal Specialist®, ISA Certified Utility Specialist®, ISA Certified Tree Worker Climber Specialist®, ISA Tree Worker Aerial Lift Specialist® and the ISA Tree Risk Assessment Qualification — all which require passing an exam to earn.

Certifications and qualifications are voluntary credentials documenting a specific industry knowledge base. They are managed by a private credentialing body, like ISA. Credentials are not licenses; licenses are traditionally issued by governments.

The certification with the largest number of credential holders, the ISA Certified Arborist certification, is a credential that verifies an arborist's fundamental knowledge across a broad range of arboricultural topics. There are currently 1,947 certified arborists in Florida. Additionally, certified arborists can earn ISA Municipal Specialist and ISA Utility Specialist certifications to document their proficiency in either of those specific arboricultural fields.

The ISA Tree Worker Climber Specialist and Aerial Lift certifications are designed for arborists to show proficiency via climbing or using aerial lift devices to work safely and efficiently in tree canopies. The ISA Board Certified Master Arborist (BCMA) certification is the highest of certifications offered by ISA, and it recognizes certified arborists that have reached the pinnacle of their profession. There are currently 29 BCMAs in Florida.

The ISA Tree Risk Assessment Qualification (TRAQ) is a qualification that BCMAs and certified arborists can earn to document their advanced proficiency in the art and science of tree risk assessment, which is

the subject of this new Florida law. There are currently 309 professional arborists who also hold the TRAQ credential in Florida.

Arborists who have the qualification and certifications discussed above can provide documentation required by this new Florida tree law. To learn more and to find an ISA Certified Arborist in your area, simply use our search tool, "Find an Arborist," at [www.isa-arbor.com](http://www.isa-arbor.com).

Please also be aware that there may be individuals who claim to be ISA certified arborists but are not. We encourage anyone that considers using the services of an ISA Certified Arborist to check their credential(s) through ISA's "Verify a Credential" tool available at <https://www.treesaregood.org/findanarborist/verify>.

If you find someone that you suspect may not be ISA certified, but claims to be, please notify ISA using an easy-to-use reporting tool located at: <https://www.isa-arbor.com/Credentials/ISA-Ethics-and-Integrity/False-Advertisements>. Please also be aware that ISA does not credential companies; only individuals can earn and maintain an ISA credential.

**ABOUT Florida ISA**

*The Florida ISA is a chapter of the International Society of Arboriculture that serves the particular needs of Florida's professional arborists and tree care consumers. Florida ISA's mission is to promote the scientifically based practice of arboriculture through research, education and public awareness. For more information, please visit our site [www.floridaisa.org](http://www.floridaisa.org).*

###



# The Florida House of Representatives

Office of the Speaker

## MEMORANDUM

**To:** Licensed Professionals  
**From:** Jose R. Oliva, Speaker  
Florida House of Representatives  
**Date:** January 10, 2020  
**Re:** Private Property Rights, Chapter 2019-155, Laws of Florida

---

As you serve your clients, you may have encountered local government standing in your way or threatening sanctions or even levying fines for simply doing what you know, in your training and experience, to be the correct thing to do.

Those days are over.

Please take note of legislation passed in the 2019 session and signed into law by Governor Ron DeSantis. CS/HB 1159 prohibits a local government from requiring a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property when an arborist or landscape architect documents that the tree presents a danger to persons or property.

Recently, I reached out to local officials to urge them to review any local ordinances that may limit property owners' ability to remove or prune trees. I also advised them that continued enforcement of such regulations may constitute illegal restrictions.

If you are aware of specific cases of local government actions restricting the free exercise of property owners' rights as specified in CS/HB 1159, please contact our office. We will be happy to try to assist you in resolving any instance of illegal enforcement.

Thank you for your attention to this important issue.



IN THE CIRCUIT COURT, 1<sup>st</sup> JUDICIAL CIRCUIT, [REDACTED] COUNTY

[REDACTED]  
Plaintiff,

v.

Case No.: 2019-CA-[REDACTED]

[REDACTED]  
Defendants.  
\_\_\_\_\_ /

**ORDER DENYING MOTION TO DISSOLVE TEMPORARY INJUNCTION**

**THIS CAUSE** came before the Court, first on August 5, 2019, and again on August 27, 2019, regarding the Motion to Dissolve Temporary Injunction filed by the Defendants [REDACTED] (“the Defendants”), and the Court having considered the testimony of witnesses, considered exhibits, and considered the memorandums and legal arguments put forth by party counsel, hereby **ORDERS and ADJUDGES** that the Motion to Dissolve Temporary Injunction is **DENIED**, for the reasons set forth below.

***Background/Introduction***

The gravamen of this action is the interpretation and application of section 163.045 (1), *Florida Statutes*<sup>1</sup> in response to the City of [REDACTED] (“the City”) denying the Defendants’ request to remove a 200-plus-year-old live-oak tree (“the Old Tree”) located in the [REDACTED] governed by specific ordinances

---

<sup>1</sup> “All new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation, are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications.” James Madison, *Federalist* No. 37, in *The Federalist*, ed. George W. Carey and James McClellan (Indianapolis, IN; Liberty Fund, 2001) 183.

tailored to protect “Heritage Trees.”<sup>2</sup> Section 163.045 (1), *Florida Statutes*, which went into effect on July 1, 2019, states that:

(1) A local government may not 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 obtains documentation 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.

Before the effective date of section 163.045, *Florida Statutes*, the City denied a tree removal permit sought by the Defendants. After the denial, but before the effective date of section 163.045, *Florida Statutes*, the Defendants then submitted a house design plan to the City, which also called for removing the Old Tree. The City denied the design plans per section 12-6-6(B)(2)(c), *The Code of the City of [REDACTED] Florida* (“[REDACTED] Code”), which prescribes that an “architect, civil engineer, or planner ... make every reasonable effort” to locate improvements “so as to preserve any existing tree.”

After section 163.045, *Florida Statutes* went into effect, the Defendants hired Arborist [REDACTED] to draft a letter stating that the Old Tree was a danger to people and property. The City immediately challenged the veracity of the letter. On July 22, 2019, the City filed a Complaint for Declaratory and Injunctive Relief. Concurrently, the City obtained an *ex-parte* temporary injunction to restrain the Defendants from removing the Old Tree. On July 24, 2019, the Defendants moved to set aside the temporary

---

<sup>2</sup> The parties are in apparent agreement that the Old Tree falls under the definition of “Heritage Tree”, as that term is defined in *The Code of the City of [REDACTED] Florida*. “Heritage Tree” is not a term used in any state statute.

injunction, based on the opinion of Arborist [REDACTED] arguing that the letter of [REDACTED] satisfies section 163.045, *Florida Statutes* (2019).

On August 5, 2019, the evidentiary portion of the Defendants' Motion to Dissolve commenced, with these witnesses being called:

A. [REDACTED] the arborist hired by the Defendants. [REDACTED] confirmed [REDACTED] initially rendered an opinion that the Old Tree was not dangerous, and that [REDACTED] only changed [REDACTED] opinion when requested to do so the Defendants. [REDACTED] was also candid that [REDACTED] did not utilize industry standards for determining whether the Old Tree is dangerous. While [REDACTED] presented [REDACTED] as a tree expert who is ISA certified, [REDACTED] opinion in the instant matter lacks credibility due to [REDACTED] failure to utilize industry standards, and his tacit admission to changing his original opinion to suit the whims of the Defendants.

B. [REDACTED], a certified arborist, called by the City. [REDACTED] unlike [REDACTED] assessed the Old Tree using ISA standards and rendered an opinion that the Old Tree is healthy and vibrant, and is not a present danger to people or property.

C. [REDACTED] arborist called by the City. [REDACTED] was not ISA certified when he assessed the Old Tree; therefore, the Court puts no weight on Mr. Brown's testimony due to his lack of certification when he analyzed the Old Tree.<sup>3</sup>

D. [REDACTED] Landscape Architect, called by the City. [REDACTED]

---

<sup>3</sup> This is not a blanket prohibition on this witness testifying in the future, if the witness is able to show that he inspected the Old Tree at a time when the witness was/is ISA certified.

testified that the field of Landscape Architecture does not have any written standards for assessing dangerous trees. Instead, [REDACTED] indicated he often relies upon ISA certified arborists to evaluate the condition of specific trees. Based upon his prior experience reviewing/analyzing the reports and opinions of ISA certified arborists regarding the condition of trees, [REDACTED] then testified that he considered the assessment conducted by [REDACTED] and that he agrees with her assessment.

E. [REDACTED], a City employee who presides over the City's parks and recreation department. [REDACTED] testimony regarding his interactions with the Defendants established that there are likely no grounds to create any form of an estoppel for the Defendants.

F. [REDACTED], a City building official who reviewed the house plans submitted by the Defendants. [REDACTED] testimony regarding his interactions with the Defendants established that there are likely no grounds to create any form of an estoppel for the Defendants.

Besides the live testimony presented at the August 5<sup>th</sup> hearing, these exhibits were admitted into evidence:

1. ISA Risk Assessment Form, with instructions.
2. Pictures of Old Tree.
3. Letter from [REDACTED]
4. Affidavit of [REDACTED]
5. Visual Inspection Report prepared by [REDACTED]
6. Letter from [REDACTED] to [REDACTED]
7. June 21, 2019 letter from [REDACTED] to the Defendants.
8. Emails between [REDACTED] and the Defendants.

The hearing concluded on August 27, 2019, with closing arguments.

### ***Objections by Defendants***

Defense counsel repeatedly asserted several objections throughout the multi-day hearing, and the Court deems it appropriate to consider the objections first.

#### **A. Objection 1- The Court improperly conducted an evidentiary hearing.**

The repeated objections by the Defendants to the Court exceeding its authority by both conducting an evidentiary hearing, and hearing testimony from witnesses called by the City, are overruled/denied.

A party who obtains a preliminary injunction without a hearing, must go forward with evidence when confronted with a motion to dissolve the injunction, and must establish a prima facie case to support the injunctive relief. *Dep't of Cmty. Affairs v. Holmes County*, 668 So. 2d 1096, 1101 (Fla. 1st DCA 1996). Per rule 1.610, *Florida Rules of Civil Procedure*, this Court must conduct a full evidentiary hearing once a motion to dissolve an ex-parte temporary injunction is filed. After the Defendants moved to dissolve the ex-parte preliminary injunction, this Court was bound to consider evidence from the City on whether the City can prove its prima facie case for entitlement to injunctive relief.

#### **B. Objection 2: The City lacks standing to seek Declaratory Relief.**

The repeated objections by the Defendants to the City's ability to seek declaratory relief are overruled/denied.

A party seeking declaratory relief must show doubt as to the existence or nonexistence of some right, status, immunity, power, or privilege and that the party is entitled to have such doubt removed. *Wilson v. County of Orange*, 881 So. 2d 625, 631 (Fla. 5th DCA 2004). Here, the City has a bona fide, actual, present practical need for the

declaration, because the City has enacted an extensive regulatory scheme for preserving certain types of trees in certain parts of the City. The City's interest is actual, present, adverse and antagonistic because the Defendants are seeking to nullify a portion of the City's tree regulations by asserting a newly enacted subject statute preempts the application of the City's regulations. Moreover, the matter is ripe, as the City has denied the Defendants' request to remove the Old Tree.

Therefore, the City's request for a declaration is not a mere request for legal advice, because the request involves analyzing a newly enacted statute to determine whether the City can prevent the Defendants from cutting down a tree situated on their property. Clearly, the parties are in doubt as to the interplay between the City's regulations, the newly enacted statute, and the ultimate impact on the Defendants' property. Accordingly, the City has standing under Chapter 86, *Florida Statutes*, to pursue declaratory relief.

### ***Statutory Interpretation Analysis***

The polestar of statutory interpretation is legislative intent, which is to be determined by first looking at the actual language used in a statute. *Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State*, 209 So. 3d 1181, 1189 (Fla. 2017). The statute at issue, section 163.045 (1), *Florida Statutes*, states that:

“(1) A local government may not 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 obtains documentation 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.”

If the statutory language is ambiguous, a court should look to the rules of statutory construction to help interpret legislative intent. *Hardee Cty. v. FINR II, Inc.*, 221 So. 3d 1162, 1165 (Fla. 2017). However, as Judge Learned Hand cautioned long ago, “[i]t is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish,” *Cabell v. Markham*, 148 F.2d 737, 739 (2d Cir. 1945), *aff’d*, 326 U.S. 404 (1945).

The verbiage at issue does not require the Court to delve into an extensive *corpus-linguistics* analysis, because the Legislature left express clues in the statutory language to narrow the scope of “danger” and “documentation.” Indeed, “[w]hen several nouns ... are associated in a context suggesting that the words have something in common, they should be assigned a permissible reading that makes them similar.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 195 (2012). To this end, the doctrine of *noscitur a sociis* (a word is known by the company it keeps) is the right interpretative tool “to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words.” *Cosio v. State*, 227 So. 3d 209, 213 (Fla. 2d DCA 2017) (*quoting Gustafson v. Alloyd Co.*, 513 U.S. 561 (1995)).

Here, the verbiage utilized in the statute shows a clear intention by the Legislature to remove local administrative barriers prohibiting property owners from removing trees that endanger other persons or property – with a qualifier that the property owner must first obtain “[d]ocumentation 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”. In a vacuum, the words “danger”<sup>4</sup> and “documentation”<sup>5</sup> are arguably vague and ambiguous because they are susceptible to innumerable interpretations. After utilizing the doctrine of *noscitur a sociis*, it becomes clear that the Legislature qualified both terms by requiring the documentation of the danger to come from either a licensed landscape architect or an ISA certified arborist.

The Legislature must be presumed to know the meaning of certified as an arborist or licensed as a landscape architect. By selecting only those two professions, the Legislature has implicitly adopted the professional standards applicable to the two respective industries. By extension, any documentation rendered on whether a tree is dangerous must conform to the respective industry standards.

---

<sup>4</sup> All trees are potentially dangerous, and can:

1. cause serious allergies; (2) attract rodents (squirrels); (3) attract bats (who have rabies); (4) act as lightning rods; (5) drop limbs and pine cones on people and property, causing injury; (6) damage property when sap drips, or leaves fall and stain with their tannins; (7) grow root systems that damage foundations, driveways, and roads; (8) have roots that act as trip hazards; (9) fall over when a strong wind blows, damaging property or killing people and pets; (10) catch on fire; (11) be used to fashion arrows, clubs, and other weapons; (12) harbor ticks, roaches, spiders, and other critters that cause disease; (13) cast large shadows that prevent healthy sunlight from making it through to the ground; (14) harbor raccoons and other larger animals that can attack people; and (15) they attract termites that can destroy the infrastructure of any house.

<sup>5</sup> For example:

Could somebody simply share a beer with a licensed arborist who then scribbles on a bar napkin that a certain tree is dangerous because ‘a lot of people are allergic to oak tree pollen’? Or maybe one beer later scribbles that the tree is dangerous because “trees attract lightening and lightening can cause injuries”? Or after several more cocktails scribbles that a tree is dangerous because “the tree attracts birds, and for somebody with Ornithophobia (the fear of birds), such a bird magnet would lead to traumatic results.”



Accordingly, the only reasonable interpretation of section 163.045 (1), *Florida Statutes* is one where: (1) an arborist or landscape architect must determine that a tree is a danger; and (2) for the determination and documentation to be rendered utilizing only the methodologies and official documents applicable to the two respective industries.

### ***Statutory Preemption Analysis***

The subject statute does not preempt the City from challenging documentation of a dangerous tree, if the City questions whether the methods utilized by the arborist/architect rendering the documentation does not comply with industry standards.

In Florida, municipalities have broad Home Rule powers and can legislate concurrently with the State Legislature on any matter not preempted to the State. *City of Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006). Limited intrusion on Home Rule is permitted only to the extent preemption is the purpose of the State Legislature. *See Tallahassee Memorial Regional Med. Center, Inc. v. Tallahassee Med Center, Inc.*, 681 So. 2d 826 (Fla. 1st DCA 1996). There are three types of preemption: (1) express preemption; (2) implied preemption; and (3) conflict preemption. *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880 (Fla. 2010).

#### **A. Express Preemption.**

Express preemption requires a specific legislative statement with explicit language, evidencing an expressed intent to preempt a particular field. *The Lake Hamilton Lakeshore Owners Assn., Inc. v. Neidlinger*, 182 So. 3d 738 (Fla. 2d DCA 2015). For example, in *Phantom of Clearwater v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005), the appellate court considered whether Florida's statute regulating the sale and use of fireworks

preempted local regulation of the sale of fireworks. In holding, that there was no preemption, the appellate court stated:

We conclude that section 791.001 does not contain language creating an express preemption. This statute does not contain language similar to the phrase, “It is the legislative intent to give exclusive jurisdiction in all matters set forth in this chapter”—language that has been held to establish a level of preemption in the field of telecommunication companies....It does not come close to the language of Chapter 316, which creates a “Florida Uniform Traffic Control Law,” and specifies “the area within which municipalities may control certain traffic movement or parking in their respective jurisdiction.” . . . If the legislature intends to preempt a field, it must state that intent more expressly than the language contained in section 791.001.

*Id.* at 1018-19 (citations omitted).

As with *Phantom of Clearwater*, the statute here contains no language reflecting a legislative intent to exclusively reserve jurisdiction in all matters related to trees, or dangerous trees. Moreover, the statute does not preclude local governments from ensuring that the documentation of any danger complies with the industry standards applicable to ISA certified arborists and landscape architects.

## **B. Implied Preemption.**

There is no implied preemption contained within the statute. Implied preemption exists when the “legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted to the Legislature.” *The Lake Hamilton Lakeshore Owners Association, Inc. v. Neidlinger*, 182 So. 3d 738 (Fla. 2d DCA 2015). Further, “[w]hen courts create preemption by implication, the preempted field is usually a narrowly defined field, ‘limited

to the specific area where the Legislature has expressed [its] will to be the sole regulator.’” *Id.* at 743 (quoting *Tallahassee Mem. Reg’l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826 (Fla. 1st DCA 1996)). The defining feature of implied preemption is the creation of an extensive regulatory scheme. Here, the Legislature did not establish a regulatory scheme and instead drafted a very narrow statutory prohibition applicable to minimal circumstances. There is simply no support to interpret section 163.045 (1), *Florida Statutes* as impliedly preempting local governments from generally regulating tree preservation.

### **C. Conflict Preemption.**

There is no conflict preemption either. Conflict preemption applies where a local ordinance conflicts with a state statute so much that the two rules cannot co-exist—as compliance with one violates the other. *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005). Conflict preemption does not exist simply because an ordinance is more stringent than a statute or if it regulates an area not covered by a statute. *See, e.g., F.Y.I. Adventures, Inc. v. City of Ocala*, 698 So. 2d 583, 584 (Fla. 5th DCA 1997) (upholding County ordinance which imposed stricter guidelines and standards on persons and organizations that conduct bingo games than was required by the statute); *Lamar–Orlando Outdoor Adver. v. City of Ormond Beach*, 415 So. 2d 1312 (Fla. 5th DCA 1982) (Federal Highway Beautification Act did not preempt power of city to enact ordinances regulating or prohibiting signs more strictly than that law and did not preempt enforcement provision of ordinance).

Both section 163.045 (1), *Florida Statutes*, and section 12-6-6(B)(2)(c), *The Code of the City of [REDACTED] Florida* may co-exist, as the [REDACTED] Code merely is simply more stringent than the statute, as it ascribes standards for arborists and architects to consider. The statute applies only when a tree is dangerous, and documentation from a certified arborist or licensed landscape architect substantiates the tree's dangerous condition. Ultimately, there is no conflict if the City challenges findings made by an ISA certified arborist, or a landscape architect, and if the findings of danger are demonstrated to fall short of industry standards.

#### **D. Preemption Conclusion**

The Legislature did not preempt local governments from challenging documentation provided under the statute. First, there is no express preemption language in the statute. Second, there is no extensive regulatory scheme promulgated to implement the statute. Finally, here in this case, there is no conflict between the statute and City Code.

Because the Legislature has identified experts to make the danger determination, then considering evidence from competing experts in the same field is a reasonable approach to resolving disputed questions on particular trees. Here, the City is not preempted from challenging, through submission of its own expert opinions, the conclusions reached by an arborist who generated questionable documentation that the Old Tree is dangerous.

### ***Analysis of Motion to Dissolve Temporary Injunction***

When a court is deciding whether to dissolve an ex-parte temporary injunction, the party who obtained the injunction must present evidence to establish a prima facie case supporting injunctive relief. *Thomas v. Osler Medical, Inc.*, 963 So. 2d 896, 900 (Fla. 5th DCA 2007) (citing *Hunter v. Bennies Contracting Co., Inc.*, 693 So. 2d 615, 616 (Fla. 2d DCA 1997)). Specifically, the party seeking to keep the injunction in place must: present evidence that it will suffer irreparable harm; establish it has no adequate remedy at law; prove it will likely succeed on the merits; and establish that the injunction will serve the public interest. *Jouvence Ctr. For Advanced Health, LLC v. Jouvence Rejuvenation Ctrs., LLC*, 14 So. 3d 1097, 1099 (Fla. 4th DCA 2009). Considering the evidence presented at the hearings in this matter, then the Court finds that the City has met its burden as to each required element, as set forth below:

#### **A. Irreparable harm.**

Here, there is a likelihood of irreparable harm, as a 200-year-old oak tree, 63 inches in diameter, cannot be replaced, and its loss is irreparable.

#### **B. No adequate remedy at law.**

If the Old Tree is removed, and the removal was deemed illegal, then money damages alone cannot replace a unique 200-year-old tree which is likely much older than the State of Florida itself.

#### **C. The City will likely succeed on the merits.**

The Court does not find the Defendants' interpretation of section 163.045 (1), *Florida Statutes* to be credible. Specifically, the Court finds that the Legislature has not

preempted local governments from challenging the documentation determining a tree is a danger if the documentation and opinion are not credible. Here, the evidence at the injunction hearing raised serious doubts as to the accuracy and credibility of the documentation that the Defendants submitted to the City.

Indeed, [REDACTED] provided the only credible expert opinion. In [REDACTED] opinion, the Old Tree is not a danger.

**D. To deny the Defendants' motion is in the best interest of public policy.**

Public policy is best served if the laws enacted by its duly elected leaders are enforced. When the Defendants purchased their lot, the Defendants were on constructive notice of the entire [REDACTED] Code, including the [REDACTED] express provisions for preserving Heritage Trees. Furthermore, the Defendants had constructive notice of the requirement to design improvements in such a way as to protect viable trees. The Defendants did not have to purchase a lot in the [REDACTED] or even in the City of [REDACTED] once they elected to do that, then they submitted themselves to the community values represented by the regulations in the [REDACTED] Code.

***Ruling***

Based on the testimony and evidence presented, and upon the motions, briefs, and other applicable filings, the Court denies the Defendants' motion and finds that:

A. The City has met its burden of going forward with sufficient evidence to establish a prima facie case to support keeping the injunction in place.

B. The City has made the requisite showing of a likelihood of success on the merits.

C. There is an immediate danger of significant loss or damage if the injunction is not maintained, as an irreplaceable 200 plus-year-old tree will likely be removed without the injunction remaining in place.

D. The City has no adequate remedy at law because monetary damages cannot compensate for the loss of a unique 200 plus-year-old tree.

E. The injunction will serve the public interest, as the tree ordinances in place were enacted by local government officials elected by the voters of the City, and are the reflection of the public interest of the residents of [REDACTED]

F. The City is excused from having to post any bond since it is a municipal governmental entity.

G. Keeping the temporary injunction in places preserves the status quo.

**DONE AND ORDERED** in [REDACTED] Florida, this 30<sup>th</sup> day of October 2019.

[REDACTED]  
\_\_\_\_\_  
**Honorable [REDACTED]**  
**Circuit Court Judge**

cc: All counsel of record.

# Pensacola lawsuit over heritage tree could be test case for new Florida property rights law

Jim Little, Pensacola News Journal Published 6:00 a.m. CT July 25, 2019

A Pensacola lawsuit could be the first test case for a new Florida law that prevents local governments from regulating tree trimming or removal trees — even "heritage" trees — on residential property.

The city of Pensacola is suing the owners of a vacant lot to stop the removal of a heritage tree.

Property owners Larry and Ellen Vickery started the process to build a home on a vacant lot at 605 N. Spring St. in the North Hill neighborhood and wanted to remove a live oak tree at the back of the lot to build their planned house.

The tree in question has a diameter of more than 60 inches. Trees larger than 34 inches are considered "heritage" trees under the city's ordinance and have additional protections even on residential property.

Some of the Vickerys' future neighbors wanted the city to protect the tree.

"Our concern is that this is a healthy 200-plus-year-old tree that's been part of our neighborhood longer than our houses have been here," Sarah O'Niell, a North Hill resident said.

After going back and forth, the city ultimately denied the Vickerys' request to remove the tree under the protections for heritage trees, saying there was enough room on the lot to build the house and preserve the tree.

**Tree protections:** [Escambia County planning board wants public input on rewriting tree protections](#)

**Push for more protection:** [Escambia County woman seeks to change county tree ordinance](#)

A final denial was dated June 21, according to court documents, but five days later Gov. Ron DeSantis signed House Bill 1159. The new law says local governments cannot make a residential property owner follow any requirements to remove or trim a tree if they have documentation from a certified arborist or licensed landscape architect that the tree "presents a danger to persons or property."

The law went into effect July 1.

On July 8, the Vickerys' home builder sent an email to the city citing the new law and that the owners would be removing the tree. Attached in the email was a letter from an arborist with Tri-



State Tree Service LLC saying the main trunk of the tree is suffering from severe decay and "will fail" and that the surrounding homes were at risk of severe damage when the tree "fails."

The assessment directly contradicts an arborist brought in by the city that said the tree is in overall good health, according to court documents.

The city took the issue to Escambia County Circuit Court on Monday filing a lawsuit against the Vickery family to prevent the removal of the tree, arguing that the original denial was still valid because it was issued before the new law went into effect.

"My clients feel that the city has been unfair in its treatment of them and that they have been deprived of a proper permit because of political considerations," wrote Kim Skievaski, the Vickerys' attorney, in a letter to the city on Monday.

Skievaski told the News Journal the lawsuit could be the first test case of the new Florida law.

"From my point of view, this is fairly egregious on the part of the city in terms of trying to now interfere with what my clients wish to do based upon (the Vickery family's) receipt of an opinion from a certified arborist that the tree presents a danger," Skievaski said. "At the end of the day, it's my clients who own the tree, and my clients who will be responsible if, having knowledge of this diseased tree, it were to fall and injury a person or property."

Skievaski said the new law doesn't leave the opinion issued the expert, hired by the property owners, open to debate. A judge has issued a temporary injunction to prevent the tree's removal while the case moves through the legal system.

The new law has left local governments wondering how it should be interpreted and comes as both the Pensacola and Escambia County are taking [another look at their tree protection ordinances](#).

Escambia County's isn't as strict as Pensacola's and defines a heritage tree as a tree greater than 60 inches in diameter compared to the city's 34 inches.

Brent Wipf, with Escambia County Natural Resources Management Department, said from the county's point of view the effect of the law is still not fully known and there's a lot of uncertainty statewide about the new law.

"Much of the uncertainty is tied to how the rule will be interpreted," Wipf said. "Words like 'dangerous' or 'residential' and how those are defined and applied are going to be important."

Escambia County will be holding [a planning board workshop later this year](#) to look at the state of its current tree ordinance.

Pensacola Mayor Grover Robinson said since the case has gone to court he was limited about what he could say. But, he said, the city brought the case to get a clear interpretation from the court on the law.

"We are asking the court to provide a clear interpretation of the law," Robinson said. "The League of Cities, it's my understanding, tried to communicate this to the Legislature that there were going to be a lot of points of confusion. There's a lot of interpretation in here, and that's why we're asking the court."

O'Niell, one of the North Hill residents who have asked the city to protect the tree, said she is glad the city is enforcing its own ordinance.

"I know that the HB 1159 is for the rights of the property owners, but when you buy into especially a preservation neighborhood, you understand that there's some codes you have to follow to preserve the character of it," O'Niell said.