

RESOLUTION NO. 2024-___

A RESOLUTION OF THE PLANNING BOARD OF THE CITY OF KEY WEST, FLORIDA, APPROVING AN AMENDMENT TO CHAPTER 110 OF THE LAND DEVELOPMENT REGULATIONS, ENTITLED “RESOURCE PROTECTION”, ARTICLE VI ENTITLED, “TREE PROTECTION”, TO PROVIDE DIRECTION TO FORESTRY STAFF TO CORRESPOND WITH THE INTERNATIONAL SOCIETY OF ARBORICULTURE REGARDING COMPLIANCE WITH F.S. 163.045.

WHEREAS, Section 90-182 of the City’s Land Development Regulations assigns power and duty to the Tree Commission to protect and enhance the health, growth, and planting of trees in the city; and

WHEREAS, the City’s Land Development Regulations includes provisions for Resource Protection and more specifically Tree Protection; Section 110-251 of Article VI states in part, *“The city commission finds that trees on privately and publicly owned property within the city are economic and aesthetic assets to the citizens of the city, because of their important and meaningful contribution to a healthy, beautiful, and safer community, attributable to their carbon dioxide absorption, oxygen production, dust filtration, wind and noise reduction, soil erosion prevention and surface drainage improvement.”*; and

WHEREAS, on July 1, 2019, the State of Florida enacted Florida Statue (F.S) 163.045 regarding the removal of hazardous trees on residential properties; and

WHEREAS, F.S. 163.045 was further modified on July 1, 2022, and provides a process by which an arborist certified by the International Society of Arboriculture (ISA) or a Florida licensed landscape architect may assess and document “unacceptable risk” through an established tree risk assessment procedure and remove a tree thereby disallowing a local government from requiring any otherwise required notice, application, approval, permit, fee or mitigation; and

WHEREAS, the Tree Commission finds that City staff and residents of the City of Key West shall respect and observe state law; and

WHEREAS, the Tree Commission wishes to direct City staff to ensure compliance with F.S. 163.045, including provision of state required documentation within a timeframe, verification of regulatory requirements for tree assessment, and authority to file ethical concerns through the ISA process, within the parameters of state law; and

WHEREAS, the Tree Commission recommends that the City Commission of the City of Key West direct City Management to draft a code amendment for Chapter 110- Resource Protection, Article VI.- Tree Protection, for consideration by the Planning Board and review and approval by the City Commission; and

WHEREAS, the Tree Commission recommends that the City Attorney assist the Planning Department to draft this Code amendment by suggesting legally defensible language to be included in the draft Code amendment; and

WHEREAS, the Tree Commission advises that municipalities such as Tampa, St. Petersburg, Pensacola, and other Florida cities are actively reporting perceived violations of F.S. 163.045, and City Management should review best practices to develop an effective procedure for the City of Key West; and

WHEREAS, the Code amendment would direct Forestry staff to alert the International Society of Arboriculture if a regulated tree has been removed and it does not appear that, “. . . *the property owner possesses documentation from an arborist certified by the ISA or a Florida licensed landscape architect that the tree poses an unacceptable risk to persons or property. A tree poses an unacceptable risk if removal is the only means of practically mitigating its risk below moderate, as determined by the tree risk assessment procedures outlined in Best Management Practices – Tree Risk Assessment, Second Edition (2017);* and

WHEREAS, the Tree Commission finds that it is in the public’s interest to draft this amendment to the City’s Land Development Regulations as proposed herein given that the Tree Commission or the

Urban Forester should be authorized to report ethics concerns to the ISA regarding tree removal; and

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2: That Section 110-296 of the Code of Ordinances is hereby added as follows:

Sec. 110-296 – Use of Florida Statute 163.045

- (1) If a residential property owner utilizes Florida Statute 163.045 to remove a hazardous tree or to perform heavy maintenance on their property, property owner shall submit, to the urban forestry manager, the required documentation under Florida Statute 163.045, within (30) days of the removal of the hazardous tree or heavy maintenance.
- (2) If the required documentation fails to comply with the requirements of Florida Statute 163.045, the urban forestry manager will issue a violation as provided in Sec. 110-288 and refer the documentation to the Tree Commission for an administrative hearing.
- (3) If the property owner fails to furnish the required documentation within thirty (30) days after the removal of the hazardous tree or heavy maintenance, the urban forestry manager shall forward the case to the code enforcement special magistrate for further hearing and penalty with proper notice prescribed in article VI of Chapter 2, Code Compliance.
- (4) Upon receipt of the required documentation under Florida Statute 163.045, the urban forestry manager will verify that the tree removal or heavy maintenance qualifies for the Statutory Exemption under Florida Statute 163.045 and the provisions of the International Society of Arboriculture (“ISA”).

(Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading. Added language is double underlined and ~~double struck through~~ at second reading.)

- (5) If the urban forestry manager is of the opinion that the merits of the documentation supporting the tree removal or heavy maintenance fails to qualify for the Statutory Exemption under Florida Statute 163.045 or ISA standards, the urban forestry manager may refer the documentation to the Tree Commission for review and finding.
- (6) Upon a finding that the documentation, used by a certified arborist or licensed landscape architect to remove trees or perform heavy maintenance, fails to qualify for the Statutory Exemption under Florida Statute 163.045 or ISA Standards, staff shall report the certified arborist or landscape architect to the ISA or the Department of Business and Professional Regulation, as appropriate.
- (7) If the documentation is referred to the Tree Commission, the certified arborist or landscape architect shall receive reasonable notice of the Tree Commission meeting that the documentation will be reviewed at.

Section 3. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Planning Board.

Read and passed on first reading at a regularly scheduled meeting held this 17th day of October, 2024.

Sam Holland, Jr. Planning Board Chairman

Date

Attest:

Katie Halloran, Planning Director

Date

Filed with the Clerk:

Keri O'Brien, City Clerk

Date