



The City of Key West
Planning Board
Staff Report

To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Planning Staff

Date: November 20, 2024

Application: **Text Amendment of the Land Development Regulations** - A Resolution of the City of Key West Planning Board recommending an ordinance to the City Commission to amend Land Development Regulations Chapter 110, entitled "Resource Protection", Article VI entitled "Tree Protection", to establish a requirement for homeowners to produce dangerous tree declarations to city staff pursuant to F.S. 163.045; to establish a procedure by which the Tree Commission and City staff may submit potential ethics violations to the International Society of Arboriculture regarding compliance with Florida statute 163.045 and associated tree removal; providing for penalties; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Request: The text amendment would provide the City the ability to request documentation from property owners and tree removal companies to ensure proper removal and trimming of trees to limit potential ethics violations of the International Society of Arboriculture (ISA).

Sponsor: City Manager

Background

The following code amendment would provide a requirement for homeowners to submit any qualifying documentation for a tree trimming or removal to the urban forester on request in collaboration with Florida Statute (F.S) 163.045 within 30 days of the qualifying tree removal or major maintenance. It also allows the Tree Commission to determine if a letter to the International Society of Arboriculture (ISA) should be sent regarding alleged violations of F.S. 163.045

F.S 163.045 was adopted in 2019, which preempted municipalities from requiring permits, replacement plants, or penalties regarding residential properties if a tree poses a danger to persons or property. That determination must be made by an International Society of Arboriculture (ISA) certified arborist or licensed landscape architect. In 2022, F.S. 163.045 was amended to clarify what “documentation” means, as well as to clarify the risk standard.

While F.S. 163.045 mandates that a city cannot require a residential tree removal permit if an arborist or landscape architect opines that a tree is a risk to persons or property, it does not specifically prohibit a city from requiring the risk assessment documentation from being submitted to the city after removal in order to ensure that licensed arborists or landscape architects are in fact making these assessments. There has also been a concern by staff regarding the veracity of the assessments. There is a desire by tree staff and the tree commission to refer suspected violations by arborists to the ISA.

The Tree Commission approved Res. TC 24-04 that requests that the City Commission initiate an Land Development Regulation (LDR) change pursuant to Sec. 90-518 to accomplish these goals. Violations of the prospective regulation would be referred to the Tree Commission for administrative hearings and code compliance thereafter if no compliance is achieved.

The below code amendment accomplishes the request by the Tree Commission. 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)* If no documentation is provided the City could open an enforcement case. The ultimate goal is to limit the number of improper tree trimming and removal.

Requested / Proposed Amendment:

*Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading.

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) 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”).

(3) 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.

(4) 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.

(5) 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.

(6) If the documentation is referred to the Tree Commission, the certified arborist or landscape architect shall receive reasonable notice of the placement of the item on a Tree Commission meeting.

Excerpt from Florida Statutes:

Section 1. Section 163.045, Florida Statutes, is amended to read:

163.045 Tree pruning, trimming, or removal on residential property.

(1) For purposes of this section, the term:

(a) “Documentation” means an onsite assessment performed in accordance with the tree risk assessment procedures outlined in Best Management Practices - Tree Risk Assessment, Second Edition (2017) by an arborist certified by the International Society of Arboriculture (ISA) or a Florida licensed landscape architect and signed by the certified arborist or licensed landscape architect.

(b) “Residential property” means a single-family, detached building located on a lot that is actively used for single-family residential purposes and that is either a conforming use or a legally recognized nonconforming use in accordance with the local jurisdiction’s applicable land development regulations.

(2) A local government may not require a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on a residential property if the property owner possesses obtains documentation from an arborist certified by the ISA International Society of Arboriculture or a Florida licensed landscape architect that the tree poses an unacceptable risk presents a danger 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).

(3)(2) A local government may not require a property owner to replant a tree that was pruned, trimmed, or removed in accordance with this section.

(4)(3) This section does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to ss. 403.9321-403.9333.

Section 2. This act shall take effect July 1, 2022.

History.—*s. 1, ch. 2019-155; s. 1, ch. 2022-121.*

Land Development Regulations Text Amendment Process:

Planning Board Meeting:	November 20, 2024
City Commission (1st Reading):	TBD, 2024
Local Appeal Period:	30 days
DEO Review (1st Reading):	Up to 60 days
City Commission (2nd Reading / Adoption):	TBD, 2024
Local Appeal Period:	30 days
DEO Review (2nd Reading):	Up to 45 days
DEO Notice of Intent (NOI):	Effective when NOI posted to DEO site

Analysis

The purpose of Chapter 90, Article VI, Division 2 of the Land Development Regulations (the “LDRs”) of the Code of Ordinances (the “Code”) of the City of Key West, Florida (the “City”) is to provide a means for changing the text of the Land Development Regulations. It is not intended to relieve hardships nor to confer special privileges or rights to any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the Planning Board and the City Commission shall consider the consistency of the proposed amendment with the intent of the Comprehensive Plan.

Pursuant to Code Section 90-552, the Planning Board shall hold a public hearing thereon with due public notice. The Planning Board shall consider recommendations of the City Planner, City Attorney, Building Official and other information submitted at the scheduled public hearing. The Planning Board shall transmit a written report and recommendation concerning the proposed change in the LDRs to the City Commission for official action.

Code Section 90-520 (6) provides criteria by which LDR amendments must be evaluated:

Section 90-520 (6) Justification. The need and justification for the proposed change shall be stated. The evaluation shall address but shall not be limited to the following issues:

The code amendment addresses recently passed State legislation that enables property owners to remove or trim trees that potentially impact their property and safety due to the tree condition. Specifically, the proposed amendment requires that a property owner submit proper documentation from a certified arborist which establishes the basis for the tree removal or trimming. It is hoped that this process will minimize the number of trees that are improperly removed or trimmed pursuant to F.S. 163.045. This code amendment would protect the City by giving the City the right to request a copy of the documentation from the property

owner for proper tree trimming and removal files, and if no file is given than an enforcement case can be initiated. The goal is to mitigate tree harm.

- a. ***Comprehensive Plan consistency. Identifying impacts of the proposed change in zoning on the Comprehensive Plan. The zoning must be consistent with the Comprehensive Plan.***

There are no specific zoning districts affected by this amendment. It encompasses the entire City.

- b. ***Impact on surrounding properties and infrastructure. The effect of the change, if any, on the particular property and all surrounding properties. Identify potential land use incompatibility and impacts on infrastructure.***

The proposed amendment would help ensure proper protection of trees from illegal trimming and removal from property owners.

- c. ***Avoidance of special treatment. The proposed change shall not constitute a spot zone change. Spot zoning occurs when:***

1. ***A small parcel of land is singled out for special and privileged treatment:***

The proposed amendment is not specific to a single parcel.

2. ***The singling out is not in the public interest but only for the benefit of the landowner.***

The proposed amendment is not specific to a single parcel.

3. ***The action is not consistent with the adopted comprehensive plan.***

The action is consistent with the adopted comprehensive plan and is carefully tailored to match guidance provided to the City from recent state law.

- d. ***Undeveloped land with similar comprehensive plan future land use map designation. The amount of undeveloped land in the general area and in the City having the same zoning classification as that requested shall be stated.***

This proposed amendment is not associated with a particular Comprehensive Plan Future Land Use designation or specific zoning district.

Recommendation:

Planning Staff recommends approval of the requested code amendment.