



MEMORANDUM

Date: September 12, 2024 City Commission meeting

To: The City Commission for the City of Key West

From: Ronald Ramsingh, City Attorney

Subject: Resolution directing staff to propose an LDR amendment for consideration by the Planning Board and City Commission to provide for a reporting requirement for homeowners seeking relief for tree removal under F.S. 163.045; providing for penalties; providing for a complaint process to the International Society of Arboriculture for violations of F.S. 163.045.

Sponsors: Planning Dept via the City Manager

Background

F.S. 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 24-03 that requests that the City Commission initiate an 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.

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 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).

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

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

Cost

There are no costs to the city in implementing this ordinance. If violations occur, they are subject to a \$250.00 per day fine until compliance, and \$500.00 per day if it is a repeat violation. It is unknown at this time what revenues would be derived from non-compliance.

Options:

1. To approve the proposed Resolution, initiating the LDR revision process pursuant to Sec. 90-518. Planning staff will propose an LDR amendment incorporating these changes to the Planning Board and then the measure will come to the City Commission for consideration.
2. To deny the proposed Resolution. No LDR changes will be initiated and city staff will continue to request voluntary compliance with the production of ISA documentation on risk assessment for residential trees.

Recommendation:

This is a policy decision to make, therefore the Legal Department makes no recommendation. However, the Planning Staff recommends approval, through the Interim City Manager.