

ADMINISTRATIVE MEMORANDUM NO. 19-303

TO: Planning and Zoning Board
VIA: David L. Recor, ICMA-CM, Director of Development Services
Jennifer Gomez, AICP, Assistant Director of Development Services
FROM: Max Wemyss, Planner
SUBJECT: Text Amendments to Chapter 155, Zoning Code
Article 5 – Tree Preservation Exceptions for Residential Property
DATE: October 7, 2019

The 2019 Florida Legislature passed HB 1159, an act relating to private property rights, which was signed by the Governor as Chapter 2019-155, Laws of Florida, and became effective July 1, 2019. HB 1159 creates Section 163.045, Florida Statutes, preempting local governments from regulating the pruning, trimming, removal, or replanting of trees on residential property if a property owner obtains documentation from a certified arborist or licensed landscape architect that the tree presents a danger to persons or property.

Broward County enacted Ordinance 19-712 on September 10, 2019, amending Section 27-406 of the Broward County Code of Ordinances, providing for an exemption consistent with this new state law from any notice, application, approval permit, fee, or mitigation requirements of the Code relating to pruning, trimming, removal, or replanting of trees on residential property when the underlying, affected trees have been determined by an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect to be a danger to persons or property.

The proposed amendment to Section 155.5204 Tree Preservation of the City of Pompano Beach Code of Ordinances, is to be consistent with the new state law and the County Ordinance, as well as Section 155.5204.A. Intent to Maintain Municipal Certification by Broward County.

Staff recommends approval.

155.5204. TREE PRESERVATION**A. Intent to Maintain Municipal Certification by Broward County**

The standards in this section, when combined with the Tree Permit provisions in Section 155.2411 and enforcement provisions in Article 8: Enforcement, are intended to qualify for certification by Broward County as containing requirements and standards that are as stringent as those in Article XIV (Tree Preservation and Abuse Ordinance) of the Broward County Code of Ordinances, and thus allow delegation to the city of the county's authority to maintain tree preservation and regulate tree abuse within Pompano Beach. The provisions in this section shall be interpreted in accordance with that purpose.

B. Applicability**1. General**

- a. Except where expressly provided otherwise in this Code, the requirements and standards in this section shall apply throughout the city.
- b. Issuance of a Tree Permit in accordance with Section 155.2411, Tree Permit, is required before any removal, relocation, replacement, or substantial alteration of any tree, any land clearing, or any demolition activity, unless exempted from the requirements and standards in this Part in accordance with subsection 2 below.

2. Exception

- a. The requirements and standards of Sections 155.5204.C. through 155.5204.E. shall not apply to the following:
 - i. Properties owned or controlled by Broward County, including but not limited to county facilities, road rights-of-way, and parks.
 - ii. Properties owned or controlled by the Broward County School Board.
 - iii. Any site designated by the Broward County Board of County Commissioners as a Local Area of Particular Concern, Urban Wilderness Inventory Area, Natural Resource Area, or Environmentally Sensitive Land.
 - iv. Any tree designated a historical tree by the Broward County Board of County Commissioners.
- b. The requirements and standards of Sections 155.5204.C. through 155.5204.E., including the requirement to obtain a Tree Permit, shall not apply to the removal of any tree other than a specimen or historical tree as defined herein, on owner-occupied residential properties of one (1) acre or less developed for detached single-family and duplex usage, when the height and minimum number of trees required by Sections 155.5203.B.2.g.ii. and 155.5203.C. are maintained on the property, except previously preserved, relocated or replaced trees that were preserved, relocated or replaced pursuant to a tree removal license.
- b.c. Pursuant to Section 163.045, Florida Statutes, as amended, pruning, trimming, removal, or replanting of, or mitigation for impacts to, a tree on residential property is exempt from any notice, application, approval, permit, fee, or mitigation requirements of this article 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. This exemption does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to Sections 403.9321 through 403.9333, Florida Statutes, as amended.
- e.d. During emergency conditions caused by a hurricane or other natural disaster, the Development Services Director may suspend application of the provisions of this section, with submitted photographic evidence—provided, however, that Tree Permits authorizing tree removals occurring during the emergency conditions shall be obtained within six months, and

the replacement of the trees shall be completed within two years after the end of the emergency condition.

3. Doubling of Application Fee if Tree is Removed Before a Tree Permit is Obtained

If a tree is removed before a Tree Permit is obtained, the application fee for a Tree Permit authorizing the tree removal shall be doubled.

C. Tree Removal

1. The Development Services Director shall approve a Tree Permit authorizing tree removal only on making one or more of the following findings:
 - ~~a.~~ That the tree removal is necessary to accommodate a proposed development.~~e.~~
 - ~~a-b.~~ ~~f~~ That the proposed development cannot be located on the site without tree removal, despite every reasonable effort having been made to incorporate the tree(s) proposed to be removed into the development and to minimize the number of trees removed.
 - ~~b-c.~~ That the tree proposed to be removed is dead, effectively destroyed, diseased, injured, or otherwise of poor quality and condition.
 - ~~e-d.~~ That the tree proposed to be removed is obstructing safe vehicular cross visibility.
 - ~~d-e.~~ That the tree proposed to be removed is too close to an existing structure so as to endanger the structure, or otherwise is creating ongoing safety problems for existing development.
 - ~~e-f.~~ That the tree is an invasive tree, as defined in Part 5 (Terms and Uses Defined) of Article 9: Definitions and Interpretation, provided the removal results in the complete removal of the invasive tree.
2. If trees proposed to be removed are located within a Natural Forest Community, as defined in Part 5 (Terms and Uses Defined) of Article 9: Definitions and Interpretation, the Development Services Director shall approve a Tree Permit authorizing tree removal only on making the following additional findings:
 - a. That any areas providing habitat to species listed in *Office Lists of Endangered and Potentially Endangered Fauna and Flora in Florida* (Florida Game and Freshwater Fish Commission) have been identified and will be preserved.
 - b. That areas of high on-site wildlife utilization have been identified and will be preserved.
 - c. That areas containing relatively undisturbed tree canopy, subcanopy, and groundcover have been identified and will be preserved.
3. Activities associated with authorized tree removal shall not cut down, destroy, remove, relocate, effectively destroy, or damage any other tree on the site unless a Tree Permit authorizing such action is first obtained.
4. No dead tree shall be allowed to remain on any developed property. Any dead tree on developed property shall be removed in accordance with a Tree Permit approved in accordance with Section 155.2411, Tree Permit.

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