

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Rafael Paz, City Attorney
DATE: December 8, 2021

First Reading

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE MIAMI BEACH CITY CODE, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE II, ENTITLED "CARE AND MAINTENANCE OF TREES AND PLANTS," BY AMENDING DIVISION 2, ENTITLED "TREE PRESERVATION AND PROTECTION," BY AMENDING SECTION 46-58, ENTITLED "TREE REMOVAL REQUIREMENTS, EXEMPTIONS, AND PROHIBITED SPECIES" TO PROHIBIT REMOVAL OF TREES AND PALMS IDENTIFIED IN LANDSCAPE NEIGHBORHOOD OVERLAYS LISTED WITHIN CHAPTER 126 FROM PUBLIC PROPERTY; AMENDING SECTION 46-63 THEREOF, ENTITLED "CRITERIA AND CONDITIONS FOR HERITAGE TREE DESIGNATION AND HERITAGE TREE REMOVAL AND RELOCATION," TO PERMIT PALMS OR GROUPING OF PALMS TO QUALIFY FOR DESIGNATION AS HERITAGE TREES IN THE SAME MANNER AS OTHER SPECIMEN TREES; AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

ANALYSIS

See attached Commission Memorandum.

SUPPORTING SURVEY DATA

N/A

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?

Yes

Does this item utilize G.O. Bond Funds?

No

Legislative Tracking

Office of the City Attorney

Sponsor

Commissioner Steven Meiner

ATTACHMENTS:

Description

- ▢ Commission Memorandum
- ▢ Ordinance



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Rafael Paz, Acting City Attorney

DATE: October 13, 2021

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE MIAMI BEACH CITY CODE, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE II, ENTITLED "CARE AND MAINTENANCE OF TREES AND PLANTS," BY AMENDING DIVISION 2, ENTITLED "TREE PRESERVATION AND PROTECTION," BY AMENDING SECTION 46-58, ENTITLED "TREE REMOVAL REQUIREMENTS, EXEMPTIONS, AND PROHIBITED SPECIES" TO PROHIBIT REMOVAL OF TREES AND PALMS IDENTIFIED IN LANDSCAPE NEIGHBORHOOD OVERLAYS LISTED WITHIN CHAPTER 126 FROM PUBLIC PROPERTY; AMENDING SECTION 46-63 THEREOF, ENTITLED "CRITERIA AND CONDITIONS FOR HERITAGE TREE DESIGNATION AND HERITAGE TREE REMOVAL AND RELOCATION," TO PERMIT PALMS OR GROUPING OF PALMS TO QUALIFY FOR DESIGNATION AS HERITAGE TREES IN THE SAME MANNER AS OTHER SPECIMEN TREES; AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

Pursuant to the request of Commissioner Steven Meiner, the above-referenced Ordinance is submitted on First Reading for consideration by the Mayor and City Commission at the October 13, 2021 City Commission meeting.

BACKGROUND

On March 17, 2021, the Mayor and City Commission adopted Resolution No. 2021-31653, sponsored by Commissioner Steven Meiner, requiring palm tree removals be held in abeyance until legislation is considered regarding the preservation of palm landscapes iconic to Miami Beach's culture and history. Additionally, the intent of the Resolution was to accommodate preservation concerns, while minimizing any delays to City construction projects currently in process.

On March 17, 2021, and also at the request of Commissioner Meiner, the City Commission referred a proposal to the Neighborhood and Quality of Life Committee, to consider an amendment to Chapter 46 of the City Code, which governs the regulatory process for tree removals in the City.

The objective of the proposed Ordinance is to identify areas of the City where palm trees would be provided with heritage tree designation, in order to encourage the preservation of palm trees as part of the distinctive and historic landscaping feature of the City of Miami Beach.

Commissioner Meiner also sponsored a companion ordinance amendment, which was referred to the Land Use and Sustainability Committee and the Planning Board, to amend the minimum landscaping standards set forth in Chapter 126 of the City Code, to create Landscape Neighborhood Overlays, to achieve the foregoing purposes.

The proposed Ordinance amends Section 46-58 of the City Code to specify that any trees, including palm trees identified in Landscape Neighborhood Overlays authorized pursuant to Chapter 126 of the City Code, shall be permitted and encouraged to remain. The proposed Ordinance would also accommodate preservation concerns of palm tree landscapes iconic to Miami Beach's culture and history by designating palms in Landscape Neighborhood Overlays neighborhoods as heritage trees, and provides that any such palm trees may be replaced with the same species at the same location, with no additional mitigation requirement.

On July 21, 2021, the NQLC discussed the proposed amendment to Chapter 46, and directed staff to add the proposed amendment to the July 28, 2021 City Commission meeting for consideration as part of the discussion of companion amendment to Chapter 126 of the City Code, which has also been placed on the October 13, 2021 City Commission agenda. As presented at the July 21, 2021 NQLC meeting, the Administration did not recommend adopting this Ordinance due to concerns that by their nature, individual palms are replaceable and do not have the unique characteristics ordinarily associated with heritage designation.

If the proposed Ordinance is adopted, it is anticipated that an Overlay will be created to protect the significant palm tree groupings located on La Gorce Island.

RAP/FA/ag

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE MIAMI BEACH CITY CODE, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE II, ENTITLED "CARE AND MAINTENANCE OF TREES AND PLANTS," BY AMENDING DIVISION 2, ENTITLED "TREE PRESERVATION AND PROTECTION," BY AMENDING SECTION 46-58, ENTITLED "TREE REMOVAL REQUIREMENTS, EXEMPTIONS, AND PROHIBITED SPECIES" TO PROHIBIT REMOVAL OF TREES AND PALMS IDENTIFIED IN LANDSCAPE NEIGHBORHOOD OVERLAYS LISTED WITHIN CHAPTER 126 FROM PUBLIC PROPERTY; AMENDING SECTION 46-63 THEREOF, ENTITLED "CRITERIA AND CONDITIONS FOR HERITAGE TREE DESIGNATION AND HERITAGE TREE REMOVAL AND RELOCATION," TO PERMIT PALMS OR GROUPING OF PALMS TO QUALIFY FOR DESIGNATION AS HERITAGE TREES IN THE SAME MANNER AS OTHER SPECIMEN TREES; AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City encourages historic preservation, including preservation of iconic historic landscaping features; and

WHEREAS, amendments to Sections 46-58 and 46-63 of the City Code are required to accommodate preservation concerns of palm tree landscapes iconic to Miami Beach's culture and history.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Sections 46-58 and 46-63 of Chapter 46 the Code of the City Miami Beach, entitled "Environment," are hereby amended as follows:

CHAPTER 46

ENVIRONMENT

* * *

ARTICLE II. CARE AND MAINTENANCE OF TREES AND PLANTS

* * *

Sec. 46-58. Tree removal requirements, exemptions, and prohibited species.

It shall be unlawful for any person, unless otherwise permitted by the provisions of this division, to perform any tree or palm removal work, or effectively destroy any non-specimen tree, specimen tree, heritage tree, or prohibited species located within the boundaries of the city, on either public or private property, without first obtaining a tree work permit. Trees identified in Landscape Neighborhood Overlays authorized pursuant to Chapter 126 of the City Code, including trees defined as palms, shall be permitted and encouraged to remain. Trees identified

in Landscape Neighborhood Overlays, including trees defined as palms, may be replaced with the same species tree at the same location with no additional mitigation requirement.

- (1) *Exemptions.* The following shall be exempt from the provisions of this division, and do not require a tree work permit:
 - (a) Removal of non-specimen prohibited tree species.
 - (b) Removal of dead trees or trees destroyed by an act of God. This exemption does not apply to any trees or palms that have died as a result of violations of those provisions set forth herein.
 - (c) Any tree that, as the result of damage, disease or other cause, poses imminent danger to health, safety or property, and therefore requires immediate removal, may be removed without obtaining a tree work permit: provided that the owner of the property can establish that such hazardous condition(s) existed prior to the removal with documentation from an arborist certified by the International Society of Arboriculture, a Florida licensed landscape architect, or an ASCA Registered Consulting Arborist.
 - (d) Removal of trees within the yard area of an existing single-family residence in a single-family zoning district; provided the trees are non-specimen trees with a DBH of less than three inches.
 - (e) Removal of trees within licensed plant nurseries and botanical gardens; provided such trees were planted and are growing for the display, breeding, propagation, sale or intended sale to the general public in the ordinary course of business.
 - (f) Removing, trimming, cutting or altering of any mangrove tree or removal of any tree located upon land which is wetlands as defined in section 24-5 of the Code of Miami-Dade County, Florida, and are subject to the permitting requirements of article IV of chapter 24 of the Code of Miami-Dade County, Florida.
 - (g) Removal of plants which are defined as shrubs, hedges, vines, or groundcover.
 - (h) Removal of palms and clustering palms under 15 feet in overall height.
- (2) *Removal of prohibited species.* This division incorporates by reference the prohibited species list in chapter 24 of the Miami-Dade County Code as same may be amended from time to time. If present on a development or redevelopment site they shall be removed prior to development or redevelopment, and their sale, propagation planting, importation or transportation is prohibited. The only exceptions to this shall be if the particular site contains prohibited species trees that have a DBH greater than 12 inches, or have been designated as heritage trees, or are located in a designated historic district as so defined in section 46-56 herein provided a variance from the requirements of chapter 24 of the Code of Miami-Dade County Florida has been obtained. No fees shall be charged for their removal and replacement trees shall be required for the removal of any prohibited species in accordance with city Code sections 46-64(5) and 118-251.

The city manager may suspend the enforcement provisions of this division by determining that tree removal permitting requirements will hamper private or public work to restore order to the city after a declared state of emergency by the city or other governmental authority, including, without limitation, declaring a state emergency, following an extreme weather event or other disaster.

Nothing in this division shall be construed to prevent the pruning or trimming of trees on private property where necessary for proper landscape maintenance and safety; provided that no

more than 25 percent of the crown or foliage is removed annually and that the pruning performed does not effectively destroy the tree.

* * *

Sec. 46-63. Criteria and conditions for heritage tree designation and heritage tree removal and relocation.

(1) *Designation.* Heritage trees shall be those specimen trees or grouping of specimen trees designated by the city environment and sustainability director in recognition that the trees or grouping of trees are of unique or intrinsic value. In order for a specimen tree to be considered for heritage tree designation, the tree must be identified through an evaluation by a ISA certified arborist and or ASCA registered consulting arborist to be in good health and structural integrity as defined by the latest version of ANSI A300 part 9. Trees of any species, except for those trees defined as palms (other than palms identified in Landscape Neighborhood Overlays authorized pursuant to Chapter 126 of the City Code), including prohibited species, may be designated as heritage trees, provided they meet one of the following criteria:

- (a) It is a historic tree or grouping of trees, of documented historical significance and value to the city because of its or their location or historical association with the community.
- (b) It is a tree or grouping of trees with exemplary representation of species' characteristics and of high value to the community because of its or their species, size, age, location, distinctive form, exceptional characteristics, or ecological value.
- (c) It is a champion tree or grouping of trees. A champion tree is defined by the State of Florida Division of Forestry as being the largest of its species within the state or by the American Forestry Association as being the largest of its species in the United States or the world.
- (d) Trees and Palms identified in Landscape Neighborhood Overlays authorized pursuant to Chapter 126 of the City Code.

Designations can be initiated by any person with the written consent of the property owner(s) of such tree(s) by making an application to the environment and sustainability department or, on city owned property by the city. Designation requests submitted through the tree work permit application shall be reviewed by the environment and sustainability director and his/her designee. The designation of any prohibited species as a heritage tree, requires the issuance of a variance from section 24 of the Code of Miami-Dade County, Florida. The environment and sustainability department shall waive the tree work permit fee and shall pay all county fees required for prohibited species seeking a variance from Miami-Dade County Section 24. A listing of designated heritage trees, including the specific locations thereof, shall be kept by the environment and sustainability department.

* * *

SECTION 2. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

SECTION 3. CODIFICATION.

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 4. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect this _____ day of _____, 2021.

PASSED and **ADOPTED** this _____ day of _____, 2021.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

(Sponsored by Commissioner Steven Meiner)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

10-5-21

Date