

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 THE DEFINITIONS IN SECTION 46-56, BY AMENDING THE PROVISIONS IN SECTION 46-58 REGARDING TREE REMOVAL REQUIREMENTS, BY AMENDING THE PROVISIONS IN SECTION 46-59 TO PROVIDE AN APPEAL PROCEDURE FOR TREE WORK PERMIT DENIALS, BY AMENDING PROVISIONS IN SECTION 46-61 REGARDING THE REPLACEMENT OF REMOVED PROHIBITED SPECIES AND THE CITY'S TREE PRESERVATION TRUST FUND, BY AMENDING TREE PROTECTION SPECIFICATIONS, TREE PRUNING REGULATIONS, AND THE EXCEPTIONS IN SECTION 46-62, BY AMENDING REGULATIONS REGARDING HERITAGE TREES IN SECTION 46-63, BY AMENDING PROVISIONS REGARDING ENFORCEMENT AND PENALTIES IN SECTION 46-67, AND BY REPLACING ALL REFERENCES TO THE PUBLIC WORKS DEPARTMENT, OR DIRECTOR, THROUGHOUT DIVISION 2 WITH ENVIRONMENT AND SUSTAINABILITY DEPARTMENT, OR DIRECTOR, OR HIS OR HER DESIGNEE, THE URBAN FORESTER, AS MORE SPECIFICALLY SET FORTH THEREIN; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission declares that it is in the public health, safety and welfare, and the interest of the citizens of Miami Beach, to establish and enhance policies, regulations and standards to ensure its residents and visitors will realize the full benefits of a healthy, well-managed urban forest; and

WHEREAS, revisions to the tree preservation code are needed to further enhance protections afforded to trees in the face of climate change, evolving permitting needs, progressing operating conditions, and unexpected tree related challenges; and

WHEREAS, the City seeks to enhance overall tree canopy coverage by requiring mitigation for the removal of *Ficus altissima*, *Ficus benghalensis*, and *Ficus microcarpa* trees; and

WHEREAS, the creation of an appeals process for denied tree removal applications will improve customer satisfaction; and

WHEREAS, it is in the best interest of the City to set and revise the Tree Preservation Trust Fund contribution rates by resolution of the City Commission allowing for increased flexibility to adjust the contribution rates to reflect current market conditions; and

WHEREAS, the City seeks to enhance the protection standards for trees on public property; and

WHEREAS, the City seeks to increase the quality of tree pruning work conducted Citywide; and

WHEREAS, the City seeks to prevent instances of improper tree pruning by providing additional details on proper tree pruning methods; and

WHEREAS, the City seeks to revise the Heritage Tree Designation process to speed up the overall designation process and encourage Heritage Tree Designation submittals; and

WHEREAS, the City seeks to establish penalties and corrective actions that are compensatory to impacts in order to better protect the City's urban canopy; and

WHEREAS, the Administration recommends amending the City's existing tree preservation and protection regulations in the City Code to accomplish the above objectives.

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

SECTION 1. That Article II, entitled, "CARE AND MAINTENANCE OF TREES AND PLANTS," of Chapter 46 of the Miami Beach City Code, Division 2 thereof, entitled "TREE PRESERVATION AND PROTECTION", is hereby amended as follows:

CHAPTER 46

ENVIRONMENT

* * *

ARTICLE II. CARE AND MAINTENANCE OF TREES AND PLANTS

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DIVISION 2. TREE PRESERVATION AND PROTECTION

Sec. 46-56. Definitions.

Act of God: Natural occurrences including, but not limited to, hurricanes, tornadoes, lightning strikes, fire, disease, pest damage, or other event that causes a tree to die or decline and is outside of the control of any person .

Arborist: An individual who is a specialist in the care and maintenance of trees and is a Certified Arborist by the International Society of Arboriculture (ISA).

Caliper: A measurement of trunk diameter of nursery trees, measured 6 inches above the ground for trunks with a diameter of 4 inches or less, and 12 inches above the ground for trunks with a diameter larger than 4 inches.

Consulting Arborist: An individual who is a specialist in the care and maintenance of trees and is a Registered Consulting Arborist certified by the American Society of Consulting Arborists (ASCA)

Critical Root Zone: The portion of the root system that extends 10 feet from the trunk of the tree, or as adjusted by the Urban Forester ~~Public Works Director~~ or his/her designee, as may be determined by an individual tree assessment.

DBH (Diameter at Breast Height): The measurement of a tree's trunk diameter taken 4 ½ feet above the ground. The measurement of those trees with multiple-trunks shall be the sum of the diameters of all trunks at 4 ½ feet above the ground.

Drip-line: An imaginary vertical line running to the ground from the outer-most horizontal extension of a tree's canopy. Trees with canopies set off-center will be projected based on the average diameter of the existing drip-line, using the tree trunk as its point of origin.

Effectively destroy: To cause, suffer, allow or permit any act which will result in the death or unnatural decline of a tree, which may include, but is not limited to, damage inflicted upon the root system by heavy machinery, excessive root removal or cutting, excessive trimming including hatracking, removal of live palm fronds originating above the horizontal plain, tears and splitting of limb ends or peeling and stripping of bark caused by improper tree and palm pruning techniques not in accordance with the latest edition of the American National Standards Institute (ANSI) A-300 pruning standards, use of climbing spikes on trees or palms not designated for removal, trenching or excavating in the critical root zone, changing the natural grade above the root system or around the trunk, damage intentionally inflicted on the tree which permits infection or pest infestation, application of herbicides or other chemical agents, intentional fire damage to the tree, the infliction of a trunk wound through girdling, spiking and bark removal, or the removal of sufficient canopy to cause the unnatural decline of the tree.

Girdling: The removal of a strip of bark around a tree trunk or a branch of a tree.

Hatracking: To flat-cut the crown of a tree by severing the leader or leaders; or to prune a tree by stubbing off branches three (3) inches or greater in diameter; or to remove more than 25 percent of a tree's canopy without City approval; or to reduce the size or spread of a tree's crown in a manner not in conformance with the most recently published American National Standards Institute (ANSI), A-300 standards.

Heritage Tree: A tree so designated by the Environment and Sustainability Director after consultation with ~~and/or his/her designee the Urban Forester~~ City of Miami Beach Mayor and Commission because of its unique or intrinsic value to the community with regards to its historic value, size, age, location, distinctive form, exceptional characteristics, ecological value or other relevant criteria.

Prohibited tree species: Those tree species listed in Chapter 24 of the Miami Dade County Code, as amended, whose sale, propagation, planting, importation or transportation shall be prohibited under Miami-Dade County regulations.

Non-Specimen tree: Any tree that is not designated by the City of Miami Beach as an exempt tree, and which:

- a. is located on public land or private land, having no less than a three (3) inch DBH or ten (10) foot mature height; or
- b. is a replacement tree or any non-exempt tree that is represented or identified in a planning or development document for the purposes of securing an approved City building or demolition permit.

Protective barrier: Fences or like structures at least four (4) feet in height that exclude damage or disturbance to trees and tree roots on construction sites.

Pruning/trimming: The selective removal or reduction of tree limbs to benefit the overall health and safety of a tree, pursuant to those requirements established by the International Society of Arboriculture (ISA) and the American National Standards Institute (ANSI) A-300 pruning standards (Part1).

Public nuisance tree: A dead or dying tree, or a tree with an infectious disease or insect infestation, or a tree that poses a threat to public safety or the health of other trees in the vicinity, as determined by the City of Miami Beach's Environment and Sustainability Director ~~Public Works Director~~ or his/her designee, who shall be the City's Urban Forester.

Specimen Tree: A tree with an individual trunk that has a DBH of twelve (12) inches or greater, or any multiple-trunk tree in which the sum of the diameters of all the trunks at DBH is twelve (12) inches or greater. Includes palm trees with an overall height of ten feet or greater with multiple-trunks in which the sum of those trunks is twelve (12) inches or greater but not including non-native species of the genus Ficus.

Spiking: The insertion, whether vertically or horizontally, of foreign objects into the trunk of the tree or its root system with the intention of killing the tree.

Topping: See Hatracking.

Tree: Any self-supporting woody plant or palm which usually has a single main axis or trunk, with a minimum trunk diameter at breast height of three inches and a minimum overall height of 12 feet. This definition excludes plants which are defined as shrubs, hedges, vines, or ground covers.

Tree Service: Any business, entity, or individual who accepts or solicits compensation for trimming, removing or relocating trees, or who trims, removes or relocates trees as part of landscape or yard maintenance activities for which compensation is accepted.

Urban Forester: The City of Miami Beach official with specialized knowledge of urban forest management, arboricultural and horticultural practices, who has been designated to manage the City of Miami Beach's urban forest by the Environment and Sustainability Director ~~Public Works Director~~, to provide direction for tree planting, maintenance, removals, and all arboricultural practices and tree-related activities, and to carry out the enforcement of this Division.

Sec. 46-57. Purpose and Intent.

It is recognized that trees are a vital part of the City of Miami Beach's infrastructure, providing numerous environmental, economic, and social benefits. Trees improve air quality, save energy by reducing air conditioning costs, ameliorate high urban temperatures, reduce storm water runoff, increase property values, improve productivity, reduce stress and crime, and beautify residential and commercial neighborhoods. Trees decrease urban noise, encourage tourism and economic growth, preserve community character and identity, provide habitat for wildlife, and shade pedestrian walkways. It is the purpose and intent of this Division to establish policies, regulations and standards to ensure that the City of Miami Beach, its residents and its

visitors will realize the full benefits of a healthy, well-managed urban forest. The provisions of this Division are enacted to:

1. Promote the establishment and maintenance of the optimum sustainable amount of tree cover on public and private lands.
2. Establish and maintain diversity in tree species and age classes to provide a stable and sustainable urban forest.
3. Minimize the removal or loss of Non-Specimen, Specimen and Heritage trees.
4. Require mitigation for the removal of Non-Specimen, Specimen and Heritage trees on public and private property.
5. Establish procedures to designate and protect Heritage Trees of unique or intrinsic value to the community, as defined in this Division.
6. Maintain City of Miami Beach trees in a healthy and non-hazardous condition through good management practices.
7. Minimize maintenance costs and damage to sidewalks, streets, and other infrastructure by planting tree species that are appropriate for existing site conditions and available growing space.
8. Preserve the community's character and quality of life well into the future.

Sec. 46-58. Tree Removal Requirements Scope, Exemptions, and Prohibited Species.

It shall be unlawful for any person, unless otherwise permitted by the provisions of this Division, to perform tree removal work or effectively destroy any Non-Specimen tree, Specimen tree or Heritage tree located within the boundaries of the City of Miami Beach, on either public or private property, without first obtaining a tree work permit.

1. Exemptions

The following shall be exempt from the provisions of this Division, and do not require a tree work permit:

- a. Removal of prohibited species that do not have a Heritage Tree designation or are located in a locally designated Historic district.
- b. Removal of dead trees or trees destroyed by an act of God. This exemption does not apply to any trees or palms effectively destroyed through 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.
- 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 six ~~twelve (6-12)~~ inches ~~or greater~~. This exemption does not apply to trees that are growing on public rights-of-way adjoining existing single family residences.

- 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.

2. Removal of Prohibited Species

This Division incorporates by reference the prohibited species list in Chapter 24 of the Miami-Dade County Code. 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 been designated as Heritage trees or are located in a designated historic district as so defined in Sec. 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 may be required for the removal of any prohibited species in accordance with City of Miami Beach Code Sec. 118-251. The removal of any trees with a minimum DBH of 20 1/2" or greater for the following prohibited species: *Ficus altissima*, *Ficus benghalensis*, or *Ficus microcarpa* requires a no fee City tree removal work permit and installation of replacement tree canopy in accordance with the requirements of Sec. 46-64(5). Final decisions on canopy replacement for prohibited species shall involve review and approval from the Environment and Sustainability Department ~~Public Works Department~~. This list may be amended from time to time as set forth in Section 24-49.9 of the Code of Miami-Dade County, Florida.

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 of Miami Beach after a declared state of emergency by the City or other governmental authority, 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 twenty-five (25) percent of the crown or foliage is removed annually and that the pruning performed does not effectively destroy the tree.

Sec. 46-59. Tree work permit application processing, requirements, and review.

1. *Permit, when required.* A tree work permit shall be required:

- a. for the removal or relocation of any Non-Specimen tree, Specimen tree or Heritage tree within the City of Miami Beach that is subject to review as specified in section 46-58.

No person, agent or representative thereof, directly or indirectly, shall cut down, remove, relocate, or effectively destroy any Non-Specimen, Specimen or Heritage tree situated on any property described in Sec. 46-58, without first obtaining a tree work permit as hereinafter provided. No building permit shall be issued by the City's Building Department,

and no right-of-way permit shall be issued by the Public Works Department, for any work that has the potential to affect trees, including new construction, additions, carports, pools, decks, fences, driveways, parking lots, tennis courts, demolition, or similar work, unless it has been determined that no tree work permit is required, or a valid tree work permit has been issued in accordance with this Division.

2. *Application requirements.* Applications for tree work permits shall be made on the form provided for that purpose by the Environment and Sustainability Department ~~Public Works Department~~. The application shall include a written statement indicating the reasons for the removal or relocation of each tree and shall describe the proposed tree work. The following documentation and any applicable fees shall accompany applications:
 - a. Applications for all locations except for existing single family homes. Applications for tree work, in conjunction with any new construction, including new single family homes and additions, shall include a tree survey drawn to scale identifying the species and listing the height, spread and DBH of all existing trees shall be provided. The tree survey shall be prepared by and bear the seal of a professional land surveyor, licensed in the State of Florida. In addition, a tree disposition and site plan drawn to scale identifying and listing all existing trees and specifying the condition of each tree and whether such trees are to remain, to be removed or to be relocated shall be provided. This plan shall also illustrate the location of all existing structures and/or all proposed new construction, as applicable, the location of any overhead and/or underground utilities, the new locations of existing trees to be relocated on site, and all areas affected by construction-related activities, such as access routes to the property, and staging area. The plan shall be prepared by and bear the seal of a landscape architect currently licensed to practice in the State of Florida.
 - b. Applications for existing single family homes. Applications for tree work at existing single family homes, shall require a site sketch indicating the approximate location and disposition of the tree(s).
 - c. A tree replacement plan prepared in accordance with Sec. 46-61.
 - d. The Environment and Sustainability Department ~~Public Works Department~~ shall determine the completeness of an application pursuant to this subsection, and provide notification to the applicant of any material that is required for the issuance or denial of the tree work permit.
3. *Review of application.* Upon receipt of a completed application, the Environment and Sustainability Department ~~Public Works Department~~ shall review the application for compliance with the regulations as set forth in this Division. Such review may include a field inspection of the site. The Environment and Sustainability Department ~~Public Works Department~~ shall issue an intended decision approving, denying or approving with conditions the application within thirty (30) calendar days from the date the application is deemed completed.
4. *Issuance of permit.* The tree work permit, if approved by the Environment and Sustainability Department ~~Public Works Department~~, shall be issued. The property owner shall be responsible for insuring that the tree work permit is displayed until the authorized work is completed. If the permitted work is not completed within one year from the issuance date, the permit shall become subject to revocation.
5. *Fees.* Fees for tree work permits shall be established by the City Commission and or the Environment and Sustainability Department via resolution. Applications from government

agencies ~~or~~ City projects with tree removals solely in areas dedicated to public use may, at the discretion of the City Commission, be exempted from application and permit fees.

6. *Final inspection.* No later than six (6) months following the completion of the authorized work, the applicant shall schedule a final inspection with the Environment and Sustainability Department ~~Public Works Department~~ for verification and acceptance of the final authorized work. The inspection shall be conducted by the Urban Forester or his/her designee. All new, relocated or mitigation trees within the project area shall be replaced, if they are not alive and viable one (1) year after the final inspection. The final inspection requirements for replacement or relocated trees installed at offsite locations pursuant to Sec. 46-61.5 shall require written approval from the Environment and Sustainability Department ~~Public Works Department~~.
7. *Appeals.* Appeals of application denials shall be made in writing within fifteen (15) days of the denial to the Environment and Sustainability Department Director, or to his/her designee, the Urban Forester, whose ultimate decision shall be final.

Sec. 46-60. Criteria and conditions for Non-Specimen tree removal and relocation.

1. *Criteria for Non-Specimen tree removal.* No tree work permit shall be issued for Non-Specimen tree removal from the site, unless one of the following criteria exists:
 - a. The Non-Specimen tree is located in the proposed building footprint or yard area where a structure or improvement may be placed and unreasonably restricts the permitted use of the property. Non-Specimen trees located in the property frontage (within the City of Miami Beach's required setback), shall not be considered to be located within the building footprint or yard. Non-Specimen trees on the public right-of-way shall not be considered for removal as a result of restriction to or from ingress or egress to the garages or parking on the site; provided however, that if there is no other reasonable access to and from the structure or to the property from the public right-of-way, as determined by the Environment and Sustainability Director ~~Public Works Director~~ or his/her designee, the Urban Forester, this requirement shall be waived. All project drawings must include all existing trees on the private property and public right-of-way accurately drawn to scale. Authorization to remove Non-Specimen trees, including right-of-way Non-Specimen trees, shall be approved prior to issuance of a building permit.
 - b. The Non-Specimen tree is diseased, damaged or in danger of falling; interferes with utility service; creates unsafe vision clearance that cannot be corrected through pruning without effectively destroying the tree; or materially impairs the structural integrity of an existing structure.
 - c. The Non-Specimen tree is an undesirable or non-native tree species and will be replaced with a South Florida native tree species to promote good forestry practices, or is an undesirable or non-native species and interferes with native tree species.
 - d. The Non-Specimen tree creates a health hazard, or it is in the general health, safety and welfare of the public that the tree be removed for a reason other than set forth above.
2. *Conditions for tree removal, relocation and replacement of Non-Specimen trees.*
 - a. The applicant may be required to redesign the project to preserve Non-Specimen tree(s), to ensure compliance with the scope and intent of this article.
 - b. Where practical, as determined by the Environment and Sustainability Director ~~Public Works Director~~ or his/her designee, the Urban Forester, any Non-Specimen Tree that is proposed for removal, shall be relocated on or off-site. The applicant shall adhere to

acceptable tree relocation specifications, in accordance with the most current ANSI A-300 Standards.

- c. If the Environment and Sustainability Director ~~Public Works Director~~ or his/her designee ~~the Urban Forester~~ determines it is not reasonably possible to relocate such Non-Specimen tree(s) either on or off-site, because of age, type, size, or condition, the applicant shall be required to replace all Non-Specimen trees permitted to be removed in accordance with the tree replacement requirements in Sec. 46-61.
- d. The Environment and Sustainability Department ~~Public Works Department~~ may require that the applicant provide a written report from an ISA Certified Arborist and or ASCA Registered Consulting Arborist before making any determinations in conjunction with this Section. The Environment and Sustainability Department ~~Public Works Department~~ may also require monitoring by an ISA Certified Arborist and or ASCA Registered Consulting Arborist during construction to assure Non-Specimen tree preservation.

Sec. 46-61. Tree replacement.

1. *Tree replacement chart.* The tree replacement chart, below, shall be used to determine the total number of trees that must be planted for the replacement of those Non-Specimen trees permitted to be removed. A tree replacement plan shall be submitted to the Environment and Sustainability Department ~~Public Works Department~~ as part of the tree work permit application process that shall include the number of trees, number of species of trees and size of trees proposed for planting. The replacement trees are based on the total square footage of the Non-Specimen trees to be removed, and such measurement is accomplished through the use of aerial photography, on-site inspection and or review of a submitted tree survey. Canopy measurement shall be rounded up to the nearest foot. Refer to Sec. 46-64 Specimen Tree Standards for tree replacement requirements for Specimen trees and refer to Sec. 46-63 Heritage trees for replacement requirements for Heritage trees.

a) Tree replacement chart.

TABLE INSET:

Replacement Tree Category	Canopy Credit in Square Feet
Category 1 Tree	300
Category 2 Tree	150
Category 3 Tree	100
Category 4 Palm	50

The Environment and Sustainability Department ~~Public Works Department~~ shall maintain a list of approved species for each category of replacement tree. This list may be amended from time to time, as necessary. Replacement tree heights shall be determined by overall height measured from where the tree meets the ground to the top-most branch. All category 1 trees shall be a minimum of twelve (12) feet in height at the time of planting with a 2-3" minimum caliper. All category 2 trees shall be a minimum of ten (10) feet in height at the time of planting with a 2-3" minimum caliper. All category 3 trees shall be a minimum of eight (8) feet in height at the time of planting with a 2-3" minimum caliper. All category 4 palms shall have a minimum (6) foot clear trunk.

2. *Tree species and diversity standards.* Tree(s) installed as replacement trees shall be tree(s) of native or non-native species and shall be planted according to ISA best management practices, and to ANSI A300 Standards as published in the most current edition of *ANSI A300, The American National Standard for Tree Care Operations – Tree, Shrub, and Other Woody Plant Maintenance – Standard Practices*. When more than ten (10) trees are installed as replacement trees, a diversity of species shall be required as per the Tree Species Diversity Chart, below.

a) Tree species diversity chart.

TABLE INSET:

Required number of trees	Required minimum number of species
01--20	2
21--50	4
51 or greater	6

The number of trees of each species planted shall be proportional to the number of species required. A minimum of fifty (50) percent of all replacement trees planted shall be native to Miami-Dade County, and no more than thirty (30) percent of the replacement trees shall be palms. Palms may be installed only to replace palms. When trees native to South Florida are removed, all replacement trees for such native trees shall be native to South Florida. South Florida is geographically defined as the Southern tip of Florida South of Lake Okeechobee and includes hardiness zones 10 & 11.

3. *Prohibited species.* Replacement ~~may be trees shall not be~~ required for the removal of any prohibited species in accordance with Sec. 46-58 (2), and no fees shall be charged for removal of prohibited species not designated as a Specimen or Heritage tree. However, Miami Beach Historic Preservation Board approval is required before any Specimen tree, including prohibited species, is removed from public or private property within a designated historic district.
4. *Tree quality.* Trees installed as replacement trees in accordance with this section shall conform to, or exceed, the minimum standards as Florida Number One or better as provided in the most current edition of "*Grades and Standards for Nursery Plants, Part I and II,*" prepared by the Florida Department of Agriculture and Consumer Services. Trees shall be planted according to ISA best management practices and ANSI A300 Standards as published in the most current edition of *ANSI A300, The American National Standard for Tree Care Operations – Tree, Shrub, and Other Woody Plant Maintenance – Standard Practices*.
5. *Off-site replacement trees.* In those circumstances that the total number of trees required as replacement trees cannot be reasonably planted on the subject property, the applicant may enter into an agreement with the City, to plant the excess number of replacement trees on an approved alternate location of publicly owned land or publicly accessible parcel.

6. *City of Miami Beach Tree Preservation Trust Fund.* In those circumstances when that the total number of trees required as replacement trees cannot be reasonably planted on the subject property, and there is insufficient planting space available at an Environment and Sustainability Department ~~Public Works Department~~-approved alternate location(s) on publicly owned land or a publicly accessible parcel, the applicant shall contribute to the City of Miami Beach's Tree Preservation Trust Fund in accordance with the required contributions established by Resolution of the City Commission ~~tree trust fund contribution chart below for each tree required as replacement trees in accordance with Sec. 46-61.~~ The contribution amounts ~~fee allocated to the Tree Preservation Trust Fund~~ may be reviewed periodically by the City Commission to reflect cost of living adjustments and/or market conditions, and may be amended ~~modified~~ by resolution ~~approval~~ of the City Commission. In establishing and reviewing the contribution amounts ~~fees~~, the City Commission ~~may~~ shall consider the cost of material, labor, transportation, planting, watering and mortality rate of replacement trees.

a) ~~Tree trust fund contribution chart.~~

TABLE INSET:

Canopy type	Contribution amount
Regular tree canopy replacement	Forty dollars (\$40) per 100 square feet
Specimen tree canopy replacement	Eighty dollars (\$80) per 100 square feet

7. *Completion.* The replacement tree process must be completed prior to the issuance of a certificate of occupancy or temporary certificate of occupancy, and in accordance with the specific conditions set forth and identified in the tree work permit.

Sec. 46-62. Tree preservation and protection requirements, root cutting, tree relocations and tree pruning.

1. *Tree protection requirements, in general, and during construction*

- a. *General.* All reasonable steps shall be taken to prevent the destruction or damaging of trees for which no tree work permit has been issued during site development and construction on private or public property. Any owner, tenant, contractor or agent thereof who fails to provide tree protection, as set forth herein, shall be subject to enforcement as provided in Sec. 46-67. Trees destroyed or incurring major damage must be replaced by trees of equal environmental value, as specified by the Environment and Sustainability Department ~~Public Works Department~~, prior to the issuance of the certificate of occupancy or certificate of use, unless removal of the trees has been authorized pursuant to a tree work permit. Tree protection zones must be established for all trees that remain in place on site and for any trees relocated within or to the site. When proposed development activities may damage the root systems or canopies of trees to be retained or relocated on site, alternatives to the proposed activities, or effective protective measures, shall be identified and used.
- b. *Permit/construction drawings.* All permit and construction drawings of the site shall show the tree protection zones, as prescribed by the Environment and Sustainability

~~DepartmentPublic Works Department~~, as shaded areas that are accurately drawn to scale and labeled as such on the drawings. The tree protection zones shall be shown on all drawings that include any underground utility installations, including but not limited to, irrigation, plumbing, electrical, telecommunication or streetlight lines.

The tree protection zones shall be shown on all drawings that include structural installations that will require excavation(s), and for above-ground installations that may include, but is not limited to, such as walkways, street lights, overhead wires or other types of infrastructure.

2. Tree protection specifications

The following tree protection specifications must be adhered to, in general, and as a condition of approval of the site plan for any project. The Urban Forester may require supplemental protection measures to ensure the protection of trees. The Urban Forester and his/her designee shall have the authority to enter the subject property to ensure compliance with required tree protection measures.

a. Protective Barriers

- i) Placement. Protective barriers shall be placed at the drip line of each tree, cluster of trees, or preservation area, and in no case less than ten (10) feet from the trunk of any protected tree, tree cluster or preservation area. In situations where trees have been transplanted to the project site, the protective fencing shall be placed no closer to the tree than a point one to two feet outside the root ball, or at the drip line, whichever is greater. The fenced tree protection zones shall be extended where necessary to protect tree canopies roots. If trees are to be preserved in place and root pruning is required to accommodate new construction, the root pruning locations shall be identified and approved by the Environment and Sustainability DepartmentPublic Works Department, and fencing shall be installed one (1) to two (2) feet beyond the edge of the root ball. The installation of the fencing shall be coordinated with any phased root pruning that must occur. Tree maintenance measures must be in place prior to any root pruning or transplanting.
- ii) Timing and Duration. All protective barriers shall be installed prior to the start of any construction or site development, including tree removal, demolition or land-clearing activities, and shall remain in place throughout all phases of construction. Protective barriers shall be maintained in place until development is completed, and shall not be removed until the Environment and Sustainability DepartmentPublic Works Department inspects the site and authorizes their removal.
- iii) Barrier Specifications. Sturdy temporary barriers shall be installed around all tree protection zones. Barriers shall be a minimum of four feet high, and shall be constructed of continuous chain link fence with metal posts at 8-foot spacing, or of two-by-four-inch posts with three equally spaced two-by-four-inch rails. Posts may be shifted to avoid roots.

b. Activities Within Tree Protection Zones Enclosed By Protective Barriers

- i) Understory plants within areas surrounded by protective barriers shall be protected.
- ii) No oil, fill, equipment, building materials, building debris, or any other material shall be placed within the areas surrounded by protective barriers.

- iii) No disposal of any waste material such as paints, oils, solvents, asphalt, concrete, mortar, or any other material shall occur within the areas surrounded by protective barriers.
- iv) Natural grade shall be maintained on areas surrounded by protective barriers. In the event that the natural grade of the site is changed as a result of site development such that the safety of the tree may be endangered, tree wells or retaining walls are required.
- v) Only hand digging and grading activities will be permitted within the tree protection zone. All surrounding areas must be graded to a point that meets the outside of the tree protection zone
- vi) Underground utility lines, including, but not limited to, irrigation, plumbing, electrical, or telecommunication lines, shall be placed outside the areas enclosed by protective barriers. If such placement is not possible, disturbance and root damage shall be minimized by using techniques such as tunneling, hand digging, excavation with an air spade, or the use of overhead utility lines.
- vii) No vehicles or equipment shall be permitted within areas surrounded by protective barriers
- c. Fences, walkways and walls shall be constructed to avoid disturbance to any tree to remain in place onsite in the vicinity of construction activities. Post holes and trenches located close to trees shall be dug by hand and adjusted as necessary, using techniques to avoid damage to major roots system.
- d. No attachments, signs, chains, ropes or wires other than those of a protective or non-damaging nature shall be attached to any trees on publicly owned or controlled property, in general, or during any proposed site development or construction.

3. *Root cutting*

The cutting of roots with a diameter of two inches or larger is prohibited, unless there is no feasible alternative, as determined by the Environment and Sustainability Director~~Public Works Director~~ or his/her designee the Urban Forester. The City may require that construction activities, such as trench lines and walkway construction, be redirected away from tree root zones.

Root cutting shall be done according to approved techniques as outlined herein:

- a. Trees shall be evaluated by the Urban Forester to determine whether the root cutting will destabilize the tree or cause unacceptable damage to the tree.
- b. Root cuts shall be made, at minimum, a distance from the trunk equivalent to three times the tree's trunk diameter at 4.5 feet above ground (DBH) unless unavoidable because of sidewalks, pavement, or other infrastructure. Root cuts must be made at a distance from the trunk equivalent to five times the tree's DBH or greater in all other circumstances.
- c. Roots may not be torn off with power equipment, and cut roots shall not be left with ripped, ragged or shredded ends. Roots must be cleanly severed with sharp hand tools or power root saws.
- d. When tunneling or otherwise avoiding roots is not possible, the trench shall be carefully excavated by hand or machine and, when a root with a diameter of 2 inches or greater is encountered, a final clean cut shall be made with a saw. The cut shall be made flush with the side of the trench closest to the tree. The root pruning trench shall be backfilled with soil.

- e. When adjacent to new curbing, uncurbed paved areas, or areas of grade changes, roots shall be cut no more than 18 inches towards the tree from the back of the curb, the edge of the pavement, or the point of intersection of old and new grades, respectively. After root pruning, no excavation for the installation of forms or for any other reason may be performed any closer than six inches outside of the root pruning cut. The root pruning trench shall be backfilled with soil.

4. *Tree relocations*

- a. Irrigation must be present and applied effectively for two to four weeks prior to root pruning, through the period of root pruning, and after root pruning and transplantation until the tree has been completely reestablished at the new planting space. Irrigation shall be operated automatically with water being applied directly to and just outside of the remaining intact root system. Watering frequency shall be such so as to insure that free water is available to the root system at all times. Any temporary disruption in automatic operation shall be supplemented by hand watering.
- b. There should be no canopy pruning or a minimum of canopy pruning before or after root pruning. Dead, diseased or damaged branches shall be pruned at this time.
- c. The root system of a tree to be relocated shall be well-watered before the tree is dug and lifted to ensure that the tree is properly hydrated, and to improve cohesiveness of the root ball.
- d. All transplanting and relocating of trees or palms shall, be done in compliance with standards set forth in the most recently published edition of the American National Standards Institute ANSI A-300 Standards. This requirement includes all procedures, techniques, standards for minimum root ball size, and any other standards included in ANSI A-300 Standards.
- e. Relocated trees shall be braced in such a fashion as to not scar, penetrate, perforate, or otherwise inflict damage to the tree.

5. *Tree pruning*

- a. Tree pruning is to be performed in accordance with ANSI A-300 Standards and good horticultural practices. Hatracking, girdling, spiking or any other pruning activities that effectively destroy a tree(s) are prohibited. The City may require that construction activities minimize negative impacts to tree canopy.
- b. Any Tree Service performing palm or tree pruning activities not solely limited to removal of dead palm fronds on private or public property within the City must have an individual present onsite to perform or oversee the work who is either an ISA Certified Arborist or an ASCA Registered Consulting Arborist in good standing.
- c. Trees shall be pruned in the following manner:
 - i) All cuts shall be clean, flush and at junctions, laterals or crotches. Cuts shall be made as close as possible to the trunk or parent limb, without cutting into the branch collar or leaving a protruding stub. Tree limb reduction cuts shall be the preferred option with tree limb removal cuts performed only as a last resort.
 - ii) Removal of dead wood, cross branches, branches with poor angles of attachment and thinning of suckers shall be accomplished simultaneously without any reduction in crown.

- iii) Pruning of lateral branches that results in the removal of more than one third of all branches on one (1) side of a tree shall not be permissible unless allowed per Sec. 46-62 (5)(c).
- iv) Lifting of branches or tree thinning shall be designed to distribute over half of the tree mass in the lower two thirds of the tree.
- v) No more than 25 percent of a tree's living canopy shall be removed within a one (1) year period.
- vi) Tree canopy removal of greater than 25 percent may only be considered under the following criteria as outlined herein:
 - a. The tree is located in the proposed building footprint area or yard area where a structure or improvement shall be placed and unreasonably restricts the permitted use of the property. Trees located in the property frontage (within the City of Miami Beach's required setback), shall not be considered to be located within the building footprint or yard. Trees on the public right-of-way shall not be considered for removal of more than twenty five percent of a tree's canopy as a result of restriction to or from ingress or egress to the garages or parking on the site, provided however, that if there is no other reasonable access to and from the structure or to the property from the public right-of-way, as determined by the Environment and Sustainability Director or his/her designee the Urban Forester. Authorization to remove more than 25 percent of a tree's canopy including right-of-way trees must be received prior to issuance of a building permit.
 - b. The tree is diseased or damaged; creates hazardous conditions; interferes with utility service; creates unsafe vision clearance; or materially impairs the structural integrity of an existing structure.
 - c. If tree pruning is required to facilitate a construction project, the Environment and Sustainability Department may require that the property owner provide a written report from an ISA Certified Arborist and or ASCA Registered Consulting Arborist before making any determinations in conjunction with this Section. The Environment and Sustainability Department may also require monitoring by an ISA Certified Arborist and or ASCA Registered Consulting Arborist during construction to assure proper tree pruning practices are implemented.

~~Tree canopy removal of greater than 25% may only be considered under the following criteria as outlined herein:~~

- ~~i) The tree is located in the proposed building footprint area or yard area where a structure or improvement shall be placed and unreasonably restricts the permitted use of the property. Trees located in the property frontage (within the City of Miami Beach's required setback), shall not be considered to be located within the building footprint or yard. Trees on the public right-of-way shall not be considered for removal of more than 25% of a tree's canopy as a result of restriction to or from ingress or egress to the garages or parking on the site, provided however, that if there is no other reasonable access to and from the structure or to the property from the public right-of-way, as determined by the Public Works Director or his/her designee. Authorization to remove more than 25% of a tree's canopy including right-of-way trees must be received prior to issuance of a building permit.~~

- ii) ~~The tree is diseased or damaged; creates hazardous conditions; interferes with utility service; creates unsafe vision clearance; or materially impairs the structural integrity of an existing structure.~~
- iii) ~~If tree pruning is required to facilitate a construction project, the Public Works Department may require that the property owner provide a written report from an ISA Certified Arborist and or ASCA Registered Consulting Arborist before making any determinations in conjunction with this Section. The Public Works Department may also require monitoring by an ISA Certified Arborist and or ASCA Registered Consulting Arborist during construction to assure proper tree pruning practices are implemented.~~

6. Exceptions

Exceptions to the requirements of subsections (1) and/or (2) and/or (3) of this section shall be approved only when the property owner receives specific written authorization from the Environment and Sustainability Director or his/her designee the Urban Forester~~Public Works Director~~. The Environment and Sustainability Director or his/her designee the Urban Forester~~Public Works Director~~ shall not issue written approval, unless he/she~~the Public Works Director~~ determines that the affected trees can be adequately protected and maintained without meeting the requirements of these subsections, or that, due to exceptional circumstances, it is not practical or reasonable to meet the requirements of this section.

Sec. 46-63. Heritage trees.

1. *Designation:* Heritage trees shall be those trees or grouping of trees designated by the City Environment and Sustainability Director after consultation with and/or his/her designee the Urban Forester~~a resolution of the City Commission~~ in recognition that the trees or grouping of trees are of unique or intrinsic value to the general public. Trees of any species, including prohibited species, may be designated as Heritage trees, provided they meet the required criteria. Trees may be so designated, if one of the following criteria applies:

- a. It is an historic tree or grouping of trees, of notable historical interest and value to the City of Miami Beach because of its or their location or historical association with the community.
- b. It is a tree or grouping of trees of high value to the community because of its or their species, size, age, location, distinctive form, exceptional characteristics, ecological value, aesthetic value or other relevant criteria.
- c. It is a champion tree or grouping of trees, identified 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.

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~~Public Works Department~~ or, on City owned property by the City. Designation requests shall be reviewed by the Environment and Sustainability Director and/or his/her designee the Urban Forester~~Public Works Director~~, and those trees meeting the requirements of this section shall be so designated as Heritage trees~~presented to the City Commission, which shall decide whether to designate a tree(s) as a Heritage tree~~. 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, and shall be obtained prior to the Environment and Sustainability Department~~City Commission~~ Designation. ~~The City Clerk shall notify the property owner(s) in writing of the designation by the City Commission of the Heritage tree.~~ The Environment and Sustainability Department shall pay all County fees required for obtaining a variance for preservation of the following prohibited species with a minimum DBH of 20" or greater: Ficus altissima, Ficus benghalensis or Ficus microcarpa. A listing of designated Heritage trees, including the specific locations thereof, shall be kept by the Environment and Sustainability Department~~Public Works Department~~.

2. *Protection:* Any tree or grouping designated as a Heritage tree shall be subject to the provisions of this Code.

- a. All areas within the drip-line of a Heritage tree shall be protected from any activity that may disturb or injure the tree.
- b. Prior to the commencement of any development activities or other potentially disturbing activities that may impact a Heritage tree, and for the duration of such activity, protective barriers required by Sec. 46-62. Root cutting and tree relocations shall be placed a minimum of fifteen (15) feet from the trunk of the tree or at the drip-line of the tree, whichever is greater.
- c. Where development activity or other potentially disturbing activity is permitted within the drip-line of a Heritage tree, the Urban Forester may require additional protection provisions to be incorporated in the conditions of the permit to assure protection of the Heritage Tree.
- d. A variance of the required minimum front, rear, and side-yard setbacks may be granted to allow the preservation of Heritage trees.

3. *Removal:* No tree work permit shall be issued for removal of a Heritage tree without a written evaluation by an ISA Certified Arborist and or ASCA Registered Consulting Arborist demonstrating that removal is necessary to avoid an immediate peril to life and/or property, and/or the tree is dead, non-viable, or deteriorated to the point that removal is warranted. Furthermore, the tree work permit shall not be issued until the Urban Forester evaluates the tree and determines that removal is necessary. Removal and replacement of Heritage trees must be approved by the Environment and Sustainability Department Director after consultation with~~nd/or his/her designee the Urban Forester.~~City Commission~~and the replacement shall be determined by the City Urban Forester.~~Commission.

Sec. 46-64. Specimen tree standards.

1. *Specimen trees.* Specimen trees that have not been classified as prohibited species shall be preserved whenever reasonably possible. The Environment and Sustainability Department~~Public Works Department~~ shall consider all of the following factors in evaluating an application for the removal~~newal~~ of Specimen tree(s):

- a. Size and configuration of the property; and
- b. Size and configuration of any proposed development; and
- c. Location of the tree relative to any proposed development; and
- d. Whether or not the tree can be preserved under the proposed plan or any alternative plan; and
- e. Health, condition and aesthetic qualities of the tree; and
- f. Whether the tree poses a threat to persons or property.

2. *Alternate plans.* If, upon review of the factors enumerated in *Section 46-59*, the Environment and Sustainability Department~~Public Works Department~~ determines that a Specimen tree cannot reasonably be preserved under the proposed plan, the applicant may be required to provide an alternate plan when feasible, which shall include preservation of the Specimen tree and design alterations consistent with the scope and intent of the initially-proposed plan. Alterations consistent with the scope and intent of the initially-proposed plan may include, but shall not be limited to:
 - a. An adjustment of building orientation on a site.
 - b. An adjustment of lot lines within a site proposal for more than one (1) lot when such adjustment will not cause an unreasonable loss of usable space. An applicant shall have the burden of proof in the determination of what constitutes an unreasonable loss of usable space.
3. *Specimen tree relocation.* If preservation of the Specimen tree and any alternate design consistent with the scope and intent of the initial plan are mutually exclusive, then the Environment and Sustainability Department~~Public Works Department~~ may issue a permit to relocate the Specimen tree. If the tree removal permit requires relocation, then the applicant shall be required to relocate the tree in accordance with the standards set forth in *Section 46-62*.
4. *Removal of Specimen trees.* If relocation of the Specimen tree is not reasonably possible, due to the size, health, location, species or any other factor, then a permit may be issued for removal, and tree replacement shall be required.
5. *Replacement requirements for Specimen trees.* As a condition of the issuance of a tree removal work permit for the removal of a Specimen tree, tree replacement requirements shall be twice those specified in *Section 46-61*. In the event that replacement tree installation is not feasible on-site, then alternative off-site replacement shall be required on City approved publicly owned land or publicly accessible parcels. In the event that there is insufficient planting space available at a City approved offsite location, there shall be an equitable contribution to the City of Miami Beach Tree Preservation Trust Fund for double the amount for each tree required as replacement trees in accordance with *Section 46-61*.
6. *Exemptions from Specimen tree replacement requirements.* An applicant may be exempt from the Specimen tree replacement requirements of *Section 46-64*, but subject to the tree replacement requirements in *Section 46-61*, under the following circumstances:
 - a. The submittal of a tree appraisal report or tree risk assessment report from a landscape architect registered in the State of Florida, ISA Certified Arborist or an ASCA Registered Consulting Arborist that states that a Specimen tree, due to disease, condition, growth habit or any other reasonable botanical factor, does not provide the aesthetic or environmental contribution associated with a Specimen tree. The report shall include the specific reason(s) for the claimed exemption from the provisions of *Section 46-64*; or
 - b. When preservation of the Specimen tree would cause a foreseeable risk to property; or
 - c. When a site contains more than one (1) Specimen tree, and fifty (50) percent or more of the existing Specimen trees and at least fifty (50) percent of the existing Specimen tree canopy area is preserved; or
 - d. Specimen tree exemptions approved by the Urban Forester.

Sec. 46-65. City of Miami Beach Tree Preservation Trust Fund.

1. *Establishment of trust:* There is hereby created the Miami Beach Tree Preservation Trust Fund (the "Trust") for the purpose of accepting and disbursing the replacement fees paid to the City of Miami Beach as part of tree work permits and any other monies deposited with the Environment and Sustainability Department~~Public Works Department~~ for tree preservation purposes. This fund shall solely be used for the planting of trees on publicly owned land in the City of Miami Beach, and any other ancillary costs associated with the planning, planting, establishment or preservation of trees.

2. *Term of existence:* The Trust shall be self-perpetuating from year to year, unless specifically terminated by the City Commission.

3. *Trust assets:* All monies received hereunder from public or private concerns shall be placed in trust for and inure to the use and benefit of the City of Miami Beach. These funds shall be expended, utilized and disbursed only for the planning, planting, establishment or preservation of trees as designated in this division, by the Environment and Sustainability Department~~Public Works Department~~ on publicly owned land, and upon approval of the City Commission. Trust funds will be used to plan and manage the urban canopy, obtain trees, landscaping, irrigation systems, and any other items or materials necessary and proper for the preservation, maintenance, relocation or restoration of trees and the urban forest on any publicly owned land in Miami Beach.

4. *Trust administration:*

- a. Trust funds shall be expended, utilized and disbursed by the Environment and Sustainability Department ~~Public Works Department~~, upon approval of the City Commission, for the purposes designated in this section.
- b. All funds deposited hereunder shall be deposited in the Trust, which must be a separate account established and maintained from the general revenue funds and accounts of the City.
- c. The funds obtained hereunder may be accepted on behalf of the City by the City Manager, who shall promptly deliver to the Department of Finance, which shall cause the same to be credited to the Trust.
- d. The Trust funds will be used to obtain trees, landscaping, irrigation systems, and any other items or materials necessary and proper for the preservation, maintenance, relocation or restoration of trees and the urban forest on any publicly owned land or publicly accessible parcels in Miami Beach. These funds may also be expended by the City of Miami Beach for the Adopt-a-Tree Program, or similar program approved by the City Commission.

Sec. 46-66. Trees constituting a public nuisance.

1. Any tree, dead tree or tree stump upon any parcel of land within the City of Miami Beach which imminently threatens or endangers the public health, safety or welfare, or which the Urban Forester determines to be a threat to the City of Miami Beach's urban forest due to an untreatable disease or infestation, is declared a public nuisance.

2. Trees or other woody plant species, on property bordering on any street, which obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct sight lines at any street or alley intersection are declared a hazard.
3. It shall be the duty of any person owning or occupying real property on which there may be nuisance trees, dead trees, stumps or hazards as described in subsection (1) /or (2) to remove when corrective pruning or treatment cannot alleviate the hazard or nuisance, correctively prune in accordance with American National Standards Institute A-300 Pruning Standards (part 1), or treat those hazards and nuisances in such manner as to eliminate the threat to public safety or the possibility of infecting or infesting surrounding plant life. Canopy mitigation shall be required in accordance with Sec. 46-61 Tree Replacement and Sec. 46-64, Specimen Tree Standards, as applicable.
4. The owner must remove, correctively prune, or treat such tree, dead tree or stump no later than ten (10) days after receipt or posting of the aforementioned Notice of Violation. The City may remove, correctively prune, or treat the same or have the same removed, correctively pruned or treated and the exact cost thereof shall be assessed to the owner should the hazard or nuisance not be corrected.

Sec. 46-67. Enforcement/civil remedies.

Enforcement and Penalties.

- (a) Civil fine for violators. The following civil fines shall be imposed for a violation of Section 46-59, for those violations incurred for not obtaining a Tree Work Permit:
 - (1) First offense committed within a 12 month period -\$1,000.00 per tree;
 - (2) Second offense within a 12 month period -\$2,000.00 per tree;
 - (3) Third offense and subsequent offenses within a 12 month period -\$3,000.00 per tree.
- (b) Civil fine for violators. The following civil fines must be imposed for a violation of this Division, except for those penalties set forth in subsection (a):
 - (1) First offense within a 12 month period- \$500.00;
 - (2) Second offense within a 12 month period -\$1,000.00;
 - (3) Third offense and subsequent offenses within a 12 month period- \$1,500.00.
- (c) Enforcement. The Code Compliance Department shall enforce the provisions of this Division. This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this Division, and all applicable laws. If an enforcing officer finds a violation of this Division, the officer may issue a Notice of Violation to the violator. The Notice of Violation must inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, notice that the Violation may be appealed by requesting an administrative hearing within ten days after service of the Notice of Violation, and that failure to appeal the violation within the ten days, shall constitute an admission of the violation and a waiver of the right to a hearing.
- (d) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal.

- (1) A violator who has been served with a Notice of Violation must elect to either:
 - (a) Pay the civil fine in the manner indicated on the Notice of Violation; or
 - (b) Request an administrative hearing before a special master to appeal the Notice of Violation, which must be requested within 10 days of the issuance of the notice of violation.
 - (2) The procedures for appeal by administrative hearing of the Notice of Violation shall be as set forth in Sections 30-72 and 30-73 of the City code.
 - (3) If the named violator, after issuance of the Notice of Violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the officer. Failure of the named violator to appeal the decision of the officer within the prescribed time period must constitute a waiver of the violator's right to an administrative hearing before the special master, and must be treated as an admission of the violation, which fines and penalties to be assessed accordingly.
 - (4) A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes.
 - (5) Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
 - (6) The Special Master shall be prohibited from hearing the merits of the Notice of Violation or the consideration of the timeliness of a request for an administrative hearing, if the violator has failed to request the administrative hearing within ten (10) days of the issuance of the Notice of Violation.
 - (7) The Special Master shall not have discretion to alter the penalties prescribed in Subsections 46-67 (a) and (b) herein.
- (e) Enhanced penalties. The following enhanced penalties shall be imposed, in addition to any mandatory fines set forth in subsections (a) and (b) above, for violations of this Section:
- (1) Enhanced Penalties for Subsection (a):
 - (a) The tree work activity must be immediately terminated, upon confirming a violation has occurred, by the Miami Beach Police Department, Code Compliance Department and/or the Environment and Sustainability Department~~Public Works Department~~.
 - (b) Violations for subsection (a) shall be issued to the property owner and the tree services company, who shall be joint and severally liable for the violation.

- (c) The Environment and Sustainability Department~~Public Works Department~~ shall decline to issue a Tree Work Permit to such person, individual, entity, business, company or any affiliates that have violated this Section within a three (3) month period. The prohibition from receiving the Tree Work Permit shall be for a three (3) month period of time.
 - (d) An after-the-fact City Tree Work Permit shall be required for all violations involving unpermitted removals or effective destruction of Specimen, Non-Specimen and Heritage trees. Total tree removal shall be required for all effectively destroyed trees.
- (2) Enhanced Penalties for Subsection (b):
- (a) If the offense is a fourth offense within the preceding 12 month period of time, in addition to the fine set forth in subsection (b), the property owner, tree services company permittee or any affiliates shall be prohibited from receiving a Tree Work Permit for a three (3) month period of time.
 - (b) If the offense is a fifth offense within six (6) months following the fourth offense, in addition to any fine set forth in subsection (b), the property owner, tree services company permittee or any affiliates shall be prohibited from receiving a Tree Work Permit for a six (6) month period of time. The property owner, tree services company or permittee shall be deemed a habitual offender.
 - (c) The Environment and Sustainability Department~~Public Works Department~~ may decline to issue future Tree Work Permits to such person, individual, entity, business, company or any affiliates that have been deemed habitual offenders pursuant to this section for a period of up to one year.
 - (d) Additional corrective actions may also be required as determined by the Environment and Sustainability Department Urban Forester, which may include, but not limited to, corrective structural pruning, installation and maintenance of tree protection barriers, corrective root pruning and or obtaining a written tree evaluation from an ISA Certified Arborist or ASCA Registered Consulting Arborist.

Secs. 46-68 - 46-90. Reserved.

SECTION 2. REPEALER.

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

SECTION 3. SEVERABILITY.

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

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, 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, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this _____ day of _____, 2016.

ATTEST:

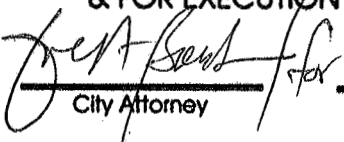
Philip Levine, Mayor

Rafael E. Granado, City Clerk

Underscore denotes new language
~~Strike-through~~ denotes stricken language

(Sponsored by Commissioner Joy Malakoff)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

10/28/2016

Date