

ORDINANCE 002- 2025

TREE ORDINANCE

AN ORDINANCE FOR THE PURPOSE OF AMENDING THE TOWN OF KENNETH CITY LAND DEVELOPMENT CODE NATURAL RESOURCES ARTICLE II. TREES SECTION 70-31 THROUGH 70-51; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Kenneth City desires to regulate and allow for existing and future general commercial uses within the light industrial zoning district, and

WHEREAS, the Town of Kenneth City held a first reading and hearing on this Ordinance on the 9th day of April 2025, and

WHEREAS, the Town of Kenneth City prepared a *Business Impact Estimate* on the 9th day of April, 2025, and

WHEREAS, the Town of Kenneth City advertised this Ordinance on the 23rd day of April, 2025 at least 10 days prior to a scheduled and noticed second public reading and hearing on this Ordinance to be held on the 14th day of May 2025 or as announced at that meeting as continued to a new date certain for adoption at a subsequent meeting, and

WHEREAS, the Town Council deems approval of this Ordinance to be in the best interest of the Town of Kenneth City; and

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Kenneth City that the Town of Kenneth City Town Code is hereby amended as follows:

Section 1. Recitals Adopted. That each of the above stated whereas clauses are hereby confirmed, adopted, and incorporated herein and made a part of this Ordinance by reference.

Section 2. Amendment to the Town Code. That Chapter 70 of the Town Code of Ordinances is hereby amended as follows with additions shown as underlined text, deletions shown as ~~strikethrough~~ text in Exhibit A to this Ordinance:

See Exhibit A

Section 3. Conflicting Provision. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 4. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for

any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining words, sections, sentences, clauses, and phrases of this Ordinance it being the legislative intent that this Ordinance shall remain valid notwithstanding the invalidity of any word, part or portion.

Section 5. Codification. That it is the intention of the Town Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Town Code, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word.

Section 6. Effective Date. That this Ordinance shall become effective immediately upon adoption on second reading.

PASSED ON FIRST READING on the 9th day of April, 2025, on a motion made by Vice Mayor Arrison and seconded by Councilmember Chan.

PASSED AND ADOPTED ON SECOND READING this 14th day of May 2025, on a motion made by CHAN and seconded by NORLE. Upon being put to a roll call vote, the vote was as follows:

Mayor Megan Zemaitis
Vice Mayor Bob Arrison
Councilmember Bonnie Noble
Councilmember Donald Kinney
Councilmember Tony Chan

yes
yes
yes
yes
yes

Megan Zemaitis
MAYOR

ATTEST:

Kristin Cook
DEPUTY TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Ralf Brookes
RALF BROOKES ATTORNEY

Subpart B - LAND DEVELOPMENT CODE
Chapter 70 - NATURAL RESOURCES
ARTICLE II. TREES

ARTICLE II. TREES

Sec. 70-31. Intent.

- (a) Trees as defined and their removal regulated in this article of the land development code are declared to provide and/or maintain beneficial public resources, and it is the intent of the town council to protect them as herein set out in the interest of the health, safety and welfare of present and future citizens. In addition, it is further intended to perpetrate through provisions provided herein adequate tree numbers and canopy to maintain the economic and social status of the town.
- (b) To that end, it shall be unlawful to cut down, damage, hatrack, poison or in any other manner destroy or cause to be destroyed any trees as covered by the terms of this article except in accordance with all of the provisions of this article of the land development code.

(Ord. No. 391, § 1(25-01), 2-14-90; Ord. No. 403, § 1, 7-11-90)

Sec. 70-32. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adverse environmental impact means any change in the physical or biological conditions of the natural environment within or adjacent to the area that results in a detrimental effect upon flora, fauna, air, water, minerals or other natural characteristics of the area.

Alter or alteration mean to cut, remove, defoliate, or otherwise destroy.

Bona fide agriculture means a land use from which the owner of the land received greater than 50 percent of his livelihood, such as but not limited to citrus grove and timber production.

Canopy means the leafy portion of a tree.

Commercial nursery or tree farm means a licensed plant or tree nursery or farm where trees planted and growing on the premises are so planted and growing for the sale or intended sale to the general public in the ordinary course of business.

Diameter breast height (DBH) means the diameter in inches of a tree measured at 4½ feet above the existing grade.

Dripline means an imaginary, perpendicular line that extends downward from the outermost tips of the tree branches to the ground.

Grubbing means the effective removal of understory vegetation, such as, but not limited to, palmetto from the site. As herein defined, no trees greater than six inches in diameter at DBH will be removed.

Hatracking means otherwise known as topping or heading, refers to the removal of major portions of a tree crown by cutting (pruning) branches back to stubs and/or to the trunk.

Historic tree means a tree which has been found by a professional forester, horticulturist or other professional plantsman to be of notable historic interest to the town because of its age, type, size or historic

association and has been so designated, and that designation has been officially made and promulgated as part of the official records of the town.

Land clearing stage means those operations where trees and vegetation are removed and which occur previous to the construction of buildings, e.g., road right-of-way excavation and paving, lake and drainage system excavation, utility excavation, grubbing, etc.

Mayor means the mayor for the town or such person as he shall designate to act in his stead.

No tree verification means a signed, notarized statement by the owner or his agent stating that no trees exist upon the site.

Prop roots means root structures originating from the trunk and limbs of red mangrove, *Rhizophora mangle*, which grow towards the sediment and are also known as stilt roots.

Protective barrier means a physical structure limiting access to a protected area, composed of wooden and/or other suitable materials, which assures compliance with the intent of this article of the land development code. Options and/or variations of these methods may be permitted upon written request if they satisfy the intent of this article.

Remove or removal mean the actual removal of a tree by digging up or cutting down or the effective removal through damage.

Specimen tree means a tree which has been determined by the judgment of a professional forester, horticulturist or other professional plantsman to be of high value because of its type, size, age or other professional criteria and has been officially made and promulgated as part of the official records of the town.

Town Manager (Manager) – means the Town Manager appointed by the Town Council pursuant to the Town Charter.

Transplant means the digging up by a property owner of a tree from one place on his property and the planting of the same tree in another place on the same property.

Tree means any self-supporting woody plant of a species which normally in the town grows at maturity to an overall height of a minimum of 15 feet, including all mangroves and cabbage palms.

Tree bank means the use of or storage of future use of trees permitted for removal under the provisions of this article which are donated to the town for its use on public property.

Tree survey means a minimum 1;inch; = 200;ft; scale aerial or drawing to scale which provides the following information: Location of all trees protected under the provisions of this article, plotted by accurate techniques, the common names of all trees and diameter and diameter breast height.

Vegetation means plant growth other than trees, including, but not limited to, sod, ground cover, vines, hedges and shrubs.

(Ord. No. 391, § 1(25-02), 2-14-90; Ord. No. 403, § 1, 7-11-90; Ord. No. 440, 2-8-95)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 70-33. Application.

The terms and provisions of this article shall apply to real property as follows:

- (1) *Small tracts.* On platted lots or tracts of land less than one acre in area where a valid certificate of occupancy is in effect, it shall be unlawful for any person to remove or cause to be removed any tree with a trunk diameter of three inches or more, such diameter being measured at DBH, without first having obtained a permit to do so as provided herein.

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- (2) *Small tracts (undeveloped)*. On any platted or unplatted tract of less than one acre in area, it shall be unlawful for any person to remove or cause to be removed any tree with a trunk diameter of three inches or more, such diameter being measured at DBH, without first having obtained a permit to do so as provided herein.
 - (3) *Large tracts*. On any platted or unplatted tract of one acre or more in area, it shall be unlawful for any person to remove or cause to be removed any tree with a trunk diameter of three inches or more, such diameter being measured at DBH, without first having obtained a permit to do so as provided herein.
 - (4) *Land clearing*. On any platted, unplatted or undeveloped land, it shall be unlawful for any person to remove or cause to be removed any tree with a trunk diameter of three inches or more, such diameter being measured at DBH, without first having obtained a permit to do so as provided herein.
 - (5) *Mangrove trees*. All species commonly known as "mangroves," including the following species:

Rhizophora mangle—Red Mangrove;

Avicennia germinans—Black Mangrove;

Laguncularia racemose—White Mangrove;

Conocarpus erecta—Buttonwood, Button Mangrove;

of whatever size or species are recognized to be of special ecological value. No mangrove tree shall be removed without a tree removal permit except where such tree is located in an area subject to a permit which was issued by the county water and navigation authority; in which case, the provisions of this article pertaining to mangrove trees shall not apply. However, due to vegetative characteristics of this plant community, mangroves will be exempt from the tree survey requirements except they shall be designated by name and clump location as defined herein, but no other permitting procedures will nullify the requirement of this article, including but not limited to a 1;inch; = 200;ft; aerial and site plan review. The replacement requirements for legally removed mangroves may be waived where suitable habitat for such mangroves no longer exists. In such cases, replacement requirements will be based on comparable canopy substitutes utilizing other tree species.

- (6) *Specimen and historic trees*. All real property upon which specimen and/or historic trees are located, i.e., trees having been designated as such under the provisions of this article, shall be maintained in a living condition.

(Ord. No. 391, § I(25-03), 2-14-90; Ord. No. 403, § 1, 7-11-90)

Sec. 70-34. Tree removal/land clearing permits.

Any person wishing to obtain a permit to remove or relocate a tree or clear land and/or grub land as required under the provisions of this article shall make application to the ~~mayer~~ Town Manager or his/her designee by filing a written application and paying such a fee as is established by the town necessary to cover the costs of processing the application. Where an application as required by this article has been submitted, no permit shall be issued until a tree removal/land clearing plan, or the related component of an overall site plan for the lot or parcel has been reviewed and approved by the ~~mayer~~ Town Manager or his/her designee. The plan shall show the following information at a scale sufficient to enable the determination of matters required under these regulations:

- (1) *Small tracts*. For small tracts the plan shall show the following information:
 - a. The shape and dimensions of the lot or parcel together with the existing and proposed locations of structures and improvements if any.

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- b. Locations of all existing trees which are subject to this article identified by common or botanical name. Trees proposed to remain, to be transplanted or to be removed shall be identified. Groups of trees in close proximity (three- to five-foot spacing or closer) may be designated as a "clump" of trees, and the predominant specie, estimated number and average size will be listed.
 - c. If existing trees are to be transplanted, the proposed relocation for such trees together with a statement as to how such trees are to be protected during land clearing and construction and maintained after construction.
 - d. A statement showing how trees not proposed for removal or relocation are to be protected during land clearing and construction, i.e., a protective barrier as defined herein.
 - e. Locations and dimensions, of all setbacks and easements required by the zoning code of the town.
 - f. Statements as to grade changes proposed for the lot or parcel and how such changes will affect these regulations.
 - g. Any proposed tree replacement program.
 - h. All trees to be retained shall be so identified by some method, such as painting, flagging, etc., prior to field inspection. All trees shall have suitable protective barriers as required erected prior to the issuance of a permit.
- (2) *Large tracts.* For large tracts a topographical survey sealed by a registered engineer or registered surveyor, which shows the information required in this article shall be required. An aerial photograph of suitable quality (minimum 1;inch; = 200;ft;) to facilitate the plan review and/or a tree survey as defined herein, may also be required. A tree survey will be required on all areas for which tree removal authorization is being requested other than areas previously approved under land clearing.
- (3) *Land clearing and/or grubbing.* Upon written request, land clearing or grubbing shall be permitted when the physical condition of the proposed development site does not permit the preparation of a tree survey as defined herein. Information as to the general number, species and size of the protected trees on the property will be required before land clearing or grubbing will be authorized upon request. Land clearing shall be permitted within designated road rights-of-way, drainage and other utility areas as depicted on an approved preliminary site plan. No fee will be required. During authorized grubbing, all trees will be left in an undisturbed condition with no less than the area defined as the dripline understory left intact.
- (4) *Alternate plan information.* In the event that there are no trees or vegetation cover located on the site to be developed which are required to be protected under the provisions of this article, the applicant shall so state in his/her application, subject to a no-tree verification. If such statement is substantiated by an inspection of the site by the mayor or his/her designee, the applicant shall be relieved of the necessity of supplying unnecessary or unimportant information, such as topographic survey, etc.
- (5) *Time of permit.* Any and all permits issued by the town as requirements of this article shall be null and void if commencement of work so permitted is not started within the time prescribed herein not to exceed six months; the time for completion of such work may be extended by the ~~mayor~~ Town Manager or his/her designee for an additional period not to exceed six months upon the showing of good cause by the applicant. Permits not used within this period are null and void, and future work will require a new application.

(Ord. No. 391, § I(25-04), 2-14-90; Ord. No. 403, § 1, 7-11-90; Ord. No. 499, § 27, 3-14-01)

Sec. 70-35. Procedure.

The tree removal application shall be field checked. The ~~mayor~~ Town Manager or his designee may request a recommendation concerning the application from any or all appropriate town departments. No tree removal permit will be approved without final site plan approval of the project except in the case of a land clearing or grubbing permit as defined herein.

(Ord. No. 391, § I(25-05), 2-14-90; Ord. No. 403, § 1, 7-11-90)

Sec. 70-36. Preapplication inspection service.

In connection with applications under the alternate site plan procedure and in connection with application involving large tracts of property and land clearing, the ~~mayor~~ Town Manager or his designee shall make his or his designee's services available for preapplication inspections of the site involved.

(Ord. No. 391, § I(25-06), 2-14-90; Ord. No. 403, § 1, 7-11-90)

Sec. 70-37. Criteria.

Upon receiving the field inspection report and requested recommendations concerning the application, the ~~mayor~~ Town Manager or his designee shall issue a permit after the application is filed for the removal or relocation of trees and/or clearing if one or more of the following conditions exist:

- (1) *Criteria for removal.* The following shall be criteria for removal:
 - a. The tree is located in an area where a structure or improvements may be placed according to an approved plan and it unreasonably restricts the economic enjoyment of the property, and the tree cannot be relocated on or off the site because of age, type or size of the tree.
 - b. The tree is diseased, injured, in danger of falling, too close to existing or proposed structures, interferes with existing utility service, creates unsafe vision clearance or conflicts with other ordinances or regulations.
 - c. It is in the welfare of the general public that the tree be removed for a reason(s) other than set forth above.
- (2) *Professional evaluations.* In determining whether to grant a permit pursuant to this section, the mayor or his designee shall consider significant adverse impact in the following areas on the urban and natural environment:
 - a. *Groundwater and surface water stabilization.* Whether the removal of trees will substantially alter the water table adversely regarding water assimilation by vegetation, transpiration and the interception of solar radiation as it affects the evaporation potential of associated soils and bodies of water.
 - b. *Water quality and/or aquifer recharge.* Whether the removal of trees will lessen the ability for the natural assimilation of nutrients, chemical pollutants, heavy metals, silt and other noxious substances from groundwaters and surface waters.
 - c. *Ecological impacts.* Whether the removal of trees will have an adverse impact upon existing biological and ecological systems, microclimatic conditions which directly affect these systems or whether such removals will create conditions which may adversely affect the dynamic equilibrium of associated systems.

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- d. *Noise pollution.* Whether the removal of trees will significantly increase ambient noise levels to the degree that a nuisance is anticipated to occur or that a violation of the town noise control ordinance is anticipated to occur.
 - e. *Air movement.* Whether the removal of trees will significantly reduce the ability of the existing vegetation to reduce wind velocities to the degree that a nuisance is anticipated to occur.
 - f. *Air quality.* Whether the removal of trees will significantly affect the natural clearing of the atmosphere by vegetation through particulate matter interception or significantly affect the production of oxygen released to the atmosphere as a byproduct of photosynthesis.
 - g. *Wildlife habitat.* Whether the removal of trees will significantly reduce available habitat for wildlife existence and reproduction or result in the emigration of wildlife from adjacent or associated ecosystems.
 - h. *Aesthetic degradation.* Whether the removal of trees will have a significant adverse impact on property values in the neighborhood where the applicant's property is located.
- (3) *Basis for denial.* The mayor or his designee, upon a determination that an application is to be denied, shall state the basis for such denial specifically and shall notify the applicant of the criteria upon which such denial is predicated.

(Ord. No. 391, § 1(25-07), 2-14-90; Ord. No. 403, § 1, 7-11-90)

Sec. 70-38. Relocation or replacement.

- (a) *Conditions.* As a condition of the granting of a permit, the applicant may be required where practical to relocate the trees being removed or required to replace the trees on a one-for-one ratio. The replacements shall have at least equal shade potential and other characteristics comparable to that of the trees removed and shall have a minimum of 1½-inch diameter measured 12 inches aboveground and shall be a minimum of eight feet overall height at the time of planting and Florida Department of Agriculture Nursery Grade #1 or better. A suggested list of replacement trees will be on file in the zoning division.
- (b) *Replacement trees.* For all single-family and duplex lots, a minimum number of replacement trees will be required based on the following square footage areas. Any removal of trees will require that up to this minimum number be replaced. Any trees left in a good growing condition on the site shall be counted toward these minimum numbers. Selection of replacement trees, their number and species shall be determined by analysis of tree canopy cover and soil conditions:

Tree Replacement Requirements for Residential Zones

Lot Size (Square Footage)	Minimum Replacements
3,500— 5,999	2
6,000— 9,499	4
9,500—15,999	6
Over 16,000 (per 16,000 square-foot unit)	8

For developed lots where a landscaping plan in which existing trees were allowed for specific planting credit was submitted and approved by the town, if such trees are removed, the number of required replacement trees shall be consistent with the number of tree planting credits allowed at the time of plan approval.

- (c) *Tree bank.* Where a trees is to be removed under the provisions of this article, the town shall have the option with the owner's permission to relocate the trees (not being relocated within the property) at the town's

expense to town-owned property for replanting either for permanent utilization at the new location or for future use at other town property. The relocation shall be accomplished within 15 working days of the issuance of a permit unless it is necessary to root-prune the trees to assure its survival; in which case, the relocation shall be accomplished within 30 working days of the issuance of a permit or other suitable schedule as agreed to by all parties.

(Ord. No. 391, § I(25-08), 2-14-90; Ord. No. 403, § 1, 7-11-90)

Sec. 70-39. Tree protection during construction.

- (a) It shall be unlawful for any person in the construction of any structures or other improvements to place solvents, material, construction machinery or temporary soil deposits within six feet or two-thirds of the dripline as defined herein, whichever is greater, of any tree having a three-inch or greater trunk diameter being measured at DBH above existing grade.
- (b) Before development, land clearing or filling of any land alteration, a permit will be required, and the developer shall be required to erect suitable protective barriers, and these protective structures where required shall remain until such time as they are authorized to be removed by the town building inspectors of the appropriate department or issuance of the final certificate of occupancy. Also, during construction, no attachments or wires shall be attached to any of such trees so protected. Wooden, metal or other substantial material shall be utilized in the construction of barriers. Barriers will be required for all trees being protected except in the following cases:
 - (1) *Road right-of-way, utility easement, etc.* Road right-of-way, utility easement, etc., may be ribboned by placing stakes a minimum of 50 feet apart and tying ribbon, plastic tape, rope, etc., from stake to stake along the outside perimeters of such areas to be cleared.
 - (2) *Large property areas separate from the construction or land clearing area into which no equipment will be operated or placed.* Large property areas separate from the construction or land clearing area into which no equipment will be operated or placed may also be ribboned off as described above.

(Ord. No. 391, § I(25-09), 2-14-90; Ord. No. 403, § 1, 7-11-90)

Sec. 70-40. Exceptions for betterment plans.

Applicants for permits shall be entitled to demonstrate by means of a proper landscape plan that an improvement or betterment of the environment can be accomplished over the existing site conditions if such landscape plan is carried out to its fullest. If such a detailed landscape plan is so offered and is accepted by the ~~mayer~~ Town Manager or his designee, the applicant shall guarantee by adequate bond the faithful adherence and completion of such landscape plan.

(Ord. No. 391, § I(25-10), 2-14-90; Ord. No. 403, § 1, 7-11-90)

Sec. 70-41. Emergencies.

In case of emergencies, such as hurricane, windstorm, flood, freeze or other disasters, the requirements of these regulations may be waived by the ~~mayer~~ Town Manager or his designee upon a finding that such waiver is necessary so that public or private work to restore order in the town will not be impeded.

(Ord. No. 391, § I(25-11), 2-14-90; Ord. No. 403, § 1, 7-11-90)

Sec. 70-42. Exemptions.

- (a) The provisions of this article shall not apply to the transplant of a tree on small tracts.
- (b) The provisions of this article shall not apply to trees 2½ inches DBH or under on small tracts where a valid certificate of occupancy has been issued.
- (c) The provisions of this article shall not apply to any land upon which bona fide agricultural uses and practices as herein defined are being conducted.
- (d) Specifically exempt from the terms and provisions of this article are the following species of trees:
 - (1) All palm trees other than Cabbage Palm (*Sabal palmetto*).
 - (2) Australian Pine (*Casuarina* spp.).
 - (3) Brazilian Pepper (*Schinus* spp.).
 - (4) Chinaberry (*Melia azedarach*).
 - (5) Ear Tree (*Enterolobium cyclocarpum*).
 - (6) Eucalyptus (*Eucalyptus* spp.).
 - (7) Punk (*Melaleuca eucadendra*).
 - (8) Silk Oak (*Grevillea robusta*).
 - (9) Woman's Tongue (*Albizia* spp.).
 - (10) Java Plum (*Syzygium cumini*).
 - (11) Acacia (*Acacia* spp.).
 - (12) Avocado (*Persea americana*).
 - (13) Cherry laurel (*Prunus Caroliniana*).
 - (14) Citrus, rue family: orange, lemon, lime, kumquat, grapefruit (East Asia).
 - (15) Ficus (*Ficus* except banyan) (South American).
 - (16) Italian Cypress (*Cupressus sempervirens*) (South Europe).
 - (17) Jacaranda (*Jacaranda acutifolia*) (Brazil).
 - (18) Jerusalem thorn (*Parkinsonia aculeata*) (Central America).
 - (19) Loquat (*Eriobotrya japonica*) (China).
 - (20) Mango (*Mangifera indica*) (India).
 - (21) Monkey puzzle tree (*Araucaria*) (Australia).
 - (22) Norfolk Island Pine (*Araucaria excelsa*) (Norfolk Island).
 - (23) Orchid (*Bauhinia*) (India).
 - (24) Poinciana (Madagascar).
 - (25) Toog (*Bischofia javanica*) (Africa).
 - (26) Brazilian pepper, Punk, Australian Pine.

(Ord. No. 391, § 1(25-12), 2-14-90; Ord. No. 403, § 1, 7-11-90; Ord. No. 440, § 2, 2-8-95)

Sec. 70-43. Public right-of-way.

No trees shall be removed from the public right-of-way except under the direction of the ~~mayer~~ Town Manager or his designee.

(Ord. No. 391, § I(25-13), 2-14-90; Ord. No. 403, § 1, 7-11-90)

Sec. 70-44. Certain trees prohibited; removal required.

(a) *Prohibited trees; notice.* No person shall plant or cause to be planted anywhere within the corporate limits of the town any of the following:

- (1) Melaleuca quinquenervia (punk).
- (2) Schinus terebinthifolius (Brazilian pepper).
- (3) Syzygium cuminii (Java plum).
- (4) Casuarina spp. (Australian pine).
- (5) Grevillea robusta (silk oak).
- (6) Enterolobium cyclocarpum (ear tree).
- (7) Bischofia javanica (bischofia).
- (8) Albizia spp. (woman's tongue).
- (9) Eucalyptus spp. (eucalyptus tree).
- (10) Melia azedarach (chinaberry).
- (11) Ficus spp.

Whenever the ~~mayer~~ Town Manager or his designee after investigation shall determine that any one of the above prohibited trees has been planted within the town, he shall cause to be served upon the owner or occupant of the real property upon which the trees are planted in violation of this section a written notice requiring such owner or occupant to remove such tree or trees within 15 days after the service of such notice.

(b) *Noncompliance; variance fee.* If, after the service of the notice provided herein, the owner or occupant does not comply with the directions contained therein within the time specified, the ~~mayer~~ Town Manager or his designee may lawfully have the tree or trees removed and charge the cost of removal thereof to the real property owner. Each such appeal or request for variance shall be accompanied by payment of a fee in the amount of \$55.00. Each such appeal of request for variance shall be determined by the town council after a public hearing.

(c) *Permissible height; duty to keep trimmed.* Whenever any plant material is located within any public right-of-way or parkway, it shall be the duty of the owner of the abutting property who owns the fee-simple interest in the property on which the public right-of-way is located to keep such plant material trimmed so that the plant material does not exceed three feet in height as measured from the curb or, if no curb, the pavement edge of the adjacent roadway. Where trees are maintained, they shall be cleared of branches and foliage from a minimum height of eight feet to the ground as measured from the curb or, if no curb, the pavement edge of the adjacent roadway.

(Ord. No. 391, § I(25-14), 2-14-90; Ord. No. 440, § 3, 2-8-95)

Sec. 70-45. Processing of violations and enforcement.

- (a) The ~~mayor~~ Town Manager or his designee is hereby authorized and directed to enforce all of the provisions of this article. When evidence of a violation to the article is documented, the mayor or his designee shall notify the owner of the property in writing of the violation and what steps must be taken to comply with the regulations of this article. Where trees have been cut down, damaged, hat racked, poisoned or in any other manner destroyed, the owner of the property will be required to replace each tree destroyed with a tree that meets one of the following requirements:
- (1) Tree stock, in which the method of preparation for planting includes reducing the existing root mass by cutting, pruning, spading or other means, including collected and relocated stock, shall be a minimum of 1½ inches in diameter as measured one foot above grade and be a minimum of eight feet in overall height.
 - (2) Tree stock, in which the root mass is allowed to grow complete and intact to a reasonable degree, including container and grow-bag grown, shall be a minimum of 1¼-inch caliper as measured six inches above grade and be a minimum of eight feet in overall height.
- (b) The replacement will be from the same category of tree that is destroyed. That is, a canopy tree will be replaced with a canopy tree, an intermediate tree will be replaced with an intermediate tree, and an understory tree will be replaced with an understory tree. Palms are considered understory trees for the purpose of replacement.

(Ord. No. 391, § I(25-15), 2-14-90; Ord. No. 403, § 1, 7-11-90)

Sec. 70-46. Penalties.

Any person or any agent or representative thereof who shall violate the provisions of this article shall be subject upon conviction in a court of competent jurisdiction to the penalty as provided in section 1-15. In any prosecution under this article for the removal of a tree without a permit, each tree so removed will constitute a separate offense.

(Ord. No. 391, § I(25-16), 2-14-90; Ord. No. 403, § 1, 7-11-90)

Sec. 70-47. Civil penalties.

In addition to the criminal penalties provided herein, any person who violates any provision of this article shall forfeit and pay to the town a civil penalty equal to the total value of those trees illegally removed or damaged as computed from the International Society of Arboriculture shade tree value formula. Such sum shall accrue to the town and may be recovered in a civil action brought by the town. The sum so collected shall be placed in a fund for the tree bank and shall be expended for the purchase of trees for placement in public properties in the town. Replacement of illegally removed trees may be required as restoration in lieu of money. This replacement will be computed on an inch-for-inch ratio based on the total diameter measured at DBH in inches of the illegally removed trees. A combination of money and tree replacement may be required.

(Ord. No. 391, § I(25-17), 2-14-90; Ord. No. 403, § 1, 7-11-90)

Sec. 70-48. Withholding of certificate of occupancy.

The ~~mayer~~ Town Manager or his designee may withhold the issuance of the required certificate of occupancy or permits and inspections on any development as required until the provisions of this article, including conditions of any permits issued under this regulation, have been fully met.

(Ord. No. 391, § 1(25-18), 2-14-90; Ord. No. 403, § 1, 7-11-90)

Sec. 70-49. Appeals.

Any persons adversely affected by a decision of the ~~mayer~~ Town Manager or his designee in the interpretation of any of the terms or provisions of this article may appeal such decision to the board of adjustment by filing written notice with the clerk of the town and paying the appropriate fee within ten days after the date of the action or decision complained of. The written notice of appeal shall set forth the reasons or grounds for the appeal. The board of adjustment shall set such appeal for hearing at the earliest possible date, and cause notice thereof to be served upon the appellant, the ~~mayer~~ Town Manager or his designee. The ~~board of adjustment~~ Town Council shall hear and consider all facts material to the appeal and render a decision promptly. The ~~board of adjustment~~ Town Council may affirm, reverse or modify the action or decision appealed from, provided that it shall not take any action which conflicts with or nullifies any of the provisions of this article. The ~~board of adjustment~~ Town Council shall not have jurisdiction to reconsider the subject matter of any appeal after its final decision within 12 months of its decision, unless it is determined that there has been a material and substantial change in the circumstances; provided, however, the ~~mayer~~ Town Manager or his designee may reconsider at any time action or decision taken by him and not appealed to the board of adjustment and may modify such action or decision.

(Ord. No. 440, § 4, 2-8-95)

Sec. 70-50. Alteration of trees.

It shall be unlawful for any person to cut down, damage, poison, or in any manner destroy or cause to be destroyed any tree regardless of condition with a trunk diameter of two inches or more, such diameter being measured at 4½ feet above the ground surface, or to alter the natural form or character of a tree through trimming or pruning. This section shall not be construed to regulate the trimming or pruning of trees for routine maintenance.

(Ord. No. 440, § 5, 2-8-95)

Sec. 70-51. Hazardous vegetation.

It shall be unlawful for any person to permit to remain on any property owned or occupied by such person, including the abutting rights-of-way, any tree or tree branch that is in such diseased or dead condition as to be in danger of falling upon any public way in the town or upon the property of another. **This ordinance is subject to the state preemption exempting a tree that poses an unacceptable risk to persons or property as defined in section 163.045, Florida Statutes as may be amended from time to time from permits for trimming or removal.**

(Ord. No. 440, § 6, 2-8-95)

Secs. 70-52—70-80. Reserved.