

ORDINANCE NO. 2021-007

AN ORDINANCE OF THE COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AMENDING THE VILLAGE'S CODE OF ORDINANCES AND UNIFIED LAND DEVELOPMENT CODE OF ORDINANCES TO ESTABLISH RESILIENCE AND SUSTAINABILITY CODE PROVISIONS BY MODIFYING CHAPTER 3, "DEFINITIONS", CHAPTER 8 ZONING, GENERAL SITE DESIGN STANDARDS, CHAPTER 10 FLOOD DAMAGE PROTECTION, CHAPTER 91 ANIMALS AND CHAPTER 100 TREE PRESERVATION AND PROTECTION PROVIDING FOR IMPLEMENTATION; PROVIDING FOR INCORPORATION INTO THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, North Bay Village (the "Village") strives to develop policies and initiatives that make the Village, its residences, buildings, and infrastructure resilient against flooding, significant weather events, sea level rise, and other consequences of climate change and that create sustainable environmental practices, so as to protect all property within the Village and the future quality of life of Village residents; and

WHEREAS, the Village's Resilience and Sustainability Committee has worked with staff to develop a variety of policy recommendations that seek to update the Village's Code of Ordinances and Unified Land Development of Ordinances, making our code more resilient; and

WHEREAS, the Mayor and Commission believe that this Ordinance is in the best interest of the Village, as it advances the health, safety, and wellness of the community

NOW, THEREFORE, IT IS HEREBY ORDAINED BY MAYOR AND COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. The foregoing recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. Village Code Amended. Chapter 3 of the Unified Land

Development Code of Ordinances is hereby amended as provided in Exhibit “A”, which is incorporated herein and made a part hereof by this reference.

Section 3. Village Code Amended. Chapter 8 of the Unified Land Development Code of Ordinances is hereby amended as provided in Exhibit “B”, which is incorporated herein and made a part hereof by this reference.

Section 4. Village Code Amended. Chapter 9 of the Unified Land Development Code of Ordinances is hereby amended as provided in Exhibit “C”, which is incorporated herein and made a part hereof by this reference.

Section 5. Village Code Amended. Chapter 10 of the Unified Land Development Code of Ordinances is hereby amended as provided in Exhibit “D”, which is incorporated herein and made a part hereof by this reference.

Section 6. Village Code Amended. Chapter 91 of the Code of Ordinances is hereby amended as provided in Exhibit “E”, which is incorporated herein and made a part hereof by this reference.

Section 7. Village Code Amended. Chapter 100 of the Code of Ordinances is hereby amended as provided in Exhibit “F”, which is incorporated herein and made a part hereof by this reference.

Section 8. Conflicts. 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 9. 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 sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 10. Inclusion in Code. The provisions of this Ordinance shall become and be made a part of the Village Code, that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word

Section 11. Implementation. The Village Manager, Village Attorney, and Village Clerk are hereby authorized to take such further action as may be needed to implement the purpose and provisions of this Ordinance

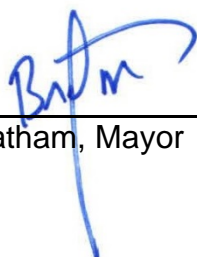
Section 12. Effective Date. That this Ordinance shall become effective immediately upon adoption on second reading.

The foregoing Ordinance was offered by Commissioner Strout, who moved its adoption on first reading. This motion was seconded by Vice Mayor Wilmoth and upon being put to a vote, the vote was as follows:

| | |
|--------------------------------|-----|
| Mayor Brent Latham | Yes |
| Vice Mayor Marvin Wilmoth | Yes |
| Commissioner Richard Chervony | No |
| Commissioner Rachel Streitfeld | Yes |
| Commissioner Julianna Strout | No |

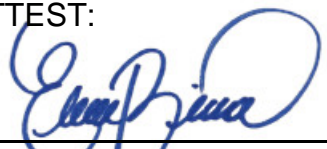
PASSED on first reading on this 9th of February, 2021.

PASSED AND ENACTED on second reading on this 9th of March, 2021.



Brent Latham, Mayor


ATTEST:



Elora Riera, MMC
Village Clerk



APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



Weiss Serota Helfman Cole & Bierman, P.L.
Village Attorney

Chapter 91 - ANIMALS^[1]

Footnotes:

--- (1) ---

Cross reference— Animals, fowl, and dog regulations, Chapter 5, § 21-28(c), Dade County Code.

GENERAL PROVISIONS

§ 91.01 - Killing animal of another prohibited.

Whoever, in the Village, shall commit, or shall aid, abet, or assist another in, maliciously or wantonly or by gross negligence, killing a dog or other animal of another person, shall be guilty of an offense against the Village.

(1964 Code, § 13-7(d))

Cross reference— Penalty, § 91.99.

§ 91.02 - Prohibited animals.

It shall be unlawful for any person to keep or maintain or raise within Village limits any live monkeys, apes, reptiles, rabbits, wild animals, horses, ponies, cattle, sheep, swine, goats, poultry, fowl, livestock, farm animals, or animals for husbandry or dairy, including all animals similar to the foregoing. For purposes of this subsection, fowl is defined as chicken, duck, goose, turkey or any domesticated bird used as human food.

(1964 Code, § 13-7(v); Ord. 90-09, passed 5-22-90; Ord. No. 02-16, § 1, 6-25-02)

Cross reference— Penalty, § 91.99.

§ 91.03 - Excrement.

- (A) It shall be unlawful for the person who has control over a dog or other domesticated pet or other animal, to fail to immediately remove and dispose of animal wastes (except for law enforcement animals while on duty) deposited by the dog or domesticated pet or other animal upon any public property, including but not limited to sidewalks, rights of way, linear, passive and other public park properties; further, including, any similar occurrence that takes place upon an unauthorized private property.
- (B) It shall further be the duty of any person while in direct control of a dog or other domesticated animal or pet to have in their possession a plastic bag or "pooper scooper" or other such device sufficient for their use in the removal of animal waste when not within their own property.
- (C) Disposal of dog or other domestic pet or other animal waste shall occur by promptly placing the waste in a designated waste container. Animal waste shall never be thrown into a waterbody.
- (D) This section may be enforced by all police officers, animal control officers, code enforcement officers, or park rangers in the town. Violators may be punished by issuance of a notice to appear, a civil citation or a code enforcement violation notice, and upon a finding of guilt or fact, said violator may be subject to a fine or other penalty.

- (E) The owner of any dog or other domesticated pet or other animal shall remove animal waste from his or her property if it poses a threat to the health, safety or well-being of any animals, persons or waterbodies.
- (F) This section shall not apply to disabled persons accompanied by any service animal used for assistance in accordance with the law.
- ~~(A) It shall be unlawful for any person, firm, or corporation to allow or permit any dog or other animal to void excrement on any public or private property other than the property of the owner of such dog or other animal.~~
- ~~(B) Dogs or other animals may be allowed or permitted to void excrement between the curbs of public streets of the Village provided that the owners of such dogs or other animals clean and remove such excrement after such dog or other animal has voided same.~~
- ~~(C) No person shall permit such dog or other animal to unlawfully void excrement on private property or fail to clean and remove such excrement from public property after having been voided by such dog or other animal, after a warning from proper authority.~~

(1964 Code, § 4-4; Ord. 251, passed 4-16-73)

Cross reference— Penalty, § 91.99.

DOGS

§ 91.10 - Dogs which are vicious or a nuisance; cruelty to, stealing or abandoning dogs.

- (A) No person shall keep, harbor, or own any dog in the Village which indulges or engages in frequent or habitual barking, yelping, or howling, or which is mean or vicious, thereby creating annoyance to the inhabitants of the neighborhood in which the dog is kept or to people passing to and from the public streets.
- (B) No person shall keep, harbor, or own a dog who is cruel and inhumane to the animal, such cruelty and inhumaneness consisting of unnecessarily beating or torturing or mutilating or cruelly killing, failing, or neglecting to provide suitable food or drink in sufficient quantities, together with adequate shelter for such animal.
- (C) No person shall steal any dog or abandon an aged, sick, disabled, or otherwise unwanted dog.

(1964 Code, § 4-1; Ord. 69, passed 7-17-52)

Cross reference— Penalty, § 91.99.

§ 91.11 - Keeping dogs for commercial purposes prohibited; exception.

It shall be unlawful for any person, firm, association, or corporation to house or keep dogs for commercial purposes in the Village other than a licensed veterinary doctor which such doctor has dogs in his custody and control solely for the purpose of providing them with medical care and attention.

(1964 Code, § 4-2; Ord. 69, passed 7-17-52)

Cross reference— Penalty, § 91.99.

§ 91.12 - Keeping more than three dogs prohibited; exception.

No person, firm, association, or corporation shall own or keep more than three dogs over the age of six months within the Village other than a licensed veterinary doctor where such doctor has the control and custody of such dogs solely for the purpose of providing them with medical care and attention.

(1964 Code, § 4-3; Ord. 69, passed 7-17-52)

Cross reference— Penalty, § 91.99.

§ 91.13 - Running at large prohibited.

(A) For the purpose of this section the following definitions shall apply unless the context clearly indicates or requires a different meaning.

At large. Off the premises of the owner, and not under the control, custody, charge, or possession of the owner, or other responsible person, either by leash, cord, or chain.

Dog. Includes both male and female.

Responsible party. Includes any person, persons, firms, corporations, or associations owning, harboring, keeping, or controlling a dog or dogs within the Village. Wherever the words *Owner* or *Person* are used in this section, these words shall mean *Responsible party*.

(B) No responsible party owning or having possession, charge, custody, or control of any dog shall cause or permit or allow the dog to stray, run, be, go, or in any manner to be at large in or upon any public street, sidewalk, or park, or on private property of others without the express or implied consent of the owner of the private property.

(C) Any responsible party who violates any of the provisions of this section shall be punished as provided for in § 91.99.

(Ord. 85-10, passed 8-13-85)

Cross reference— Penalty, § 91.99.

ANIMAL CONTROL ENFORCEMENT

§ 91.20 - Definitions.

For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Animal. Any living non-human dumb creature.

Animal control officer. Any person employed or appointed by the Village Manager who is authorized to investigate, on public or private property, civil infractions relating to animal control or cruelty and to issue citations as provided in this section. An Animal Control Officer, as such, is not authorized to bear arms or make arrests.

Citation. A written notice issued to a person by an officer that the officer has probable cause to believe that the person has committed a civil infraction in violation of a duly enacted ordinance, and that the county court will hear the charge. The citation shall contain:

- (1) The date and time of issuance;
- (2) The name and address of the person;
- (3) The date and time the civil infraction was committed;
- (4) The facts constituting probable cause;
- (5) The ordinance violated;
- (6) The name and authority of the officer;
- (7) The procedure for the person to follow in order to pay the civil penalty or to contest the citation;
- (8) The applicable civil penalty if the person elects to contest the citation;
- (9) The applicable civil penalty if the person elects not to contest the citation; and
- (10) A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, then he shall be deemed to have waived his right to contest the citation and that in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

Control. The regulation of the possession, ownership, care, and custody of animals.

Cruelty. Any act of neglect, torture, or torment that causes unjustifiable pain or suffering of an animal.

Officer. Any law enforcement officer defined in F.S. § 943.10, any veterinarian defined in F.S. § 474.202, or any Animal Control Officer.

Ordinance. Any ordinance enacted by the governing body of the Village that is a civil infraction relating to the control of or cruelty to animals including, but not limited to, all provisions of Chapter 91, of the Village Code.

(Ord. 88-04, passed 6-14-88)

§ 91.21 - Issuance of citation.

Any police officer of the Village and the designated Animal Control Officer of the Village is hereby authorized to investigate, on public or private property, civil infractions relating to animal control or cruelty and to issue citations as provided in this subchapter.

(Ord. 88-04, passed 6-14-88)

Cross reference— Penalty, § 91.99.

§ 91.22 - Refusal to sign citation.

Any person who willfully refuses to sign and accept a citation issued by an officer shall be guilty of a misdemeanor of the second degree, punishable as provided by F.S. §§ 775.082, 775.083, or 775.084.

(Ord. 88-04, passed 6-14-88)

§ 91.23 - Authority to enact animal control provisions not in conflict with state law.

Nothing contained in this subchapter shall prevent the Village from enacting any ordinance relating to animal control or cruelty which is identical to the provisions of F.S. Ch. 828, or any other state law, except as to penalty. However, no ordinance relating to animal control or cruelty shall conflict with the provisions of said Chapter 828 or any other state law.

(Ord. 88-04, passed 6-14-88)

§ 91.24 - Other enforcement.

Nothing in this subchapter shall preclude enforcement by suit for declaratory, injunctive, or other appropriate relief.

(Ord. 88-04, passed 6-14-88)

§ 91.99 - Penalty.

In lieu of any penalty providing for imprisonment or fine for any violation of the ordinances and laws described in this Chapter 91, it is hereby specifically provided as follows:

- (A) A violation of such ordinance or law shall constitute a civil infraction under this chapter;
- (B) The maximum civil penalty for each such violation shall not exceed \$500.00;
- (C) A civil penalty of \$200.00 shall be imposed if the person who has committed the civil infraction does not contest the citation;
- (D) A police officer or Animal Control Officer shall only issue a citation for a violation of such ordinance upon probable cause to believe that a person has committed an act in violation of such ordinance;
- (E) A citation issued under this chapter shall be subject to contest in the County Court in accordance with law and
- (F) Except as otherwise provided herein, the other procedures and provisions necessary to implement this chapter shall be those which are applicable to a noncriminal infraction cited to the County Court under F.S. § 327.73, and such procedure and provisions are hereby incorporated by reference.
- (G) The Village Attorney shall prepare the form of citation to be used in accordance with the above.

(Ord. 88-04, passed 6-14-88; Ord. No. 96-02, § 1, 1-9-96)

Chapter 100 - TREE PRESERVATION AND PROTECTION

§ 100.01 - Tree preservation and protection.

(A) *Generally.* These tree preservation and protection regulations ("tree regulations") shall be a minimum standard for the protection, removal and relocation of trees and shall be enforced by the Village. It shall be unlawful for any person to abuse any tree by improper trimming, or to effectively destroy a tree not specifically exempted by this ordinance.

(B) *Definitions.*

- (1) *Caliper* shall mean for trees less than four inches in diameter, the trunk diameter measured at a height of six inches above natural grade. For trees four inches and greater in diameter, the trunk diameter measured at 12 inches above natural grade.
- (2) *Diameter at breast height* ("DBH") shall mean the diameter of a tree's trunk measured at a point four and one-half feet above the natural grade. In the case of multiple-trunked trees, the DBH shall mean the sum of each trunk's diameter measured at a height four and one-half feet above the natural grade.
- (3) *Hat-racking* shall mean flat-cutting the top of a tree, severing the leader or leaders, or the removal of any branch three inches or greater in diameter at any point other than the branch collar.
- (4) *Native habitat* shall mean an area enhanced or landscaped with an appropriate mix of native trees, shrubs and ground cover species that resembles a native plant community or natural forest community in structure and composition or is naturally occurring.
- (5) *Native plant community* shall mean a natural association of plants dominated by one or more prominent native plant species or characteristic physical attributes.
- (6) *Native plant species* shall mean a plant species with a geographic distribution indigenous to all or part of Miami-Dade County. Plants which are described as being native to Miami-Dade County in botanical manuals such as, but not limited to, "A Flora of Tropical Florida" by Long and Lakela and "The Biology of Trees Native to Tropical Florida" by P.B. Tomlinson, are native plant species within the meaning of this definition.
- (7) *Natural forest community* shall mean all assemblages of vegetation designated as natural forest communities on the Dade County Natural Forest Community Maps and approved by the Board of County Commissioners, pursuant to Resolution No. R-1764-84 and further defined in Section 24-3 of the Dade County Code.
- (8) *Natural grade* shall mean the ground elevation of a property prior to the placement of any fill on the site.
- (9) *Pruning* shall mean the removal of plant parts, dead or alive, in a careful and systematic manner so as not to damage the other parts of the plant.
- (10) *Specimen tree* shall mean a tree with any individual trunk which has a DBH of 18 inches or greater, provided, however, that the following trees are not specimen trees:
 - a. All trees listed in (c)(1)e.2.;
 - b. Non-native fruit trees that are cultivated or grown for the specific purpose of producing edible fruit, including, but not limited, to mangos, avocados, or species of citrus;

c. Non-native species of the genus *fichus*.

(11) *Tree* shall mean a woody or fibrous perennial plant with a trunk having a minimum DBH of three inches or with an overall height of 12 feet.

(12) *Understory* shall mean the complex of woody, fibrous, herbaceous, and graminoid plant species that are typically associated with a natural forest community, native plant community, or native habitat.

(C) *Tree removal and relocation permits.*

(1) *Permits required.*

a. *Tree removal.* A tree removal permit is required for the removal or relocation of any tree in the Village not specifically exempted below. It shall be unlawful for any person, unless otherwise permitted by the terms of these tree regulations to do tree removal work or to abuse, hatrack, or effectively destroy any tree, or to effectively destroy any understory in a natural forest community.

b. *Natural forest community.* In addition to the requirements set forth herein, if a tree is located in a natural forest community, a permit must be obtained, prior to removal, from the Miami-Dade County Department of Environmental Resources Management.

c. *Illegal removal.* Trees that have been removed illegally shall be replaced on the basis of two caliper inches per each one caliper inch of tree removed [i.e., if a ten-inch caliper tree was removed, a total of 20 caliper inches shall be re-planted to comply with this provision]. Specimen trees that have been removed illegally shall be replaced on the basis of four caliper inches per each one caliper inch of tree removed. Trees shall be replanted on site and meet minimum standards for caliper and other provisions of these regulations, including height.

d. *Violations.* A Village official shall not issue a tree removal permit that does not comply with these tree regulations. Any such permit issued in error or under false pretenses shall be void. It shall be unlawful for any person to violate or not comply with any of the conditions of a Village tree removal or landscape permit.

1. *Mortgagees.* Any mortgagee with respect to property upon which any violation of these regulations has occurred shall not be liable for such violation unless, prior to said violation, said mortgagee has foreclosed upon said property or participated in the management or control of said property, or unless said mortgagee has effected or caused the tree ordinance violations occurring on said property.

2. *Prior actions.* If actions or omissions constituting a violation of these regulations occurred at a time when the completed actions or omissions were not prohibited by law, such completed actions or omissions shall not constitute a violation.

e. *Exemptions.* The following activities are exempt from tree removal permits, but may only be undertaken following an inspection by the Administrative Official.

1. Removal of any dead tree.

2. Removal of any tree recognized by the Florida Exotic Pest Plant Council as a Category I or Category II invasive tree on the current list as may be amended. ~~of the following tree species (provided the tree is not within a natural forest community, in which~~

~~case a permit must be obtained, prior to removal, from the Miami-Dade County Department of Environmental Resources Management):~~

- ~~(i) Melaleuca quinquacervia (cajeput/paperbark)~~
- ~~(ii) Adenanthra pavonina (red sandalwood)~~
- ~~(iii) Casuarina equisetifolia (Australian pine, beefwood) Island~~
- ~~(iv) Cupaniopsis anacardioides (carrotwood)~~
- ~~(v) Schinus terebinthifolius (Brazilian pepper)~~
- ~~(vi) Dalbergia sissoo (Indian dalbergia, sissoo)~~
- ~~(vii) Bischofia javanica (bishopwood)~~
- ~~(viii) Ficus microcarpa (laurel fig)~~
- ~~(ix) Ricinus communis (castorbean)~~
- ~~(x) Psidium guajava (guava)~~
- ~~(xi) Flacourtia indica (governor's plum)~~
- ~~(xii) Albizia lebbek (woman's tongue)~~
- ~~(xiii) Hibiscus tiliaceus (mahoe)~~
- ~~(xiv) Acacia auriculaeformis (earleaf acacia)~~
- ~~(xv) Leucaena leucocephala (lead tree)~~
- ~~(xvi) Schefflera actinophylla (Queensland Umbrella)~~
- ~~(xvii) Mimosa pigra (catclaw mimosa)~~
- ~~(xviii) Araucaria heterophylla (Norfolk Island Pine)~~
- ~~(xix) Thespesia populnea (seaside mahoe)~~
- ~~(xx) Metopium toxiferum (poison wood)~~
- ~~(xxi) Hong Kong orchid tree~~
- ~~(xxii) Araucaria Heterophylla (Excelsa, Northfork Pine)~~
- ~~(xxiii) Brassala Actinophyera (Schefflera)~~

3. Removal of any tree which has been destroyed or effectively destroyed by an act of God, or by acts outside of the control of any person, individually or otherwise, who has or had a legal, beneficial or equitable interest in the real property upon which such tree is located, which acts could not have been prevented by the exercise of reasonable care by that person. Where a tree has been destroyed or effectively destroyed as described above, it is the intent of this provision to exempt from liability for such destruction or effective destruction the person who has or had a legal beneficial or equitable interest in the real property upon which such tree is located if the person could not have prevented the destruction by the exercise of reasonable care.
4. Removing, trimming, cutting or altering of any mangrove tree or removal of any tree located upon land which is a wetland.

5. Review of projects involving tree removal or relocation. The Administrative Official shall review all applications for development approval to determine if the applicant must apply for a tree removal permit. The Administrative Official shall also review for the same purpose proposed plans for new roadways or improvements to highway design projects and proposed plans for new public parks and recreational facilities and other public facilities.

6. Tree pruning, provided that the trees are pruned in accordance with the following:

- (i) All cuts shall be clean, flush and at junctions, laterals or crotches. All 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.
- (ii) Removal of dead wood, crossing branches, weak or insignificant branches, and suckers shall be accomplished simultaneously with any reduction in crown.
- (iii) Cutting of lateral branches that result in the removal of more than one-third of all branches on one side of a tree shall only be allowed if required for hazard reduction or clearance pruning.
- (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 one-third of a tree's living canopy shall be removed within a one-year period.
- (vi) Trees shall be pruned according to current ANSI A300 Standards and the Landscape Manual.

(2) *Permit application.* The Administrative Official shall provide permit application forms for removal or relocation of trees within the Village. An owner, agent of the owner, or lessee of a property may apply for a tree removal permit. If the permit application is a lessee or agent of the owner, a statement from the property owner indicating that the owner has no objection to the proposed tree removal shall accompany the application. The permit applicant shall submit to the Administrative Official a completed application form. Permit application forms shall be accompanied by two sets of site plans, which are subject to review and approval by the Village Administrative Official. The site plan shall include the locations of all existing trees (including the sizes (DBH), type, location, and canopy spread) and all proposed structures or utilities which may require removal or relocation of trees. The Administrative Official may require that said plans be prepared by either a landscape architect, architect or an engineer registered in the state. If the submitted site plan does not provide sufficient information to determine which trees will be affected by the proposed development, the Administrative Official may require that a tree survey of the site be prepared and submitted for review.

On receipt of completed permit applications, the Village Manager shall determine whether the site contains any portion of a natural forest community, trees subject to protection, or specimen tree(s). If a site contains any portion of a natural forest community, then the permit must be submitted for review by the Miami-Dade County Department of Environmental Resource Management [DERM];

(3) *Review and evaluation of permit application.* The Administrative Official shall conduct a review of each completed tree removal permit application. This review and all actions taken by the Administrative Official under the provisions of these tree regulations shall be conducted using

best available practices from biology, botany, forestry, landscape architecture and other relevant fields, and shall be conducted in a manner that is consistent with all applicable goals, objectives and policies in the comprehensive development master plan. Upon receipt of a completed permit application, the Administrative Official shall visit the site and determine whether the site contains specimen trees or any other trees subject to the provisions of these regulations.

- a. *Specimen trees.* If a site contains any specimen trees, then the provisions of subsection (4), "Specimen tree standards," shall apply.
 - b. *Natural forest community.* If a site contains any portion of a natural forest community, such portion shall be governed by the provisions of Section 24-60.2, et seq., of the Miami-Dade County Code of Ordinances. Further, tree removal from a natural forest community requires a permit from DERM.
 - c. *Other trees.* If there are trees present on a site other than any portion of a natural forest community or specimen trees, then the provisions of the (5) and (6) below, governing tree replacement requirements shall apply.
 - d. *Combination of tree types.* In the event that a site contains any combination of natural forest community, specimen trees or other trees, then the applicable provisions shall be applied in proportion to the presence of each type of tree or community.
- (4) *Specimen tree standards.* The standards to be applied in reviewing tree removal applications involving specimen trees are as follows:
- a. *Specimen trees application.* Specimen trees shall be preserved whenever reasonably possible. Upon receipt of an application to remove a specimen tree, the Administrative Official shall consider the following factors in evaluating said application:
 - 1. Size and configuration of the property.
 - 2. Size and configuration of any proposed.
 - 3. Location of the tree relative to any proposed development.
 - 4. Whether or not the tree can be preserved under the proposed plan or any alternative plan.
 - 5. Health, condition and aesthetic qualities of the tree.
 - 6. Whether the tree poses a threat to persons or property.
 - b. *Alternate plans.* If, upon review of the factors enumerated in subsection a. above, the Administrative Official determines that a specimen tree cannot reasonably be preserved under the proposed plan, then the applicant shall 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:
 - 1. An adjustment of building orientation on a site.
 - 2. An adjustment of lot lines within a site proposal where said 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.

- c. *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 Administrative Official 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 herein.
 - d. *Removal of specimen trees.* If relocation of the specimen tree is not feasible 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.
 - e. *Replacement requirements for specimen trees.* As a condition of the issuance of a tree removal permit for the removal of a specimen tree, tree replacement requirements shall be twice those specified otherwise by these regulations in paragraph (6) below. For example, a tree with a canopy cover of 200 square feet shall be replaced with replacement trees having an impact area credit of 800 square feet. In the event that replacement is not feasible on-site, then alternative off-site replacement shall be required or, as a last alternative, there shall be a contribution to the Village Tree Trust Fund for the full value of the replacement trees. Additionally, there shall also be an equitable contribution to the Village Tree Trust Fund for the irreplaceable loss of the aesthetic and environmental contributions of the specimen tree(s), according to a contribution schedule established by resolution of the Village Commission.
 - f. *Exemptions.* An applicant may be exempt from the replacement requirements of paragraph e. above, but subject to the tree replacement requirements of paragraph (6) below, under the following circumstances:
 - 1. Upon submittal of a statement from a certified arborist registered in the state which indicates 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. Said statement shall include the specific reason(s) for the claimed exemption from the provisions of these regulations.
 - 2. When a site contains more than one specimen tree, and 50 percent or more of the existing specimen trees and at least 50 percent of the existing specimen tree canopy area is preserved.
- (5) *Replacement requirements for tree removal.* As a condition of the issuance of a tree removal permit, the permittee shall be required to replace trees that are authorized to be removed under the provisions of these tree regulations. The number of trees and number of species of trees required for replacement shall be determined according to the specifications contained herein. The Administrative Official may require that replacement shall be described in a landscape replacement plan which shall meet the minimum requirements of the Code. No tree removal permit shall be issued until the Administrative Official has approved said plan.
- (6) *Procedures for determining tree replacement requirements.* The Administrative Official shall determine the total number and type of replacement trees required for the issuance of a tree removal permit according to the following procedural steps:
- a. *Step 1: Determining existing tree canopy coverage on-site.* The area of existing tree canopy coverage of a site shall be determined by the Administrative Official, using one or any combination of the following methods: review of aerial photography; on-site inspection;

and review of a tree survey. The Administrative Official may require the applicant to submit a tree survey for the purpose of this determination.

- b. *Step 2: Determining impact area of proposed project.* The area of existing canopy coverage which will be lost (impact area) by the applicant's proposed development shall be determined by the Administrative Official based on a site plan and completed tree removal permit application.
- c. *Step 3: Determining number of replacement trees required to be planted.* The total number of trees required for replacement shall be based on the impact area and the category of replacement tree selected by the applicant. Replacement tree categories shall compensate for the lost canopy.

Each replacement tree shall compensate at a ratio of 2:1 for a portion of the tree canopy lost in the impact area. For example, if the impact area is 300 square feet, replacement trees with a minimum impact area credit of 600 square feet will be required. The impact area credit is based on the canopy coverage the tree would normally be expected to have at maturity. The following table sets forth the credit which will be allowed for each category of replacement tree:

Category of Replacement Tree Impact Area Credit per Category of Replacement Tree
(in Square Feet)

| | |
|--------------|-----|
| Shade tree 1 | 500 |
| Shade tree 2 | 300 |
| Palm tree 1 | 300 |
| Palm tree 2 | 100 |
| Small tree | 200 |

The categories of replacement trees are described in greater detail in subsection (6)f. In the event that a replacement tree actually has more canopy coverage at the time of planting than the amount of credit allowed under the table above, then the applicant shall receive full credit for the canopy coverage provided by the replacement tree at the time of planting and will not have to provide replacement trees in the 2:1 ratio.

The applicant shall submit a list of proposed replacement trees on a form provided by the Administrative Official, except that when the total number of replacement trees exceeds 20, or when 10,000 square feet of canopy replacement is required, the applicant shall submit a landscape replacement plan consistent with the provisions of the landscape regulations set forth in subsection (7) below. Proposed replacement lists or plans are subject to Administrative Official approval. The Administrative Official shall approve

proposed replacement trees that are consistent with the standards of these tree regulations.

- d. *Step 4: Location of replacement trees.* Specific placement of replacement trees on-site shall be determined by the applicant. If the site cannot accommodate the required replacement trees because of insufficient planting area as determined by the Administrative Official, then the applicant shall be required to plant replacement trees at an off-site location subject to the Administrative Official's approval, or, as an alternative, shall provide an equitable contribution to the Village Tree Trust Fund to compensate for those replacement trees which cannot be accommodated on-site.
- e. *Step 5: Minimum species diversity standards.* When more than ten trees are required to be planted in accordance with the provisions of these regulations, a diversity of species shall be required. The number of species to be planted shall be based on the overall number of trees required. The applicant shall be required to meet the following minimum diversity standards:

Required Number of Trees
Minimum Number of Species

| | |
|---------|---|
| 11—20 | 2 |
| 21—50 | 4 |
| over 50 | 6 |

Permittees shall not be required to plant in excess of six species. The number of trees of each species planted shall be proportional to the number of species required. A minimum of ~~50~~ 60 percent of all replacement trees planted shall be native to the county, and no more than 30 percent of the replacement trees shall be palms. However, when native trees are removed, all replacement trees shall be native species. As an alternative to the minimum species diversity required herein, an applicant may propose an alternative species diversity in an alternative landscape enhancement plan described in these tree regulations.

- f. *Step 6: Minimum standards for replacement trees.*
 - 1. All replacement trees shall have a minimum quality of a Florida No. 1 grade or better.
 - 2. The Administrative Official shall maintain a list of 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.

- (i) All category 1 replacement shade trees shall be a minimum of 14 feet in height at the time of planting and at maturity should have a canopy coverage of 500 square feet under normal growing conditions.
 - (ii) All category 2 replacement shade trees shall be a minimum of 12 feet in height at the time of planting and at maturity should have a canopy coverage of 300 square feet under normal growing conditions.
 - (iii) All category 1 replacement palm trees shall have a minimum height of ten feet at the time of planting and at maturity should have a canopy coverage of 300 square feet under normal growing conditions.
 - (iv) All category 2 replacement palm trees shall have a minimum height of three feet at the time of planting and at maturity should have a canopy coverage of 100 square feet under normal growing conditions.
 - (v) All replacement small trees shall have a minimum height of six feet at the time of planting and at maturity should have a canopy coverage of 200 square feet under normal growing conditions.
- (7) *Requirements for a landscape replacement plan.* A landscape replacement plan shall be submitted to the Administrative Official by the permit applicant when a minimum of 10,000 square feet of replacement canopy are required. All landscape replacement plans shall meet the following minimum standards:
- a. *Number, species, and size of trees.* The number of trees, number of species of trees, and size of trees proposed for planting shall be consistent with provisions of these regulations.
 - b. *Site plan.* The applicant shall submit a site plan that includes the proposed replacement locations of all replacement plantings and tree relocations, all property lines, and all proposed and existing structures, driveways and utility casements.
 - c. *Canopy.* The canopy spread of any tree that is proposed for preservation shall be shown on the plan. Where a portion of the canopy of a tree or trees will be removed without removal of the trees, a notation shall be made on the plan.
- (8) *Tree protection requirements during construction.*
- a. *Protection requirements.* During site development, protection requirements for trees designated for preservation under an approved tree removal permit shall include, but not be limited to, the following:
 - 1. Protective barriers shall be placed around each tree, cluster of trees, or the edge of the preservation area no less than six feet (in radius) from the trunk of any protected tree cluster, or preservation area unless a lesser distance is specified by the Administrative Official. Protective barriers shall be a minimum of four feet above ground level and shall be constructed of wood, plastic or metal, and shall remain in place until development is completed and the Administrative Official has authorized their removal. Protective barriers shall be in place prior to the start of any construction.
 - 2. Understory plants within protective barriers shall be protected.
 - 3. No excess oil, fill, equipment, building materials or building debris shall be placed within the areas surrounded by protective barriers, nor shall there be disposal of any

waste material such as paints, oils, solvents, asphalt, concrete, mortar or any other material harmful to trees or understory plants within the areas surrounded by protective barriers.

4. Trees shall be braced in such a fashion as to not scar, penetrate, perforate or otherwise inflict damage to the tree.
 5. Natural grade shall be maintained within 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.
 6. Underground utility lines shall be placed outside the areas surrounded by protective barriers. If said placement is not possible, disturbance shall be minimized by using techniques such as tunneling or overhead utility lines.
 7. Fences and walls shall be constructed to avoid disturbance to any protected tree. Post holes and trenches located close to trees shall be dug by hand and adjusted as necessary, using techniques such as discontinuous footings, to avoid damage to major roots.
- b. *Replacement.* If these tree protection regulations are not adhered to by the permittee and the trees are effectively destroyed, then all such trees shall be replaced according to the standards of these regulations, in addition to being subject to the penalty provisions of the Code.
- (9) *Tree relocation standards.* The relocation of any tree subject to the provisions of these regulations shall be consistent with the minimum standards of the American National Standards Institute (ANSI) and the tree relocation standards promulgated by the county department of environmental resources and management.
- (10) *Permit issuance.*
- a. *Issuance.* The Administrative Official shall deny an application or approve an application and issue a permit (subject to conditions, limitations or restrictions), for the activity proposed under the permit application, provided:
 1. The required application fee and permit fee are submitted to the Village.
 2. A performance bond, if required, has been posted. As a condition of issuing a tree removal permit, the Administrative Official may require the posting of a performance bond, which shall be equivalent to 100 percent of the estimated cost of the permitted activity and may be in the form of a letter of credit, surety, cash, or certificate of deposit. All performance bonds shall remain in force for a minimum of either one year after the actual completion date of the permitted activity to ensure that any replanted trees which perish are replaced, or until viability of all replanted trees has been achieved, whichever occurs last. However, at the discretion of the Administrative Official, performance bonds may be partially released in phases based upon partial completion of planting or other permit requirements.
 3. All required plans or covenants are submitted and are in compliance with the standards herein.
 - b. *Incomplete permit applications.* All tree removal permit applications which remain incomplete for a period of 120 days shall be denied. A new tree removal permit

application shall be required for all work previously proposed under a permit application which has been denied.

- (11) *Continuance of official documents.* The natural forest community maps approved by the County Board of County Commissioners on December 12, 1984, by Resolution No. 1764-84; all tree removal permits issued pursuant to Chapter 26B of the Code of Miami-Dade County; administrative approvals; and all consent agreements executed in order to resolve alleged violations of Chapter 26B of the Code of Miami-Dade County, Florida, are hereby confirmed and shall remain in full force and effect, and all conditions, restrictions and limitations contained therein shall continue to apply, and compliance therewith shall be enforceable pursuant to the provisions of this these tree regulations.

(12) *Tree trust fund.*

- a. *Creation of the tree trust fund.* There is hereby created a Village Tree Trust Fund, the purpose of which is to acquire, protect and maintain natural forest communities in the Village and to plant trees on public property. All fines and penalties for violations of these regulations shall be paid into the tree trust fund.
- b. *Disbursement and maintenance of the tree trust fund.* Monies obtained for the tree trust fund shall be disbursed for the acquisition, maintenance, management and protection of the natural vegetative environment in the Village, or for planting trees on public property. Disbursement from the tree trust fund shall require approval by resolution of Village Commission, provided, however, that any funds received pursuant to the conditions of any tree removal permit shall be used as required by the permit conditions without the necessity of approval, appropriation, or action of any kind by the Village Commission. The Village Manager is hereby authorized to receive and disburse monies in accordance with this provision.

- (13) *Permit fees.* The Village shall charge and collect application, permit and tree trust fund contributions at the rates established by separate resolution approved by the Village Commission. Applications from government agencies for tree removals in areas dedicated to public use may, at the discretion of the Administrative Official, be exempted from application fees and permit fees.

- (14) *Penalties for violation of tree regulations.* The following penalties shall be assessed where these tree regulations would not have permitted trees to be removed and they have been effectively destroyed or removed in violation of these regulations. The contractor committing the violation will also be cited via a uniform civil violation notice if observed by staff or if the property owner/violator has records that identify the contractor and can provide sufficient evidence to identify the person or company who committed the violation.

- a. *First offense with no prior knowledge.* Per tree and double the amount of canopy replacement required by code:

Less than 18-inch diameter at four-foot height\$500.00

18 inches to 36 inches2,000.00

Greater than 36 inches3,000.00

- b. *Second offense or prior knowledge.* Double the fines required for the first offense, or the fine that would have been required for the first offense in the case of prior knowledge. Double the amount of canopy replacement required by code if a permit had been issued.
- c. *Subsequent offenses.* Triple the fine required for the first offense, or the fine that would have been required for the first offense in the case of prior knowledge. Double the amount of canopy replacement required by Code if a permit had been issued.

(Ord. No. 2005-14, § 1, 11-8-05)

§ 100.02 - Prevention of storm damage.

- (A) *Hurricane watch; restriction on placement of landscaping debris.* Once an official hurricane watch is issued by the National Weather Service for an area which includes the Village, no person shall place any yard waste including, but not limited to, vegetative clippings, trees, palm fronds, leaves, branches or any other vegetative debris (the "landscape debris") on any portion of the public right of way or upon any land within ten feet of the public right-of-way, unless instructed to do so by the Village Manager. This shall not prohibit the temporary placement of landscape debris on the swale area adjacent to the parcel which produced such landscape debris for pick up by a licensed private hauler, so long as such pick up and removal is fully accomplished prior to the issuance by the National Weather Service of an official hurricane warning and in any event is completed by the private hauler prior to the occurrence of the anticipated storm event and at the private property owner's sole cost and expense.
- (B) *Removal of certain exotic plants and trees for new construction.* From and after the date of adoption of this ordinance, any person owning or controlling (the "responsible person") real property upon which there exists any of the exotic species of vegetation ("exotics") listed in section 2(e)2 herein shall cause the removal and disposal of said exotics prior to obtaining a building permit for the construction of any new single family or duplex residence upon said property. As to any such property for which there exists at the time of adoption of this section an active building permit for the construction of a new single family or duplex residence upon such property, the exotics shall be removed by the responsible person prior to the issuance of a certificate of occupancy. The requirements of this section shall be applicable regardless of whether the exotics were planted or established before, on or after the date of adoption of this chapter. Nothing herein shall be construed to authorize the planting of exotics.
- (C) *Protection of electric power lines.* Each person owning or controlling real property within the Village shall cause all landscaping situated upon such real property, including, but not limited to, trees, branches, palm fronds, vines, bushes and any other vegetative matter, to be maintained and trimmed so that no trees, branches, palm fronds, vines, bushes or other vegetative matter shall be situated at any point any closer than six feet to any energized electric transmission or electric service line. In the event that a person owning or controlling such real property does not timely cause the landscaping to be maintained and trimmed as described above within seven days after having received a written demand from the Village to do so, the Village Manager shall be authorized to arrange for Village employees or contractors to perform such work. Village shall have a lien, in the nature of a special assessment, upon the property for the purpose of securing full reimbursement to the Village for all costs incurred for said work, and may record and enforce said lien to the fullest extent authorized by law. The procedures applicable to the enforcement and

collection of said lien shall be the same as those which are authorized for solid waste collection service liens pursuant to Village Code.

(D) *Hazardous conditions.* A hazardous condition is deemed to exist when:

1. The affected utility company has determined that a particular plant/tree on private property is interfering with, disrupting, impeding, altering, preventing, the delivery of utility services; and
2. The utility company has given the property owner(s) and the Village written notice that a particular plant/tree is interfering with, disrupting, impeding, altering, or preventing the delivery of utility services; and
3. The Village Manager or his designee concurs with the utility company's decision that a particular plant/tree is interfering with disrupting, impeding, altering, or preventing, the delivery of utility services; and
4. The Village through Code Compliance Officer or Police Officer, subsequently requests permission for the utility company to come onto the property; and
5. The property owner continues to refuse to allow entry to the property, or otherwise impedes the ability of the utility company to prune or remove the offending plant/tree, when deemed necessary by the utility company for the safe and reliable delivery of utility services.

(E) *Penalty.* Any person who violates any provisions of this chapter shall, upon conviction, be punished by a fine not to exceed \$500.00 or imprisonment in the county jail not to exceed 60 days or both such fine and imprisonment. Each day that a violation continues shall be deemed a separate violation. This chapter shall be subject to enforcement under the Local Government Code Enforcement Act, F.S. Ch. 162, as amended. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief in a court of competent jurisdiction.

(Ord. No. 2005-14, § 1, 11-8-05)