

Chapter 38 - TREE PROTECTION^[1]

Footnotes:

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Editor's note— Ord. No. [17-13971](#), § 1, adopted June 7, 2017, amended ch. 38 in its entirety to read as herein set out. Former ch. 38, §§ 38-1—38-112 was entitled "Vegetation," and derived from: Code 1994; Ord. No. 95-7595, adopted Dec. 20, 1995; Ord. No. 02-9704, adopted June 19, 2002; and Ord. No. 05-10939, adopted Sept. 7, 2005.

Cross reference— Code enforcement, § 2-891 et seq.

ARTICLE I. - IN GENERAL

Sec. 38-1. - Purpose and intent.

The purpose and intent of this chapter is to establish regulations governing the protection and management of city-owned trees, and for the management of diseased trees. Trees are a valuable community resource that serve to improve air and water quality, reduce soil erosion, reduce noise and glare, provide habitat for wildlife, moderate the climate and enhance community livability and property values.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-2. - Definitions.

For the purposes of this chapter, unless otherwise stated, the following terms or words used herein will be interpreted as follows:

Alter or *alteration* means to cut, remove, defoliate or destroy a tree, above or below ground level, by any means.

ANSI means the American National Standards Institute, Inc.

Arborist means a professional who practices arboriculture and focuses primarily on the health and safety of plant and tree species.

Building official means the director of the department of building as established in section 2-371 of the Code of Ordinances.

Caliper means the diameter of any tree trunk as measured at a predetermined point of measurement. Caliper for trees up to four inches will be measured six inches above the soil line. Trees greater than four inches in caliper will be measured 12 inches above the soil line. Caliper measurements will be used when measuring for replacement trees.

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Canopy means the above ground portion of a tree or plant community formed by the plant crown.

Canopy street means a public road, street, alleyway or an alameda so designated by the city council by appropriate legislation in accordance with the criteria set forth in section 38-104.

Canopy street zone means a section of a public road, street, alleyway or an alameda so designated by the city council by appropriate legislation in accordance with the criteria set forth in section 38-104.

Canopy tree means a tree, usually with one vertical stem or main trunk, that naturally develops a more or less distinct and elevated crown and provides at maturity a minimum shade crown of 30 feet in diameter or greater. Trees may be grouped to achieve the 30-foot canopy spread.

City tree means any tree, including any palm, located in whole or in part within any public right-of-way; lying between property lines and streets, medians, culs-de-sac, alleys, and traffic islands; located in any parks; and any other tree that has been planted or accepted by the city for ownership, care and maintenance.

Clear zone means canopy above the travel way trimmed to 17 feet above the road surface for vehicular clearance or above pedestrian zones trimmed to eight feet above the ground surface and two feet laterally from the edge of the sidewalk. City council may designate lower clearance above road surface, by appropriate legislation, to protect the canopy of historic trees or private trees where the canopy extends over the road, provided said road is posted as a low clearance road.

Clearance pruning means the pruning of a tree that is required to avoid damage or danger related to structures, power distribution and property, as defined in the current ANSI A300 standards.

Critical root zone means a circle on the ground corresponding to the drip line of the tree.

Crown means the branches, leaves, fronds, and reproductive structures extending from the trunk or main stem of a tree or plant community.

DBH (diameter at breast height) means a standard measurement of a tree trunk diameter as measured at a predetermined point of measurement. Trunks of existing trees will be measured at four feet, six inches above the soil line. For multi-trunked trees, the DBH means the cumulative diameter of the two largest trunks measured at four feet, six inches above the soil line.

Dead means more than 50 percent of the tree is dead, is a hazardous tree as defined herein, or in a state of irrecoverable decline.

Department means the community services department.

Deteriorated tree or *deterioration* means a tree that is degenerated by age, storm damage, vehicular accidents or disease to the point that death of the tree is inevitable.

Development order means any order granting, denying, or granting with conditions, an application for a development permit.

Disturbance means any action by a person that causes irreparable harm to a city tree. Actions that disturb a tree include, but are not limited to, damage inflicted upon the root system by heavy machinery, excessive trimming, changing the natural grade above the root system or around the trunk, damage allowing infection or pest infestation, application of herbicides or other chemical agents, infliction of a trunk wound, measured at its greatest dimension, that is 50 percent or greater than the diameter of the tree, or removal of sufficient canopy to cause unnatural decline of the tree.

Drip line means a vertical line from the horizontal extremity of the canopy of a tree to the ground. For trees with canopies set off-center, the drip line will be projected based upon the average diameter of the existing drip line using the tree trunk as its point of origin.

Emergency means any occurrence or imminent threat thereof, whether natural or caused by humans, which results in or may result in substantial damage to or loss of property.

Exempt tree means a tree that does not require a permit for its removal.

Florida Exotic Pest Plant Council's List of Invasive Plant Species Category 1 refers to a list of invasive exotic trees and plants, identified by the Florida Exotic Pest Plant Council, that are altering native plant communities by displacing native species, changing community structure or ecological functions, or hybridizing with natives. [The most current list may be found at the Florida Exotic Pest Plant Council website: <http://www.fleppc.org/list/list.htm>.]

Hatracking means the removal of 30 percent or more of a canopy.

Hazardous tree means a tree irreparably diseased or one that presents a danger of falling and cannot be controlled or remedied through reasonable preservation or preventative procedures and pesticides such that the public health or safety requires its removal.

Historic tree means any city tree that is 36 inches in DBH or greater and any city tree designated as a historic tree by the city council because of its size, age, historic association, unique character or ecological value. A historic tree may also be known as a heritage tree.

Infected tree means any tree infected with a disease that is lethal to the host tree or a species of tree.

Invasive plant means any nonindigenous invasive exotic tree or plant that grows aggressively enough to crowd out native trees or plants and is listed on the Florida Exotic Pest Plant Council's List of Invasive Plant Species - Category 1 and 2.

ISA refers to the International Society of Arboriculture.

ISA certified arborist refers to an arborist who has current credentials issued by the ISA verifying the arborist has met all professional requirements for certification and therefore is proficient in managing the health and safety of plants and trees.

Lions-tailing means the removal of an excessive number of inner lateral branches from parent branches.

Native plant means an indigenous plant.

Permit means a tree alteration permit.

Pruning means removing or reducing tree limbs to benefit the overall health and safety of a tree.

Pruning standards means pruning in accordance with current standards established by the ANSI A300.

Public nuisance, as related to trees, means any tree infected with a plant disease known as the lethal yellowing disease, including, without limitation, all species of coconut palm and any tree that is a carrier of the disease; or any other disease that has been declared a public nuisance by the state.

Removal of a tree means either actual removal of a tree from the ground in which it grew, transplanting a tree, or effectively removing a tree by damaging the trunk, topping, damaging or removing major limbs, roots, or enough canopy volume so that the tree dies, declines beyond recovery, or becomes a hazard to public safety and must be removed.

Replacement tree means any tree planted as a condition of approval of a tree removal permit, as a requirement for violating this chapter by altering a city tree without a permit, or as may be required to meet the conditions of this chapter.

Right-of-way means a public right-of-way, public easement, highway, street, bridge, roadway, or alley for which the city has jurisdiction and control and may lawfully grant access pursuant to applicable law, and includes the ground surface, the air space over the ground surface and the area below the ground surface. Right-of-way also means a strip of land dedicated as an easement or deeded in fee simple ownership to the public and accepted by the city, with such land being occupied or intended to be occupied by a street, driveway, access road, crosswalk, railroad, electric power line, oil or gas pipeline, street sign, street light, traffic signal, storm drainage system, water main, sanitary or storm sewer main, sidewalk, bicycle path, shared use path, or any similar conventional or special use or public infrastructure and facilities. Right-of-way will not include private property with the exception of public easements.

Size means the size of a city tree as determined by the DBH or caliper.

Stop work order means a notice issued by the city manager or building official to cease work or other activity on any site for which a permit has been issued or is subject to issuance.

Stub cut means an undesirable short length of a branch remaining after a break or an incorrect pruning cut is made.

Top and topping means the removal of 30 percent or more of a tree's canopy.

Tree means a living, self-supporting plant, that has or can have a mature diameter of greater than four inches measured at 4-1/2 feet above the ground, more or less upright in growth habit, generally having one stem but may be multi-stemmed and will include palm trees.

Tree alteration permit means the legal authority that must be obtained from the department before any person alters, disturbs or trims a city tree.

Tree board means the community services advisory board that has been designated as the City of Naples Tree Board by the city council.

Tree protection area means an area surrounding a tree encompassed by the drip line or projected drip line of a tree.

Tree protection barrier means a suitable structure installed as close as possible to the perimeter of the tree protection area prior to construction, land clearing, or demolition.

Trim means to cut branches, twigs, limbs, or foliage, but not to alter, by removing, defoliating, or destroying city trees.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Cross reference— Definitions generally, § 1-2.

Sec. 38-3. - Tree board.

- (a) *Creation and establishment of a city tree board.* The city hereby establishes a tree board for the purposes of enforcement of this chapter. The community services advisory board will act ex-officio as the tree board.
- (b) *Compensation.* Members of the city tree board will serve without compensation.
- (c) *Duties and responsibilities.*
 - (1) It will be the responsibility of the tree board to develop, recommend for city council approval, and to keep updated, a written plan for the care, preservation, pruning, planting, replanting, removal, or disposition of city trees. Such plan with any amendments, will be presented to city council and, upon approval, will constitute the comprehensive city tree plan for the city. The board will also be responsible for developing and recommending regulations for maintenance of city trees. Such proposed regulations will be presented to city council and, upon adoption, will be incorporated into the Code of Ordinances and enforced, as set out in this chapter or in section 1-15.
 - (2) The board, when requested by the city council, will study, investigate, and make findings, reports, and recommendations upon any special matter or question coming within the scope of its work.
 - (3) The board will recommend policies for city council approval that may require property owners, adjacent to public rights-of-way, including canals and waterways, to trim or remove trees determined to be a hazard or obstruction to vehicular, vessel, or pedestrian traffic. The board will also recommend policies that may require the treatment or removal of any tree located on public or private property that is determined to be infectious due to insect infestations or diseases that could spread to other noninfected trees.
 - (4) The board will hear appeals arising from a city manager decision to deny a tree alteration permit application as set forth in this chapter.
- (d) *Review of actions by city council.* The city council will have the right to review any actions of the board. Any person seeking a permit concerning a city tree upon or adjacent to the person's property

may appeal any ruling or order of the board to the city council, which may hear the matter and make a final decision.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-4. - Public tree care.

- (a) The city manager is responsible for the care, maintenance and protection of city trees. The city manager will make reports and requests for funds for the maintenance and protection of city trees to city council as part of the annual budget approval process.
- (b) Property owners must submit a completed tree alteration permit application to the city manager for permission to alter or trim any city tree. Any approved alteration or trimming must be performed by a contractor licensed, registered, certified or otherwise qualified to operate within the city.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-5. - Pruning standards.

City trees must be properly pruned in accordance with ANSI standards.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-6. - Tree topping or hatracking.

It will be unlawful and prohibited for any person or firm to top or hatrack any city tree. Trees damaged by storms or other causes, certain trees under electric power transmission and other utility lines or other obstructions, and certain species of trees may be exempted from this prohibition, as determined by the city manager.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-7. - Pruning for corner, sign and signal clearance.

City trees obstructing the visibility of corners, street signage, directional signage, or traffic signals within the city must be pruned so the branches do not obstruct the visibility of pedestrians or vehicles.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Secs. 38-8—38-60. - Reserved.

ARTICLE II. - TREE PROTECTION^[2]

Footnotes:

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Editor's note— Ord. No. [20-14460](#), § 1, adopted Mar. 4, 2020, amended art. II in its entirety, which included deleting former div. 1, entitled "Threatened and Endangered Tree Protection," and renumbering remaining divs. 2—4 as divs. 1—3 to read as herein set out.

DIVISION 1. - LETHAL TREE DISEASE

Sec. 38-61. - Applicability.

This division will apply to and be enforced in all areas of the city.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-62. - Declaration of lethal disease emergency.

Any tree in which a lethal disease is present is declared a public nuisance and eradication is declared an emergency. Pursuant to F.S. ch. 252, that authorizes the waiver of procedures and formalities otherwise required of political subdivisions in order to take whatever prudent action is necessary to ensure the health, safety and welfare of the community in the event of a state of emergency, the mayor of the city, or the vice-mayor in the mayor's absence, or the city manager in the absence of the mayor and vice-mayor, is hereby designated and empowered to declare a local state of emergency in the event the threat of the lethal disease is imminent and a quorum of the city council is unable to meet. The determination that such an emergency exists in the case of lethal disease will be made upon the recommendation of the city manager after the city manager has received written opinions from two ISA certified arborists that lethal tree disease is present within the city's boundaries or surrounding areas and warrants the declaration of a lethal disease emergency to protect the city's urban forest.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-63. - Extent of state of local emergency.

Upon declaration, the state of emergency from the lethal disease will continue until the person authorized to declare a local state of emergency determines that the threat or danger no longer exists and terminates the local state of emergency. The declaration or termination of a local state of emergency is subject to ratification or rejection by the city council at the next regularly scheduled meeting after the declaration or termination occurs.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-64. - Emergency measures.

In addition to any other powers conferred by law, the mayor of the city, or the vice-mayor in the mayor's absence, or the city manager in the absence of the mayor or vice-mayor, may order and promulgate all or any of the following emergency measures to be effective during the period of such declared emergency, and with such limitations and conditions as may be deemed appropriate to protect against damage or loss of property by lethal disease:

- (1) Require the mandatory treatment of all species affected by lethal disease in all areas designated for treatment by the city manager.
- (2) Require removal of species found to be affected by, or a carrier of, lethal disease by the property owner within five days from the date the trees are found to be diseased or as determined by the city manager.
- (3) Utilize all available resources of the city government as reasonably necessary to cope with the emergency, including expenditures, as budgeted for the survey of the existing species population, the treatment of city-owned species, the treatment of privately-owned species found not to be in compliance with this division, the removal of infected trees on city-owned property and on private property when the owner has failed to comply with mandated treatment or removal, and make other reasonable expenditures in implementing this division.

- (4) Have suspected species treated or have such species removed in lieu of mandating treatment or removal by the landowner, based on a cost-benefits analysis.
- (5) Curtail the transportation of species into or out of the city.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-65. - Designation of areas of mandatory treatment.

The areas in which mandatory treatment is required must be designated based on the presence of species infected by the lethal disease or the imminent threat of infection from lethal disease as determined by the city manager. The city manager will set the boundaries for the areas requiring mandatory treatment.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-66. - Unlawful activities during state of emergency; mandatory treatment requirements.

- (a) It will be unlawful for any owner of any parcel of land within the city and within an area designated for treatment to keep or maintain any species or carriers of the lethal disease without providing treatment of same as approved by the city manager.
- (b) If treatment by the owner is mandated, it will be the duty and the responsibility of the owner of any such property or parcel of land to have treated all such species with pesticides approved by the city manager.
- (c) Treatment must be determined based on lethal disease, to include amount of product, dosage amount of product, application rate, and duration of treatment. This schedule may be modified by the city manager as necessary.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-67. - Public notice.

Prior to the mandating treatment periods, the city manager must place a public notice in a newspaper of general circulation published within the city to inform property owners of their duties and responsibilities under this division.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-68. - Liability of owner for costs.

- (a) Within 15 days of mandated treatment, the owner of the parcel of land on which said trees are located must treat or make provision for treatment of trees by persons who have been approved by the city manager to provide the treatment necessary to abate the lethal disease.
- (b) If the owner fails to provide for treatment, the city may treat or have its agent treat such trees and the owner will be liable for the expenses incurred by the city, its agents or contractors, in treating the affected species. The expenses of treatment will constitute a lien on the real property upon which the treatment has taken place in accordance with the procedures set forth in section 38-73.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-69. - Treatment by owner.

- (a) A property owner may at any time treat the property owner's trees; provided, however, if any such treatment is required, the pesticide and treatment procedures used must be approved by the city manager.
- (b) Property owners who treat trees after the city manager has determined such treatment is required must, within ten days of having the treatment performed, submit to the city manager written proof of purchase for materials and equipment used in this treatment, and a certification of compliance.

(Ord. No. [17-13971](#), § 1, 6-7-2017)

Sec. 38-70. - Determination of compliance with mandatory treatment.

- (a) All contractors approved by the city manager to treat affected species and participating in treatment must submit a list of treated species within five days of treatment to the city manager. These lists should include the name of the property owner, address, number of species located on the property, and the number of species treated. Failure to notify the city manager of all treatment may result in loss of treatment certification for that contractor.
- (b) After the 15-day period for compliance with provisions for treatment, the city manager may make a determination of, and compile a list of, those persons owning land or parcels of property within the city upon which susceptible species are located and who have not complied with the requirements of this division or have not submitted a certificate of compliance.

(Ord. No. [17-13971](#), § 1, 6-7-2017)

Sec. 38-71. - Disposal of infected species.

- (a) It will be unlawful for any owner of any parcel of land within the city to permit any tree infected with lethal disease to remain on said property. Trees determined by the city manager to be infected with lethal disease must be removed and disposed of in a proper and approved method as determined at the time of the declaration within five days after notification to the owner.
- (b) If infected species have not been removed by owner within five days after notification, the city will abate the nuisance and will, through its employees, servants, agents or contractors, be authorized to enter upon the property and take steps as are reasonably required to effect abatement.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-72. - Assessment for abating nuisance.

- (a) After abatement of the nuisance by the city, the city manager will calculate the cost of abatement, including administrative costs incurred by the city with respect thereto. Such assessments will be legal, valid, and binding obligations upon the property, until paid. The assessment will become due and payable 30 days after receipt of any written form of actual notice of assessment, or posting such notice on the property, after which interest will accrue at the rate of ten percent per annum on any unpaid portion.
- (b) The city manager must mail a notice to the record owner or owners of each of said parcels of land described in the assessment resolution, at the last available address for such owner or owners.
- (c) If the owner fails to pay such assessment within 30 days after said assessment has been made, the city manager will cause a certified copy of the assessment resolution to be filed in the office of the county clerk of courts, and the assessment will constitute a lien against the property as of the date of filing such copy with the clerk and will be collectible in the same manner as liens for nonpayment of property taxes.

- (d) Collection of such assessments, with interest and reasonable attorney fees, may also be made by proceedings in a court to foreclose the lien on the assessment in the manner in which a lien for mortgages is foreclosed under the laws of Florida.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-73. - Right to hearing on assessment.

Within 30 days of the date of assessment, any owner will have the right to request a hearing before the city manager to contest the assessment or imposition of the liens.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-74. - Service of notice.

Notices under this division will be issued in the same manner as notices for code enforcement are issued.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-75. - Introduction of diseased trees or carriers prohibited.

No person will knowingly sell, offer for sale, transport into the city for sale, plant or cause to be planted, species with lethal disease or species that are carrying the disease. The city manager is authorized to conduct reasonable inspections to verify that this section is not being violated. The source of the species must be submitted, in writing, to the city manager before species are brought into the city.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Secs. 38-76—38-100. - Reserved.

DIVISION 2. - CITY TREE PROTECTION

Sec. 38-101. - Findings.

The city council hereby makes the following findings:

- (1) The city is endowed and forested by a wide variety of trees that give the city a unique visual character and beauty and enhance property values.
- (2) Preservation and maintenance of healthy trees that provide a street canopy will maintain their aesthetic and environmental value and the city's unique visual character.
- (3) Preservation of city trees along streets is important for the following reasons:
 - a. To increase the economic value of properties and neighborhoods and encourage quality development and redevelopment.
 - b. To protect the environment of the city.
 - c. To aid in the reduction of air pollution by protecting the capacity of trees to produce oxygen and sequester carbon dioxide.
 - d. To help reduce potential damage from wind.
 - e. To provide shade and act as a noise barrier.

- f. To conserve, protect and enhance the aesthetic and scenic beauty of the city.

(Ord. No. [17-13971](#), § 1, 6-7-2017)

Sec. 38-102. - Purpose of division.

The purpose of this division is to:

- (1) Preserve, promote, and protect city trees.
- (2) To designate, preserve and protect canopy streets and historic trees that enhance the verdant character of the city.
- (3) Establish permit procedures for the alteration, disturbance or trimming of city trees.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-103. - Exemptions.

This division will not apply to:

- (1) The demolition of structures where the demolition does not require the destruction or have an impact within the drip line of any city tree and, no materials or vehicles will be stored or parked at any time during the demolition of structures.
- (2) Pruning required to restore electric service during severe weather events or other electrical emergency situations.
- (3) Removal of trees listed on the Florida Exotic Pest Plant Council's List of Invasive Plant Species Category 1, as it may be amended from time to time; however, no removal of a suspected invasive exotic tree will occur until the city manager, through the designated department, has confirmed the species of tree and that no permit is required. [The most current list may be found at the Florida Exotic Pest Plant Council website: <http://www.fleppc.org/list/list.htm>.]

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-104. - Canopy Street designation.

The city council may designate streets as canopy streets or canopy street zones and may revise the designation by ordinance. Residents, city council and the city manager may petition the city council to designate a street or section of a street as a canopy street. Requests will be coordinated and brought to the city council by the city manager for approval.

- (1) Petitioners or applicants must submit a canopy street designation application to the city manager for consideration. The city manager, after reviewing the application, will submit the application to the tree board for review. The tree board will review the application and provide the city manager with a recommendation to approve or deny the application. Once the city manager has the tree board and staff recommendations, the application will be submitted to city council for consideration.
- (2) To be eligible for city council designation, canopy trees must form a unique visual character along or over a public roadway.
- (3) Canopy streets may have a clear zone of less than 17 feet above the roadway surface to protect the canopy of historic trees or private trees with a canopy extending over the road, provided said roadway is posted as a low clearance road.

(Ord. No. [17-13971](#), § 1, 6-7-2017)

Sec. 38-105. - Authorization for removal or alteration of city trees.

- (a) *Restrictions.* No permit will be granted for the removal of any trees where the applicant has failed to design the proposed improvements to minimize the impacts on city trees, consistent with the permitted use of the property under the land development code. It will constitute a violation of this section for any person to remove or disturb any city tree unless it has been determined that such city tree:
- (1) Poses a safety hazard to people, buildings, structures, or vehicles;
 - (2) Is classified as an invasive species;
 - (3) Is diseased or so weakened by age, storm or other injury so as to pose a danger to persons, property, utilities, or improvements; or
 - (4) Unreasonably prevents a development of a lot, parcel, or other lands or the physical use thereof.
- (b) *Permit procedures.*
- (1) *Application.*
 - a. A tree alteration permit application must be submitted in writing to the city manager, through the designated department, by the property owner adjacent to a city tree. The application must be completed in full and the permit fee, as set forth in appendix A to this Code, must be paid before the application can be processed.
 - b. If encroachments into a historic tree or a canopy tree are proposed, a plan, prepared by an ISA certified arborist, must be submitted with the permit application specifying the methods to be utilized to protect and preserve the tree. This plan must address protection of the root system, crown, and stems of the trees, a means of supplying water and essential elements to the root system, and the proposed location of the tree protection barriers.
 - (2) *Application review.*
 - a. After receipt of a completed permit application, receipt of an application fee, or receipt of additional information, the department must examine the application or information and notify the applicant of any apparent errors or omissions, and request such additional information as may be necessary for processing the application.
 - b. After the application has been determined to be complete, the department will take one of the following actions:
 1. Approve the application with or without specific conditions reasonably necessary to ensure compliance with this section.
 2. Deny the application with an explanation of what changes, if any, in the application are necessary for approval of the application.
 3. Deny the application with reasons clearly stated.
 - c. Any approval issued pursuant to this section will expire within 60 days, unless otherwise specified in the conditions of approval.
 - (3) *Standards for approval or denial of an application.*
 - a. No approval will be granted for the alteration of any city tree that contains active nests of migratory birds, bird species listed as species of special concern, rare, threatened, or endangered by the Florida Fish and Wildlife Commission, or which are a breeding area for a colony of birds.

- b. No approval will be granted for the alteration of city trees by mechanical, chemical, or other means except as provided below.
 - c. An approval may be granted for the removal or alteration of city trees to provide vehicular access to property or when such removal or alteration is necessary to make any reasonable use of the property, and the applicant has demonstrated that no other alternatives exist.
 - d. An approval may be granted for the removal or alteration of city trees within a dedicated utility easement or road right-of-way to provide utilities with reasonable access subject to the following guidelines:
 - 1. The applicant demonstrates that no other access or alternatives exist and the utility controlling the easement has confirmed this in writing.
 - 2. The access way should be designed and located in such a manner that the least amount of damage to the city tree is ensured.
 - 3. The applicant must submit a proposal for mitigation or replacement of the altered trees.
- (4) *Final inspection.* All permits require a final inspection to ensure compliance with the provisions of this section. Final inspections must be scheduled with the department by the permit holder after completing the project.

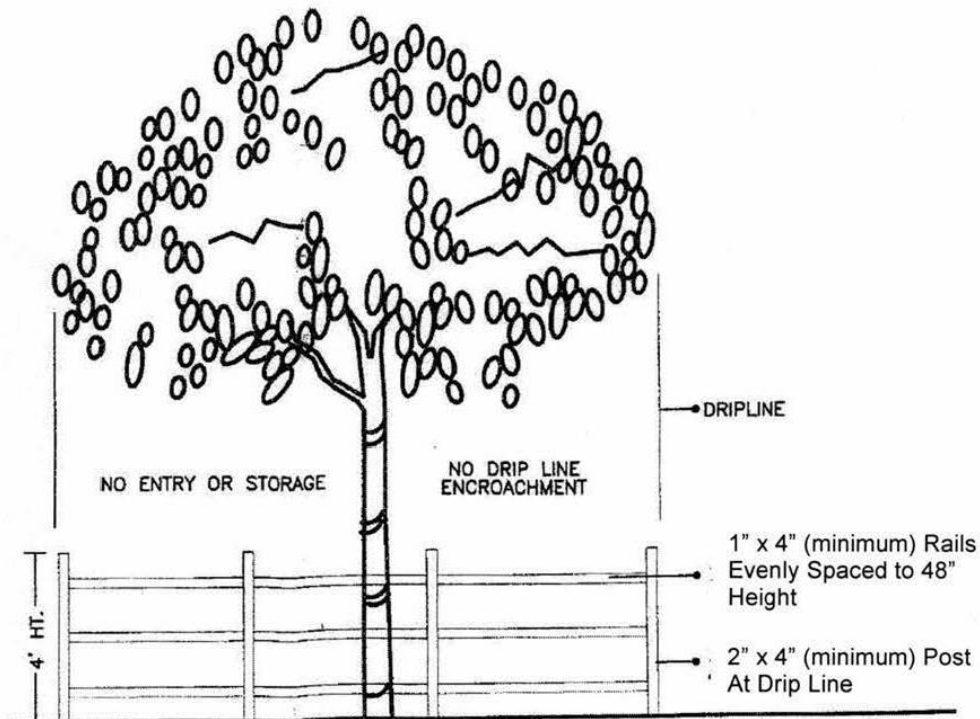
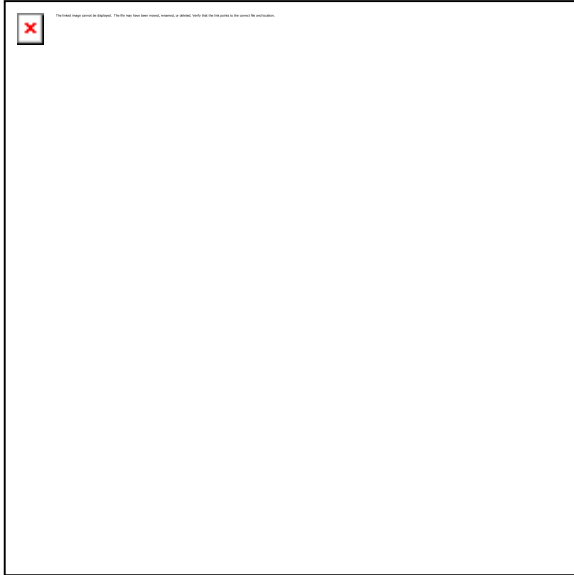
(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-106. - Protection of city trees.

- (a) *Requirements for utility pruning.* Utilities must conform to current ANSI A300 standards when performing line clearing work in canopy street zones to balance the requirement to preserve the canopy and maintain safe, reliable electric service.
 - (1) Franchised utilities must notify the department by e-mail or mail 30 business days prior to any maintenance utility line clearing work in canopy streets.
 - (2) Franchised utilities must have an ISA certified arborist directing the pruning of trees in a canopy street.
 - (3) Utility pruning should only provide minimum safe clearance to protect energized power lines with consideration for the combined movement of the conductors near trees in severe weather, the species of the tree, and the voltage of the conductor.
 - (4) The city recognizes that Florida Power and Light (FPL) has a right and responsibility, as provided by Florida State Statute and Electric Tariff Rules, to clear vegetation away from power lines in order to ensure the safe transmission of electricity to customers and the above-listed provisions are intended to be cooperative efforts between the city and FPL. This section does not apply to the extent preempted by F.S § 163.3209.
- (b) *Location of city trees.* All city trees that may be disturbed by proposed activities must be physically located on-site and shown on the site plan submitted for any project or site development and as a part of the tree removal request in the tree alteration permit application process.
- (c) *Drip line preservation.* During development, construction activity, and utility construction, the critical root zone of a city tree must shall be protected from activities that may disturb or injure the tree (such as cut and fill activities, building pad placements, road bed construction, construction material storage, driving or parking of equipment, trenching, etc.). The permit applicant may provide specific arboricultural analysis to demonstrate that there is no likelihood of adverse impact to a city tree; however, the department will make the sole determination of where tree protection barriers must be placed around a tree.

- (d) *Canopy and root pruning.* When activities disturb the area within the drip line of a city tree, or when pruning must be performed on the crown of a city tree, the following arboricultural techniques are required:
- (1) When the tree roots within the drip line may be disturbed, the affected roots must be severed by clean pruning cuts where the activity impacts the roots. Root pruning must be completed by an ISA certified arborist. Roots can be pruned by utilizing trenching equipment that is specifically designed for this purpose or by hand digging a trench and pruning roots with a chain saw, pruning saw or other equipment designed for tree pruning. Roots within the drip line must be pruned to a depth of 12 inches below existing grade or to the depth of the disturbance if less than 12 inches from the existing grade. When underground utilities are to be installed through the drip line, root pruning requirements may be waived if the lines are installed via tunneling or directional boring as opposed to trenching.
 - (2) All pruning of city trees must conform to the current ANSI A300 standards and be completed by an ISA certified arborist. There will be no stub cuts, or lions-tailing of the crown of the tree.
 - (3) It will be a violation of this section to perform the techniques of topping or other pruning techniques that remove the vertical leader stems or other pruning that results in an unnecessary reduction of shade of city trees in the permit area.
- (e) *Tree protection barrier requirements.* During development activities or any other potential disturbance that will impact the area within the drip line of any city tree, protective barriers must be placed around each city tree, by the applicant, to prevent the destruction or damaging of roots, stems, or crowns of such trees. Barriers must remain in place and intact until the work is completed, however, barriers may be removed temporarily to accommodate construction needs, provided the city approves the temporary removal in writing and that the manner and purpose for such temporary removal will not harm the tree. The city reserves the right to deny the temporary removal of tree protection barriers. The following are the minimum requirements for protective barriers:
- (1) Protective posts must be placed so as to protect all areas within the drip line boundary for each city tree affected, except in right-of-way or utility placement areas where space to install the barricade may be limited, posts may be placed so as to protect a minimum of 50 percent of the area within the drip line approved by the city manager.
 - (2) Posts must be a minimum of two inches by four inches, or larger, wooden post, two-inch outer diameter or larger, or other post material of equivalent size; will be connected with a minimum of at least a one inch by four-inch wooden board rail; and will be clearly flagged. The maximum distance allowed between upright posts is eight feet. Wooden posts and boards must be painted forest green once installed.
 - (3) Posts must be implanted deep enough into the ground to be stable and extend a minimum height of four feet above the ground.
 - (4) Where development activity is permitted within 50 percent of the radius within the area of the drip line of a city tree (as measured by the longest radius from trunk to drip line), the department may require additional tree protection provisions be incorporated in the activity permit.
 - (5) No storage or movement of equipment, material, debris, or fill soil is allowed within the drip line of any city tree.
 - (6) No equipment will be cleaned, or waste materials such as paints, oils, solvents, asphalt, concrete, mortar, or any other material will be stored, within the drip line of any city tree.
 - (7) No damaging wires, signs or permits will be fastened to any city tree unless approved by the department.
 - (8) Silt barriers, hay bales, or similar effective erosion silt control barriers will be required in any area where erosion or siltation may cause damage to city trees as determined solely by the department.

- (9) When elevation changes are proposed within the drip line of any city tree, the applicant will be required to install retaining walls or drain tiles. The applicant will have the choice of the type or design. These root protection measures must be in place prior to the deposition of fill, or excavation of soil from the drip line.
- (10) Should a private party conduct work within the drip line of a city tree and fail to install the required tree protection barrier, the city reserves the right to install the required tree protection barrier and charge the private party conducting the work for the city's materials and labor associated with the installing of the barricade. A sample tree protection barricade is set out below.



Tree Protection Barricade Fence Detail

- (f) *Inspections.* The department will conduct periodic inspections of the site during the permitted activity in order to ensure compliance with this section.
- (g) The city manager is authorized to allow a variation from the strict requirements of this section where an equivalent or superior method of preserving a tree is clearly demonstrated.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-107. - Emergency tree removal.

When it is necessary to expedite the removal of damaged or destroyed city trees in the interest of the public safety, health, and general welfare following an accident, high winds, storms, hurricanes, tornadoes, floods, or other human-made or natural disasters, the mayor of the city, or the vice-mayor in the mayor's absence, or the city manager in the absence of the mayor and vice-mayor may permit the removal of a city tree. A city arborist may provide professional advice concerning the threat to public safety, whenever possible, before a city tree is removed.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Secs. 38-108—38-120. - Reserved.

DIVISION 3. - APPEALS AND ENFORCEMENT

Sec. 38-121. - Appeals.

Any person denied a permit under this chapter, or who disagrees with conditions of a permit; and any adversely affected person who is aggrieved by the administration, decision or interpretation of any of the terms or provisions of this chapter, by the city manager may appeal to the tree board, after the interpretation or decision is issued or permit is denied or granted with conditions. The tree board, with notice to the person whose permit was denied or issued with conditions, and to any adversely affected person who has timely filed the appeal, and after a hearing may reverse, affirm, or modify, in whole or in part, the order, requirement, decision, or determination as it ought to be made. Any person aggrieved by the decision or interpretation of any of the terms or provisions of this division by the tree board may appeal to the city council after the tree board's decision. Any action pursuant to this section will not stay any enforcement proceedings. Appeals must be submitted in the following manner:

- (1) *Appeal to tree board* - An appeal application form must be completed by the adversely affected person and submitted to the city manager within 30 days after receiving the city manager's interpretation or decision.
- (2) *Appeal to city council* - An appeal application form must be completed by the adversely affected person and submitted to the city manager within 30 days after receiving the tree board's administration, interpretation or decision.

Each appeal will be conducted in a quasi-judicial manner so as to allow presentation of evidence.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-122. - Prohibitions.

Unless exempt under provisions of this chapter, it will constitute a violation of this chapter for any person to:

- (1) Alter, trim, disturb or remove a city tree, except in accordance with the conditions of a tree alteration permit issued by the department pursuant to the provisions of this chapter;
- (2) Fail or refuse to treat, or where ordered, fail or refuse to remove and properly dispose of, a lethally diseased tree;
- (3) Plant or maintain privately planted trees in a city right-of-way without permission from the city;
- (4) Transport, sell, install or maintain any lethally diseased or unpermitted tree; or
- (5) Conduct any other activity prohibited in this chapter.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Sec. 38-123. - Enforcement, penalties; additional remedies.

Violation of the provisions of this chapter or failure to comply with any of its requirements will be punishable as provided in section 1-15, and in addition to or in the alternative:

- (1) The city manager may, unless otherwise prohibited by law, withhold the issuance of any required certificate of occupancy, permit or inspection on any property until the provisions of this chapter, including all conditions of any permits issued under this chapter, have been complied with.
- (2) Reserved.
- (3) The city manager may issue a stop work order to any person, firm, owner, contractor or agent performing any work on a city tree or upon the critical root zone of a city tree which violates or fails to comply with any provision of this chapter.
- (4) The city manager may prosecute criminally if the violation is found to be willful or intentional or where the violator ignores or disobeys a stop work order or an order to treat or remove a lethally diseased tree or an order to cease and desist from selling or installing unpermitted or diseased trees.
- (5) Each individual city tree unlawfully altered or caused to die will constitute a separate offense.
- (6) Each day of violation is a separate offense.
- (7) Each individual city tree unlawfully altered or caused to die is presumed to be an irreparable or irreversible harm.
- (8) The city manager may order mitigation. If any city tree, not meeting the removal criteria provided in this chapter, has been removed in violation of the provisions of this chapter, said tree must be replaced on a caliper inch-for-inch basis. The term "inch-for-inch" means that for each caliper inch of tree improperly removed or destroyed, replacement trees having the minimum replacement tree size described in this chapter will be required and the total caliper in inches of all replacement trees must equal or exceed the combined caliper inches of all trees improperly removed. If the applicant can demonstrate that the planting of replacement trees on a property would be impractical due to the existence of other trees of a species protected by this chapter within 30 feet of all available land for the planting of trees on said property, the number of replacement trees may be reduced, and the applicant will be required to pay to the city tree bank account the sum of \$200.00 for each inch of caliper of those replacement trees that are not required to be planted as a result. Additionally, for each tree improperly removed, a fine of \$500.00 will be deposited into the tree bank account. If a permit was not obtained as required pursuant to this chapter, the city may issue a stop work order until the required permit has been issued, and the fee for same will be \$100.00. Nothing contained herein will be construed to authorize the commencement of any tree work under this chapter without required permit for same.
- (9) In addition to the remedies provided in this section, this chapter may be enforced as otherwise provided in this Code for the enforcement of any code violation.
- (10) The violator must pay all costs and expenses involved in the case. Each day the violation continues will be considered a separate offense. Nothing contained in this chapter will prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.
- (11) Additionally, the city may take such other lawful action in any court of competent jurisdiction as it is necessary to prevent, remedy or abate any violation, noncompliance or nuisance. Such other lawful actions may include, but not be limited to, an equitable action for injunctive relief or an action at law for damages.

(12) All remedies and penalties provided for in this section will be cumulative and independently available to the city and the city shall be authorized to pursue any and all remedies set forth in this section to the full extent then allowed by law.

(Ord. No. [17-13971](#), § 1, 6-7-2017; Ord. No. [20-14460](#), § 1, 3-4-2020)

Secs. 38-124—38-150. - Reserved.