

CITY COUNCIL RESEARCH DIVISION LEGISLATIVE SUMMARY



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Bill Type and Number: Ordinance 2023-324

Introducer/Sponsor(s): Council Member Becton

Date of Introduction: May 9, 2023

Committee(s) of Reference: R, LUZ

Date of Analysis: May 11, 2023

Type of Action: Ordinance Code amendment

Bill Summary: The bill amends Ordinance Code Chapter 656 – Zoning Code – in Part 12, Subpart B – Tree Protection – with regard to the unpermitted removal of trees by a property owner, a contractor, and/or an agent for the owner. A differentiation is set out between (1) when the amount of trees, measured in Diameter Breast Height (“DBH”) inches, is able to be determined (stumps or other evidence exists); and (2) when the amount of trees is not able to be determined (clearcutting with stumps removed). It also differentiates between the *mitigation* that is required, and the *fine* that will be assessed. While the mitigation amount will be calculated as if a permit was issued, a mechanism for the reduction and settlement of *fin*es is provided when the amount of trees removed is determinable. The fine reduction mechanism for the Director of Planning is codified as “The Policy.” Those policy criteria include, among other factors: (1) whether the failure to comply with the tree protection regulations was intentional or unintentional; (2) whether the violation occurred before with this individual or corporate entity; (3) whether the violations occurred during or after civil plan reviews; (4) the degree of the violator’s knowledge of the City’s tree protection regulations; and (5) the amount of tree canopy lost because of the violation. Appeals of the Director’s decision will go to the Tree Commission, rather than the Planning Commission, as final agency action (appealable in Circuit Court).

If the amount of trees removed is not determinable (clearcutting), the calculation by the Chief is only for the mitigation (Clearcutting Contribution Amount), which amount is not eligible for reduction. Decisions by the Chief on the calculation are appealable to the Tree Commission as final agency action. If a violation occurs or is occurring, the trigger for a “Stop Work” order is broadened to include stopping the removal of evidence (stumps), and clarifies that a Stop Work order means to stop all work, not just tree removal.

NOTE: see companion Ordinances 2023-312 and 2023-323

Background Information: The Public Trust Environmental Legal Institute of Florida, Inc. (Public Trust) and three City residents filed suit against the City alleging that the City was using funds generated from tree mitigation payments collected pursuant to activities regulated by Article 25 of the City Charter in a manner not consistent with the intent of the citizen-initiated Charter amendment. To end the litigation the parties negotiated a mutually agreeable settlement that was approved by the Council via Ordinance 2017-395-E. The plaintiffs have proposed to amend that settlement agreement to allow for modifications to Exhibits A and D of that agreement and have requested that the Council enact their proposed Ordinance Code amendments to address unanticipated situations that have arisen in the enforcement of the tree regulations since the effective date of the settlement agreement.

Policy Impact Area: Tree mitigation regulations

Fiscal Impact: Undetermined

Analyst: Clements