

## CITY OF STUART, FLORIDA AGENDA ITEM REQUEST

**Meeting Date:** 6/27/2022

**Prepared by:** Michael Mortell

**Title of Item:**

TREE REMOVAL PENALTIES TEXT AMENDMENT (RC):

ORDINANCE No. 2491-2022; AN ORDINANCE OF THE CITY OF STUART, FLORIDA, AMENDING CHAPTER V, RESOURCE PROTECTION STANDARDS OF THE CITY'S LAND DEVELOPMENT CODE; AMENDING SECTION 5.05.08 PENALTIES FOR THE WRONGFUL REMOVAL OF TREES; REPLACING ORDINANCE 2478-2022; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Summary Explanation/Background Information on Agenda Request:**

During the first reading of the Ordinance, the Commission requested the addition of a recital clause be added to articulate the position of the Commission regarding the legislative intent. The additional recital states that it is the intent of the City Commission to deter unauthorized removal of vegetation on development projects as well as to protect historic and specimen trees throughout the City. It is not the intent to create an untenable burden for the single-family residential homeowner.

The ordinance provides for a remediation process in which the Development Director will meet with the respondent and use the policy adopted by the Commission to replace trees that were wrongfully removed when appropriate. In the alternative, if it is an individual homeowner and the removal of the tree would have been allowed without the requirement of additional trees, then the Development Director will be able to enter an after the fact permit resolving the matter. If it was a historic or specimen tree, the ordinance provides a sufficient deterrent to prevent such willful action.

**Funding Source:**

N/A

**Recommended Action:**

Move approval of Ordinance 2491-2022 on Second Reading.

**ATTACHMENTS:**

1. Ordinance 2491-2022 Tree Removal



**BEFORE THE CITY COMMISSION  
CITY OF STUART, FLORIDA**

**ORDINANCE NUMBER 2491-2022**

**AN ORDINANCE OF THE CITY OF STUART, FLORIDA,  
AMENDING —CHAPTER V, —RESOURCE PROTECTION  
STANDARDS OF THE CITY’S LAND DEVELOPMENT CODE;  
~~ESTABLISHING—AMENDING~~ SECTION 5.05.08 PENALTIES  
FOR THE WRONGFUL REMOVAL OF TREES; REPLACING  
ORDINANCE 2478-2022; PROVIDING FOR SEVERABILITY;  
PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES;  
PROVIDING FOR CODIFICATION; PROVIDING AN  
EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**\* \* \* \* \***

**WHEREAS**, the City Commission, adopted Ordinance 2478-2022 on March 14, 2022, establishing penalties for the wrongful removal of trees without a permit in violation of Chapter V Resource Protection Standards of the City’s Land Development Code; and

**WHEREAS**, the City Commission is aware of Florida Statute Section 163.045 and it the Commission finds that this Ordinance is consistent with State Law.

**WHEREAS**, the Commission has determined that it is in the best interest of the City of Stuart to deter the wrongful removal of trees within the City of Stuart and further finds that it benefits the health and welfare of the residents and visitors to maintain and protect the environment and natural systems; and

**WHEREAS**, the Commission held two public hearings adopting Ordinance 2478-2022 adopting said penalties. Upon submittal for codification, it was determined that clarification was necessary to avoid duplication of language and the potential for confusion; and

**WHEREAS**, this ordinance does not change the policy or intent of the City Commission action in Ordinance 2478-2022. This Ordinance is intended to amend the prior regulation to the extent necessary to ensure that the policy intended by the Commission was clear and unambiguous.

**WHEREAS**, the City Commission desires to amend the language adopted on March 14, 2022 to provide clarification and remove any duplicative language that could create confusion.

**WHEREAS**, the intent of the City Commission is to deter the unauthorized removal of vegetation on development projects as well as to protect historic and specimen trees throughout the City. It is not the intent of the Commission to create an untenable burden for the single-family residential homeowner.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA THAT:**

**SECTION 1:** CHAPTER V: Section 5.05.08 “Penalties for Violations” in the Stuart land Development Code is amended to read as follows:

**CHAPTER V: RESOURCE PROTECTION STANDARDS  
SECTION 5.05.08 PENALTIES ~~FOR VIOLATIONS~~**

- A. A tree removal permit in compliance with Florida Statutes must be issued by the City Development Department for work undertaken pursuant to this Chapter V of this Code.
- a. Failure to obtain a tree removal permit shall be deemed a violation of the code.
- a.b. Even when the tree can be removed pursuant to regulations set forth in Florida Statutes, a permit is still required to maintain the appropriate records.
- ~~B.—Except as otherwise provided in this Code, each violation of the provisions of this Code chapter that involves more than 1,500 square feet the removal of any trees without a permit on any parcel of land shall be deemed as a separate violation subject to the penalties as set forth herein. The owner of the real property as well as any person or entity the person who caused causing the violation to occur shall be deemed the alleged violators responsible subject to the penalties. The Stuart Code Enforcement Magistrate or City Commission may shall have the authority to determine that when a violation of any provision of this chapter may be is irreparable or irreversible in nature pursuant to F.S. chapter 162. Accordingly, the City Magistrate or City CommissionIf the violation is determined irreparable or irreversible, the violator shall have the authority to impose be~~

~~subject to a fine of up to \$5,000 for each violation found as calculated herein without credit for any remedial action.~~

~~C.B.~~

~~A. Upon a finding by the City Development Director that a violation has occurred, notice of the violation shall be provided to the alleged violator(s) that specifies the nature of the violation and directs that a fine be paid in accordance with the following language.~~

~~B. Failure to pay the fine as directed by the City Development Director shall be deemed a violation of this Code enforceable through proceedings before the City Code Enforcement Magistrate.~~

~~C.A. Any person~~ The property owner of the land on which the trees were located or any person and/or entity who removes any tree from any property in violation of this Code shall be subject to the following penalties:

- ~~1. If historic and/or specimen trees are removed without a permit or otherwise in violation of Section 5.05.00 of the City's Land Development Code, then a penalty calculation for the replacement of the required Diameter at Breast Height (DBH) inches (as defined in City Regulations) shall be applied~~ calculated as set forth below:
  - ~~i. First, the number of inches removed based upon the DBH shall be determined.~~
  - ~~ii. Once the base amount is determined, the replacement inches shall be calculated pursuant to tree replacement formula set forth in 5.05.02, table 1.~~
  - ~~iii. Compliance shall be a combination of restoration and fine based upon three (3) times the number of DBH inches calculated from table 1.~~
  - ~~iv. The calculation shall be determined by using the total DBH inches removed. The amount of replacement DBH inches shall be calculated in accordance with the City's Tree replacement formula as contained within Section 5.05.00 of this Code excepting that the replacement DBH inches will be calculated at three times the amount for every offense.~~
  - ~~v. Example. 10 inches removed without permit. Type of trees removed pursuant to table 5.05.02 table 1 would require specimen trees to be replaced at a rate of 1.5. Ten (10) inches require fifteen (15) inches as replacement. Then, the penalty is three (3) times the replacement (15 x 3 = 45) resulting in 45 inches. The property owner shall be responsible to replant the 45 inches or pay the balance into the City Tree Replacement Fund.~~

~~D.B.~~ Remediation:

- ~~1. Prior to a Final Hearing, the violator shall present a remedial action plan to the Development Director with the intent to replant sufficient trees to restore the~~

property to an appropriate level.

2. If the remedial action plan is not approved by the Development Director, the matter shall be set for a Final Hearing with the Magistrate or City Commission as set forth above. However, if the Development Director approves the remedial action plan, then a Consent Agreement resolving the matter can be executed by the violator and the Development Director. Completion of the Remedial Plan shall resolve the matter without further hearing.
  - i. If the Development Director determines that full restoration onsite is not feasible, the balance shall be paid into the City Tree Fund within a reasonable amount of time as set forth in the agreement.
  - ii. Violation of the Consent Agreement will be treated as a separate matter.
3. Separate from the Administrative Variance procedures set forth the City Regulations, the Development Director shall have the discretion to execute an administrative variance amending the landscape plan of a previously approved development. The scope of the variance shall be limited to modifications of the landscape plan only and shall not authorize a modification of the site plan.

~~Each tree removed in violation of this article, or any permit issued pursuant to this article shall constitute a separate violation. Remedial action shall be taken to restore the property consistent with a restoration plan approved by the Development Director. If full restoration onsite is determined by both the property owner and City to be infeasible, the remaining value of the penalty shall be donated and/or payment into the city tree replacement fund in an amount equal to the cost of the three (3) to one (1) ratio as applied herein with preference given to restoration of the property. No certificate of occupancy or similar authorization shall be issued for any development until all applicable permits or restoration plan conditions have been achieved.~~
4. ~~Monies shall be paid to the City and failure to make payment shall be deemed a violation of this Code. Unless and until paid, the property is brought into compliance by consent agreement or pursuant to Magistrate or Commission Order, the Development Department may withhold the issuance of further development orders for development on the subject property including but not limited to building permits and/or certificates of occupancy.~~

**SECTION 2:** ~~Section 5.05.08 Penalties for Violations of the Stuart Land Development Code, is amended as follows:~~

#### ~~CHAPTER 5 PENALTIES FOR VIOLATIONS~~

~~5.05.08 Tree Removal; Penalties for Violations~~**A.** ~~A tree removal permit must be issued by the City Development Department for work undertaken pursuant to this Chapter V of this Code.~~

~~B.~~ **Any person who removes any tree from any property in violation of this Code shall be subject to the following penalties:**

~~If historic and/or specimen trees are removed without a permit or otherwise in violation of Section 5.05.00 of the City's Land Development Code, then a penalty calculation for the replacement of the required DBH inches shall be applied. The calculation shall be determined by using the total DBH inches removed. The amount of replacement DBH inches shall be calculated in accordance with the City's Tree replacement formula as contained within Section 5.05.00 of this Code excepting that the replacement DBH inches will be calculated at **three times the amount for every offense**. Each tree removed in violation of this article, or any permit issued pursuant to this article shall constitute a separate violation. Remedial action shall be taken to restore the property consistent with a restoration plan approved by the Development Director, and/or payment If full restoration onsite is determined by both the property owner and City to be infeasible, the remaining value of the penalty shall be donated into the city tree replacement fund in an amount equal to the cost of the three (3) to one (1) ratio as applied herein with priority given to restoration of the property. No certificate of occupancy or similar authorization shall be issued for any development until all applicable permits or restoration plan conditions have been accomplished.~~

~~C. Monies shall be paid to the City and failure to make payment shall be deemed a violation of this Code. Unless and until paid, the Development Department may withhold the issuance of further development orders for development on the subject property including building permits and certificates of occupancy.~~

**SECTION 3:** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**SECTION 4:** If any section, sentence, clause, phrase, or word of this ordinance is for any reason declared to be unconstitutional, inoperative, or void, such holding shall not affect the remaining portions of this ordinance and the remaining portions shall be deemed and held to be valid.

**SECTION 5:** The provisions of this ordinance shall be codified.

**SECTION 6:** Upon complete execution of this Ordinance, the City Clerk is directed to record a Certified Copy of the same in the Public Records of Martin County, Florida.

Passed on first reading the 13<sup>th</sup> day of June, 2022.

Commissioner \_\_\_\_\_ offered the foregoing Ordinance and moved its adoption.

The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a roll call

vote, the vote was as follows:

MERRITT MATHESON MAYOR  
TROY MCDONALD, VICE MAYOR  
BECKY BRUNER, COMMISSIONER  
EULA R. CLARKE, COMMISSIONER  
MIKE MEIER, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED on second and final reading this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST:

\_\_\_\_\_  
MARY R. KINDEL  
CITY CLERK

\_\_\_\_\_  
MERRITT MATHESON  
MAYOR

APPROVED AS TO FORM  
AND CORRECTNESS:

\_\_\_\_\_  
MICHAEL J. MORTELL, ESQ.  
CITY ATTORNEY

CITY'S ACKNOWLEDGMENT

The above Ordinance was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Merritt Matheson, Mayor, and Mary R. Kindel, City Clerk, respectively, of the City of Stuart, Florida, a Florida municipal corporation, who  are personally known to me or  have produced \_\_\_\_\_ as identification.

(Notary Seal)

\_\_\_\_\_  
Signature of Notary Public  
Printed Name: \_\_\_\_\_