



Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council
From: Steven J. Alexander, Town Manager
Date: January 21, 2009
Re: **ORDINANCE CREATING REGULATIONS RELATING TO THE PROTECTION OF TREES WITHIN THE TOWN**

REQUEST

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATING TO THE PROTECTION OF TREES WITHIN THE TOWN; PROVIDING FOR THE REGULATION OF THE SAFEGUARDING, MAINTENANCE, AND REMOVAL OF TREES WITHIN THE RIGHT-OF-WAY OF THE TOWN OF CUTLER BAY; SETTING FORTH TOWN RIGHTS AND RESPONSIBILITIES; DESCRIBING PRIVATE LANDOWNER RIGHTS AND RESPONSIBILITIES; CREATING A PUBLIC EDUCATION PROGRAM; SETTING UP A SYSTEM FOR PERMITTING AND BOND REQUIREMENTS; PROVIDING FOR PENALTIES AND NOTIFICATION; SETTING FORTH TOWN INDEMNIFICATION GUIDELINES; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

One of the identified "goals" of the Town's Street Tree Master Plan and the "Green Plan" is to become a Tree City USA. In order for the Town to qualify for Tree City USA, the town must meet four standards established by The Arbor Day Foundation and the National Association of State Foresters. The standards were established to ensure that every qualifying community would have a viable tree management plan and program. It is important to note that they were also designed so that no community would be excluded because of size.

1. A Tree Board or Department
2. A Tree Care Ordinance
3. A Community Forestry Program With an Annual Budget of at Least \$2 Per Capita
4. An Arbor Day Observance and Proclamation

The "proposed" tree Ordinance provides an opportunity to set good policy and meet one of the goals set in the Town's adopted Strategic Plan - (5. Community Identity, Unity and Pride) – emphasizes the development and implementation of a Town Beautification Program. Ideally, it will provide clear guidance for planting, maintaining and removing trees from streets, parks and other

public places. These types of standards have been recognized by various organizations, including the Florida Green Building Coalition as being critical to producing a more sustainable community.

Becoming a Tree City USA, helps present the kind of image that most citizens want to have for the place they live or conduct business. The Tree City USA signs at community entrances tell both residents & visitors that the Town cares about its environment. It is also an indication to prospective businesses that the Town Council has a high priority for the quality of life within the Town. Additionally, preference is sometimes given to Tree City USA communities over other communities when allocations of grant money are made for trees or forestry programs. The reason is that there are invariably more requests than available funds when grants are available through State or Federal agencies. If requests are equally worthy, some officials tend to have more confidence in communities that have demonstrated the foresight of becoming a Tree City USA.

RECOMMENDATION

It is recommended that the Town Council approve the attached Ordinance, for first reading.

ORDINANCE NO. 09- _____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATING TO THE PROTECTION OF TREES WITHIN THE TOWN; PROVIDING FOR THE REGULATION OF THE SAFEGUARDING, MAINTENANCE, AND REMOVAL OF TREES WITHIN THE RIGHT-OF-WAY OF THE TOWN OF CUTLER BAY; SETTING FORTH TOWN RIGHTS AND RESPONSIBILITIES; SETTING FORTH THE DUTIES OF THE TOWN; DESCRIBING PRIVATE LANDOWNER RIGHTS AND RESPONSIBILITIES; CREATING A PUBLIC EDUCATION PROGRAM; SETTING UP A SYSTEM FOR PERMITTING AND BOND REQUIREMENTS; PROVIDING FOR PENALTIES AND NOTIFICATION; SETTING FORTH TOWN INDEMNIFICATION GUIDELINES; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) recognizes the necessity of the conservation and preservation of the natural resources of the Town; and

WHEREAS, the protection of trees within the Town is a critical component to those conservation goals, and doing so provides benefits to all the citizens of the Town with respect to air quality, water quality, stormwater management, Town aesthetics and general quality of life; and

WHEREAS, this Ordinance is one facet of an integrated planning process that addresses the suitability of land use, the impacts of impervious surfaces, urban hydrology and water quality; and

WHEREAS, these types of standards have been recognized by various organizations, including the Florida Green Building Coalition, as being critical to producing a more sustainable community; and

WHEREAS, the Town Council finds that it is in the best interest of the public to provide standards and requirements for the protection of trees on public property within the Town for the purpose of making the Town a more attractive and healthier living environment; and

WHEREAS, the Town finds that this Ordinance will promote the health, safety and welfare of the Town.

NOW, THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS¹:

Section 1. Recitals Adopted. That the recitals set forth above are true and correct and incorporated herein by this reference.

Section 2. Public Tree Protection. The Town of Cutler Bay hereby creates the Public Tree Protection program, as follows:

(1) **Intent** This Ordinance is intended to supplement, not replace, the existing Town ordinance on Tree Preservation and Protection under Section 24 of the Town Code of Ordinances, and the ordinance granting the Town authority over the public right-of-way under Section 2-103.16 of the Town Code of Ordinances. This Ordinance does not apply to those species of trees covered by Sec. 24-49(4)(f) of the Town Code of Ordinances, unless the tree is a part of a natural forest community as defined by Section 24 of the Town Code of Ordinances.

(2) **Public Tree Protection Regulations**

- (a) No person except a public utility shall cut, prune, injure or remove any living tree on or in a public highway, right-of-way, neutral ground, public park, public place, sidewalk, or other public property; or cut or disturb or interfere in any way with the roots of any tree on public property; or spray with any chemical insecticide or herbicide or other oils or whitewash any tree on public property; or place any wire, rope, sign, poster, barricade, or other fixture on a tree or tree guard on public property; or injure, misuse or remove any device placed to protect any such tree. Owners of property may lightly trim those trees in the swale area which abuts their properties and may remove of dead or hanging branches from the trees in accordance with Section 19-13 of the Town Code and in a manner which is not harmful to the health of the trees.
- (b) No person shall pile building material or other material, about any tree, plant a shrub in a street in any manner that will in any way injure such tree, plant or shrub.
- (c) Commencing on March 1, 2009, no person shall pave or place gravel, soil or other such material within twelve (12) ft of any tree on public property, unless approved by Town Manager or designee. Property owners may utilize topsoil and other such materials which promote and does not inhibit the health of the swale area which abuts their properties in accordance with Section 19-13 of the Town Code. However, property owners may not alter the existing elevation of the swale area as part of the application of top soil or other such materials.

¹ Coding: underlined words are additions to existing text, ~~struck-through~~ words are deletions from existing text, **shaded** text reflects changes made from First Reading.

- (d) No person shall dump, pour or spill any oil, herbicide, insecticide or other deleterious matter upon any tree or tree space in any street or within the critical root zone of any tree, or keep or maintain upon any street, any receptacle from which oil or herbicide, pesticide or other deleterious matter leaks or drips onto any parking or concrete gutter so as to injure any tree on any public property.
- (e) No person shall use the rights-of-way, parks, sidewalks, or public places to dump grass clippings, tree trimmings, rocks or refuse of any nature. Persons that properly request a bulk waste pick-up from Miami-Dade County prior to placing their bulk waste on the right-of-way shall not be deemed to have violated this subsection.

(2)(3) Town of Cutler Bay Rights and Responsibilities

- (a) The Town shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the rights-of-way of all streets, parks, squares, and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds.
- (b) It shall be unlawful as a normal practice for any person, firm, or government entity/department to top any street tree, park tree, or other tree on public property. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this provision of this Ordinance by receipt of written notification from staff for each instance allowing such actions.
- (c) It shall be unlawful for any entity, utility, citizen, tree care company or government entity/department to trench, cut, grade, clear, or fill within the critical root zone of any public tree without the expressed written consent of the Town Manager or designee.

(4) Duties of Town

- (a) It shall be the expressed duty of the Town of Cutler Bay staff, when necessary, to issue permits, inspect tree work, require certain tree work to be performed, and enforce provisions of this ordinance.
- (b) The Town Department of Public Works shall serve as the primary department for the purpose of administering this tree ordinance and any other regulations that pertain to trees within the Town.

- (5) **Private Landowner Rights and Responsibilities** Every property owner of any tree overhanging any street or right of way within the Town shall prune the branches so that such branches shall not substantially obstruct the view of any street intersection and so that there shall be a clear space of thirteen (13) ft. above street surface or eight (8) ft. above the sidewalk surface. Said property owners shall also be responsible for the maintenance of the trees in the swale areas abutting their properties in accordance with Section 19-13 of the Town Code so that such branches shall not substantially obstruct the view of any street intersection and so that there shall be a clear space of thirteen (13) ft. above street surface or eight (8) ft. above the sidewalk surface. Said

owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs that constitute a menace to the safety of the public. The Town shall have the right to prune any tree or shrub on private property when it interferes with visibility of any traffic control device or sign or line of sight if the private landowner has not done so within 10 days of receiving notice to do so by the Town.

- (6) **Public Education** It shall be the responsibility of Town Staff to undertake a public Arbor Day planting activity and develop and/or secure and distribute tree care and tree benefit information as part of a town wide educational program.

(7) **Permit and Bond**

(a) It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating, or removing street or park trees or tree within a public right-of-way within the Town without first applying for and procuring a permit. The fees shall be established by a separate resolution subject to approval by the Town Council. No permit shall be required for electric utilities and their agents and contractors or Town employee doing such work in the pursuit of their public service endeavors.

(b) Before any permit shall be issued for any tree work on public property, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of \$100,000 for bodily injury and \$200,000 for property damage to protect the town and any third person injured as a result of such endeavors.

(8) **Notification and Penalties**

(a) Any person who shall injure, damage or destroy any public tree situated upon the public right-of-way of any street, alley, sidewalk, park or other public property within the Town of Cutler Bay shall promptly notify the Town Manager or designee of any such fact and shall, within such reasonable time as specified by the Town of Cutler Bay, repair or replace the same to the satisfaction of the Town Manager or designee.

(b) Should the person fail or refuse to repair or replace the damaged or destroyed trees or plants within such reasonable time, the Town Manager or designee shall do or cause to be done the necessary repairing or replacement, and the costs of this work shall be recovered from the person responsible for the damage or destruction by, a proper action of law which the Town is entitled.

~~(c) Any person violating any provision of this ordinance shall be, upon conviction or a plea of guilty, subject to a fine not to exceed \$250 for each violation plus restitution for damages to public trees and property.~~

- (9) **Indemnification** Nothing contained in this ordinance shall be deemed to impose any liability upon the Town, its officers or employees, nor to relieve the owner of any

private property from the duty to keep any tree, shrub or plant upon any street tree area on his property or under his/her control in such condition as to prevent it from constituting a hazard or an impediment to travel or vision upon any public property or right of way or public place within the Town.

Section 3. Schedule of violations and civil penalties amended. That the Town Code of the Town of Cutler Bay is hereby amended by amending Ordinance 07-09, Section 10 “Schedule of civil penalties”, to read as follows: ²

Sec. 10. Schedule of civil penalties.

TABLE INSET:

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
***	***	***
<u>Ordinance</u>	<u>Violation of Tree Ordinance</u>	<u>First violation \$250; Second Violation \$250500; Third or subsequent violation \$250500.</u>
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Section 4. Conflicts. All ordinances or Code provisions in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Severability. 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 6. Inclusion in the Code. It is the intention of the Town Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; 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 7. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

² Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text, **shaded** text reflects changes made from First Reading.

PASSED on first reading this 21st day of January, 2009.

PASSED and ADOPTED on second reading this ____ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____