

ORDINANCE NO. 26-\_\_\_\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY, FLORIDA, CREATING ARTICLE XIX OF CHAPTER 58, ENTITLED "TREE PROTECTION"; PROVIDING FOR TREE PROTECTION, PERMITTING, AND MITIGATION; PROVIDING FOR ENFORCEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CHAPTER 58 OF THE CODE OF ORDINANCES; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS** tree removal frequently occurs independent of development activities; and

**WHEREAS** tree regulations apply countywide except where superseded by municipal ordinance; and

**WHEREAS**, replacing trees that are removed from residential and commercial sites supports the maintenance and enhancement of Pinellas County's urban canopy; and

**WHEREAS** voluntary removal of nuisance and invasive plant species is encouraged to support the health and diversity of the county's urban canopy; and

**WHEREAS** the Board of County Commissioners finds that proposed ordinance as set forth herein is consistent with the Comprehensive Plan and County Charter.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Pinellas County, Florida in regular meeting duly assembled this \_\_ day of \_\_\_\_\_ 20 \_\_, that:

SECTION 1. RECITALS. The recitals above are incorporated herein.

SECTION 2. The Pinellas County Code is hereby amended by adding an article to be numbered Section 58-807 through Section 58-814, which reads as follows:

**Section 58-807. Definitions**

*Building footprint* means the area on the ground delineated by the outer edge of the foundation of a primary structure that has been or will be approved. This definition includes additions to existing primary structures.

*Diameter at Breast Height (DBH)* means the diameter, in inches, of a tree measured at four and a half feet above the substrate.

*Dripline* means an imaginary perpendicular line that extends downward from the outermost tips of the tree canopy to the ground.

*Effectively Remove* means to remove branches, foliage, or stems to an extent that the tree's natural function and form is severely impacted. This includes topping, defoliating, or excessive root pruning. To avoid effective removal, the most up-to-date professionally accepted pruning standards should be followed.

*Historic tree* means a tree which has been found by a qualified professional to be of notable historic interest to the county because of its historic association.

*Qualified professional* means a certified arborist, certified landscape architect, professional forester, professional wetland scientist or individual with similar training and experience who is qualified to assess tree health.

*Replant Tree* means a tree meeting the approved species requirements in Sec. 138-3664 of the Pinellas County Land Development Code that is used to meet the replant requirements of this article. Replant trees must be a minimum of 1.5 inches DBH, six feet in height, and Florida Grade No. 1 quality at the time of inspection.

*Transplant* means to move a tree from a site to another site or a different location on the same site for the purpose of preserving the tree. Transplanted trees may count towards minimum landscaping requirements when transplanted on the same site.

*Tree* means any self-supporting, woody, perennial plant with a single or multiple stems that will reach ten feet or more in height with one or more stems measuring four inches DBH or greater. In addition, all palms more than six feet in height are trees and are protected by the provisions of this article. This definition includes any tree planted, relocated, or replaced pursuant to this article and any mangrove or buttonwood specimen.

*Tree Survey* means a document prepared by a qualified professional that provides the accurate locations of all trees on the site with the species and DBH measurements for each tree, along with a rating determined using the tree rating system provided in this article where applicable.

#### **Section 58-808. Purpose.**

Trees and urban canopy provide beneficial public services and resources, including but not limited to heat mitigation, stormwater interception, wind protection, stabilization of sediments, air quality, habitat for urban wildlife, improved aesthetics and overall wellbeing of the community. Therefore, it is the intent of the board of county commissioners to protect trees and urban canopy as set forth in this article.

#### **Section 58-809. Applicability.**

This article shall apply to property, excluding county-maintained right-of-way, within the incorporated and unincorporated areas of the county. Where these provisions conflict with a municipal ordinance, the municipal ordinance shall prevail. No trees shall be removed from county-maintained right-of-way without an approved permit.

#### **Section 58-810. Enforcement, Liability, and Penalties.**

- (a) *Enforcement.* The county may enforce the provisions of this article and any permit condition as provided in Chapter 1, Sections 1-1 through 1-13; Chapter 2, Article VIII; the Pinellas County Environmental Enforcement Act; and/or the provisions of Chapter 162, Florida Statutes. The county administrator or designee may address a violation of this article using one or more of the following provisions:
- (1) Require replacement of trees removed without authorization, a monetary contribution to the tree bank fund, or a combination thereof.
  - (2) Withhold issuance of a permit or reject an application or other authorization if there is an existing unresolved violation on the subject site.
  - (3) Issue a stop work order for activity proceeding in violation of this article or activity that poses an imminent hazard to public health, safety, or welfare or the environment.
  - (4) Issue an after-the-fact permit, subject to applicable after-the-fact fees, to correct a violation for activities that meet the standards of this article.
- (b) *Liability.* Whenever a violation of this article occurs or exists, any person who caused or contributed to the violation, or who has a legal, beneficial, or equitable interest in the real property upon which such violation occurs or exists, shall be jointly and severally liable for such violation. This provision may be construed to impose joint and several liability upon all persons, individually or otherwise, who, although such persons may no longer have any such legal, beneficial, or equitable interest in such real property, did have such an interest at any time during which such violation existed or occurred.
- (c) *Penalties.* The penalty for violations of this article involving trees removed or effectively removed without authorization is equal to \$150 per DBH inch of the affected tree or trees. The DBH of removed trees may be determined using surveys, field inspections, interpretation of aerial imagery, statistical analysis of similar trees on adjacent properties, or other appropriate methods. The amount determined by this section shall be paid into the tree bank fund as provided in this article. Replant requirements pursuant to this article still apply.

#### **Section 58-811. Administrative Adjustments, Waivers, and Variances.**

Modifications to the requirements of this article may be reviewed and processed pursuant to Chapter 138, Article II, Division 7. – Variances, waivers, and administrative adjustments.

#### **Section 58-812. Tree Bank Fund**

- (a) The county tree bank funds may be used for the following purposes:
- (1) Acquiring, protecting, and maintaining native vegetative communities in the county;
  - (2) Purchasing vegetation for planting and maintaining on public properties in the county;
  - (3) Mitigating damages caused by violations of this article or the Land Development Code.
- (b) *Maintenance of fund.* Moneys of the tree bank fund may be used as a matching fund contribution towards the acquisition of native vegetative communities in the county in association with other public land acquisition programs and/or the management of environmental lands. Such tree bank fund shall be kept, maintained, and identified by the board of county commissioners solely for the purposes set forth in this section.
- (c) *Source of moneys.* The tree bank fund shall consist of the following moneys:
- (1) All moneys collected by the county administrator pursuant to the provisions of this article or the land development code which are obtained through civil action and consent agreements.
  - (2) All moneys offered to and accepted by the county for the tree bank fund in the form of federal, state, or other governmental grants, allocations or appropriations, as well as foundation or private grants and donations.
  - (3) Contributions in lieu of, or in conjunction with, the replacement planting provisions of this article when replant requirements cannot be met on site.
- (d) *Interest.* Unless otherwise restricted by the terms and conditions of a particular grant, gift, appropriation or allocation, all interest earned by the investment of all moneys in the tree bank fund shall accrue to the fund and shall be disbursed for any project authorized consistent with this section. Tree bank fund moneys shall be invested only in accordance with the laws pertaining to the investment of county funds.
- (e) *Effect on permitting.* Decisions to grant or deny permits provided for by this article shall be made without consideration of the existence of the tree bank fund or offers of donations of moneys thereto.

### **Section 58-813. Tree protection and permitting.**

- (a) *Protected trees.* Protected trees may not be removed or effectively removed without authorization pursuant to this article. Protected trees include:
- (1) Any tree with a diameter breast height (DBH) of four inches or larger, measured at a height of four and half feet above the ground.
  - (2) All palms six feet in height or larger.

(b) *Permit required.* A tree permit is required to remove, effectively remove, or transplant any protected tree(s) unless otherwise exempt from this article.

(1) *Procedure.* Applications for tree removal, effective removal, or transplant may be reviewed pursuant to Chapter 138, Article II, Division 3. Permit requests shall be made by filing application with the county and paying an application fee as established by the Board of County Commissioners.

- a. The application must contain sufficient information to enable the county administrator or designee to identify the scope of work and determine whether the activity complies with this article, the comprehensive plan, and other applicable codes. Application information includes, but is not limited to a tree survey, tree risk assessment, proof of ownership or authorization to perform the proposed work, and other information as may be requested.
- b. The county administrator or designee, upon determining that an application for a permit under this article is to be denied, shall state the basis for such denial specifically and shall notify the applicant of the criteria the request has failed to meet.

(2) *Tree rating system:* As part of the permitting process for trees located outside of wetlands and native vegetative communities, trees shall be rated on a scale of zero through three based on Table 58-813(a)—Tree Rating System.

- a. The tree rating assessment shall occur by the applicable county staff; OR
- b. The applicant may, at their own expense, provide a tree rating assessment prepared by a qualified professional using the rating system in Table 58-813(a). The county administrator or designee will review the assessment and make the final determination.

(3) *Permitted actions and requirements:* Existing trees and palms shall be preserved, replaced, relocated, and/or removed pursuant to the permitted actions and requirements for each tree rating category as listed in Table 58-813(a)—Tree Rating System.

- a. When a site contains less than the minimum required landscaping in Sec. 138-3658 and 138-3659 of the Land Development Code, landscape trees may be required to bring the property into compliance as provided in Table 58-813(a).

**Table 58-813(a) – Tree Rating System**

Grade	Description	Removal and Replacement Requirements
0 “Poor”	Dead/dying. Nuisance or invasive species. Tree has poor vigor and low foliage density for its species. Extensive twig and branch dieback present. Tree may have a single serious defect or multiple significant defects such as uprooting or splitting. Corrective actions will not improve the health or mitigate defects. (Condition rating of less than 40%)	May be removed with approved permit.  No replant trees required.  Minimum landscape requirements do not apply.
1 “Fair”	Reduced vigor. Twig dieback, defoliation, and/or dead branches may comprise up to 40% of the crown. Damage from insects or diseases may be significant. Tree may have a single defect of a significant nature or multiple moderate defects. Tree form has major deviations from species norm. Corrective actions not practical or would require multiple treatments over several years. (Condition rating of 40% to 59%)	May be removed with approved permit.  Replant trees required per Table 58-813(b).  Minimum landscape requirements apply.
2 “Good”	Vigor is normal for the species. No significant damage due to disease or pests. Any twig dieback, defoliation, or discoloration is minor. Tree has well-developed structure. Defects and health disorders are minor and can be corrected. Tree form has minor deviations from species norm. (Condition rating of 60% to 79%).	May be removed with an approved permit when the tree interferes with proposed or existing improvements, underground or overhead utilities, or poses a threat to public health, safety, or welfare as verified by county staff.  Minimum landscape requirements apply.  Replant trees required per Table 58-813(b).
3 “Excellent”	Native tree in excellent condition; no visible signs of decay; less than 10% deadwood present; no significant structural defects (root girdling, codominance is lower half). This rating shall include trees	May be removed with a permit when the tree prevents development of or access to a lot, interferes with underground or overhead utilities, or removal

	with historical significance and unusual or rare species. It shall also include hardwood species >36" DBH and softwood species >20" DBH that would otherwise be a grade 2. (Condition rating of 80% or greater)	is necessary to protect public health, safety, or welfare as verified by county staff.  Minimum landscape requirements apply.  Replant trees required per Table 58-813(b).
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(4) *Replants required.* Trees having a 1, 2, or 3 rating will be replaced on the same site from which they were removed, as provided in Table 58-813(b).

- a. Trees whose trunks are located within the proposed building footprint are exempt from replant requirements when impacts are unavoidable and alternatives to tree removal are not feasible.
- b. In addition to any required replant trees, lots must contain the minimum number of landscape trees required based on the lot size per Table 138-3658(a).
- c. Replant trees planted in combination with at least two other species of native plants to create native vegetative communities with a minimum diameter of 10 feet centered around the replant tree receive double credit towards the replanting requirements in Table 58-813(b). Suggested plant pairings can be found in the approved species list on the county website and defined in Sec. 138-3664 of the Pinellas County Land Development Code. Paired plantings must be provided in sufficient quantity to achieve 80% coverage within one year.

<b>Table 58-813(b) – Replant Tree Requirements</b>			
<b>DBH of tree removed</b>	<b>Number of replants required by grade</b>		
	Grade 1	Grade 2	Grade 3
4" – 14"	1	2	3
14.1" – 24 "	2	4	6
24.1" – 34"	3	6	9
>34"	4	8	12

(5) *Credit for nuisance/invasive species removal.* Removal of nuisance and invasive species that is not otherwise required under Sec. 138-3653 of the Land

Development Code may be credited towards replant requirements as provided in Table 58-813(c) – Nuisance/Invasive Tree Removal Credit.

<b>Table 58-813(c) – Nuisance/Invasive Tree Removal Credit</b>	
<b>DBH of nuisance/invasive tree</b>	<b>Number of tree credits provided</b>
4” – 14”	1
14.1” – 24 “	2
24.1” – 34”	3
>34”	4
Invasive trees removed under this provision must be maintained to prevent regrowth/reestablishment.	

- (6) *Alternatives to on-site replants.* The following alternatives to on-site replacement of trees may be allowed:
- Where replanting on the subject site is not feasible, the applicant may provide a monetary contribution to a formally adopted tree mitigation fund at a rate established by the Board of County Commissioners.
  - The tree may be transplanted on the same site, on a different site under the same ownership, or in common areas with written permission from the property owners association.
  - Replant trees may be provided on other sites under the same ownership or on other sites under different ownership located within the same jurisdiction with written permission from the property owner.
  - Replant trees may be provided on common areas with written permission from the property owners association.
- (7) *Installation and maintenance.* Replant trees and other plant material installed to meet the requirements of this article are subject to the following installation and maintenance requirements:
- Plants shall be installed and maintained in accordance with the Florida Grades and Standards for Nursery Plants manual published by the Florida Department of Agriculture and Consumer Services.
  - Replant trees and other plant material which dies during the establishment period must be replaced within 30 days.
- (8) *Permit conditions.* The county administrator may include conditions to any permit issued pursuant to this article, including but not limited to the following:



- a. A tree removal permit expires 90 days from the date of issuance unless otherwise noted on the permit. Extensions may be requested in writing.
- b. Existing trees remaining on the site must be protected with tree barricades.
- c. Other protected vegetation must remain on site unless authorized for removal.
- d. A final inspection may be required to verify protected vegetation remains and any required replant trees have been planted.
- e. Monitoring reports and/or inspections performed at designated intervals to verify survival of protected, planted, or relocated vegetation may be required.

**Section 58-814. Minimum specifications for replant trees.**

Replant trees and other plant material used to meet the replant requirements of this article shall comply with the following minimum standards:

(a) *Species selection.*

- (1) Any replant tree used to meet the minimum standards of this division shall comply with the approved species provided in Sec. 138-3664 of the Land Development Code. Species included on the nuisance and invasive species list in Sec. 138-3653 cannot be used as replant trees.
- (2) Replant trees shall be Florida Grade No. 1 or better, as specified by the Florida Grades and Standards for Nursery Plants manual published by the Florida Department of Agriculture and Consumer Services.
- (3) At least 60 percent of the tree species shall be native varieties.

(b) *Tree specification requirements.*

- (1) Replant trees shall meet the minimum specifications listed in Table 58-814(a)—Replant Tree Specifications, at the time of inspection.
- (2) In the event of a market shortage, the county administrator or designee may approve a reduction of the required DBH to the largest available Florida Grade No. 1 equivalent plant as provided in Chapter 138, Article II, Division 7 – Variances, Waivers and Administrative Adjustments.

<b>Table 58-814(a) — Replant Tree Specifications</b>		
Tree	Size at inspection	Other Requirements
Replant Trees	1.5" DBH per stem (2" caliper)	To promote species diversity, one additional species must be used for every 10 replant trees required.
	Six feet minimum overall height	Replant trees must create or enhance urban canopy and may include a combination of small, medium, and large trees.

		No more than 25% of the required trees may be small trees.
Palms	Six feet minimum overall height	No more than 25% of required trees may be palms.

**SECTION 3. Severability.** If any section, subsection, sentence, clause, phrase, or provision of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such holding will not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

**SECTION 4. Inclusion in Code.** The provisions of this Ordinance will be included and incorporated in the Pinellas County Code, as an amendment thereto, and will be appropriately renumbered to conform to the uniform numbering system of the Pinellas County Code.

**SECTION 5. Filing of Ordinance; Effective Date.** Pursuant to Section 125.66, Florida Statutes, a certified copy of this Ordinance will be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners. This Ordinance will become effective upon filing of the ordinance with the Department of State.

PCAO 540476

APPROVED AS TO FORM  
By: Derrill McAtter  
Office of the County Attorney