

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF PINELLAS, AMENDING AND REVISING PINELLAS COUNTY CODE CHAPTER 58 (ENVIRONMENT), ARTICLE XVI (MANGROVE TRIMMING AND PRESERVATION); PROVIDING AND UPDATING DEFINITIONS; PROVIDING CHANGES TO BE CONSISTENT WITH THE MANGROVE TRIMMING AND PRESERVATION ACT FOUND IN SECTIONS 403.9321 THROUGH 403.9333, FLORIDA STATUTES; PROVIDING ADDITIONAL ENFORCEMENT MECHANISMS; PROVIDING FOR A SPECIAL MAGISTRATE TO HEAR APPEALS; PROVIDING FOR UPDATED NOTICE OF HEARING PROCEDURES; PROVIDING FOR POSTING OF PERMITS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREAS EMBRACED; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Pinellas County received delegation from the Florida Department of Environmental Protection to enforce the provisions of the “Mangrove Trimming and Preservation Act,” contained in Sections 403.9321 through 403.9333, Florida Statutes, via delegation agreement dated February 27, 1996; and

WHEREAS, the Board of County Commissioners (“Board”) currently hears appeals of staff determinations under Chapter 58 (Environment), Article XVI (Mangrove Trimming and Preservation) of the Pinellas County Code (“Code”); and

WHEREAS, the Board desires for appeals of staff determinations under the Mangrove Trimming and Preservation Code to be heard by a special magistrate; and

WHEREAS, Chapter 90-403, Laws of Florida, as amended, titled the “Pinellas County Environmental Enforcement Act,” found in Chapter 58 (Environment), Article II (Environmental Enforcement) of the Code provides additional mechanisms to enforce standards for the protection, enhancement, and restoration of the air, water, soil, natural resources, and animal and plant life of Pinellas County; and

WHEREAS, the Board wishes to explicitly include the Pinellas County Environmental Enforcement Act within Chapter 58 (Environment), Article XVI (Mangrove Trimming and Preservation) as an enforcement mechanism; and

WHEREAS, Chapter 2 (Administration), Article VIII (Code Enforcement by Special Magistrates) of the Pinellas County Code allows for violations of codes and ordinances to be heard by special magistrates; and

WHEREAS, the Board desires that, in addition to the enforcement options listed in Chapter 58 (Environment), Article XVI (Mangrove Trimming and Preservation), violations of this

Ordinance may be heard by special magistrate pursuant to Chapter 2 (Administration), Article VIII (Code Enforcement by Special Magistrates), Pinellas County Code; and

WHEREAS, the Board finds it necessary to require the posting of permits issued pursuant to this Ordinance; and

WHEREAS, the Board recognizes other updates to Chapter 58 (Environment), Article XVI (Mangrove Trimming and Preservation) Pinellas County Code are needed to be consistent with Florida Statutes.

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. Chapter 58 (Environment), Article XVI (Mangrove Trimming and Preservation) of the Pinellas County Code is hereby amended to read as follows:

ARTICLE XVI. MANGROVE TRIMMING AND PRESERVATION

Sec. 58-600. Findings.

- (a) The board finds that there are over 555,000 acres of mangroves now existing in Florida. Of this total, over 80 percent are under some form of government or private ownership or control and are expressly set aside for preservation or conservation purposes. The board also finds that the vast majority of these mangroves are located at the southern end of the state and do not provide the direct ecological benefits to the county that the local mangroves do, estimated at 18,800 acres for the Tampa Bay area and 6,500 acres for Pinellas County.
- (b) The board finds that mangroves play an important ecological role as habitat for various species of marine and estuarine vertebrates, invertebrates, and other wildlife, including mammals, birds, and reptiles; as shoreline stabilization and storm protection; and for water quality protection and maintenance and as food-web support. The mangrove forest is a tropical ecosystem that provides nursery support to the sports and commercial fisheries. Through a combination of functions, mangroves contribute to the economies of many coastal counties in the state, including Pinellas County, which has an economy strongly dependent on tourism and a variety of marine-related industries, most of which are closely correlated to a healthy natural environment and strong fisheries. In addition, the county's coastal environment and natural resources are a strong attractant for both businesses and residents.
- (c) The board finds that since 1950, approximately half of the Tampa Bay area's natural shoreline has been adversely impacted, with some areas of Pinellas County having lost almost half of their mangroves in that same time frame.
- (d) The board finds that the Pinellas County Comprehensive Plan and the Comprehensive Conservation and Management Plan for Tampa Bay ("Charting the Course") both support the protection, conservation and restoration of marine resources and habitats, including mangroves.
- (e) The board finds that the pruning of mangroves can affect their productivity and habitat value.

- (f) The board finds that many areas of mangroves occur as narrow riparian mangrove fringes that do not provide all the functions of mangrove forests or provide such functions to a lesser degree.
- (g) The board finds that water views are important to waterfront property owners and that scientific studies have shown that mangroves are amenable to standard horticultural treatments and that waterfront property owners can live in harmony with mangroves by incorporating such treatments into their landscaping systems.
- (h) The board finds that the trimming of mangroves by professional mangrove trimmers has a significant potential to maintain the beneficial attributes of mangrove resources and that professional mangrove trimmers should be authorized to conduct mangrove trimming, as contained herein, without prior government authorization.

Sec. 58-601. Intent.

- (a) It is the intent of the board to protect and preserve mangrove resources valuable to our environment and economy from unregulated removal, defoliation, and destruction.
- (b) It is the intent of the board that no trimming or alteration of mangroves may be permitted on uninhabited islands which are publicly owned or on lands set aside for conservation and preservation, or mitigation, except where necessary to protect the public health, safety, and welfare, or to enhance public use of, or access to, conservation areas in accordance with management plans approved by the state, county or municipality.
- (c) It is the intent of the board to provide waterfront property owners their riparian right of view, and other rights of riparian property ownership as recognized by F.S. § 253.141, and any other provision of law, by allowing mangrove trimming in riparian mangrove fringes without prior government approval when the trimming activities will not result in the removal, defoliation, or destruction of the mangroves.
- (d) It is the intent of the board to also allow mangrove trimming at waterfront properties with mangroves that do not qualify as riparian mangrove fringes, where such trimming can be done consistent with the specific criteria of this division.
- (e) It is the intent of the board that this division shall be administered so as to encourage waterfront property owners to voluntarily maintain mangroves, encourage mangrove growth, and plant mangroves along their shorelines.
- (f) It is the intent of the board that all trimming of mangroves pursuant to this act conducted on parcels having multifamily residential units result in an equitable distribution of the riparian rights provided herein.
- (g) It is the intent of the board to grandfather certain historically established mangrove maintenance activities.

Sec. 58-602. Authority for division.

The Florida Department of Environmental Protection (FDEP) has delegated its authority to regulate the trimming and alteration of mangroves to the county which requested such delegation and demonstrated to the FDEP that it has sufficient resources and procedures for the adequate administration and enforcement of a delegated mangrove-regulatory program. The county may,

through interlocal agreement, further delegate the authority to administer and enforce regulation of mangrove trimming and alteration to municipalities that can also demonstrate that they have sufficient resources and procedures for the adequate administration and enforcement of a delegated mangrove regulatory program. In no event shall more than one permit for the alteration or trimming of mangroves be required within the jurisdiction of any delegated local government.

The county shall issue all permits required by law and in lieu of any FDEP permit provided for by F.S. §§ 403.9321 through 403.9333. The availability of the exemptions to trim mangroves in riparian mangrove fringe areas provided in F.S. § 403.9326, may not be restricted or qualified in any way by any local government. This subsection does not preclude a delegated local government from imposing stricter substantive standards or more demanding procedural requirements for mangrove trimming or alteration outside of riparian mangrove fringe areas. References in this article to the department shall include a delegated local government if the context permits.

Sec. 58-603. Territory embraced.

This article shall be effective in the incorporated as well as unincorporated areas of the county.

Sec. 58-604. Definitions.

For the purposes of this division, the term:

Alter means anything other than trimming of mangroves including removal, destruction or defoliation of mangroves.

Board means the Pinellas County Board of County Commissioners.

County means Pinellas County, Florida, or an employee or agent thereof.

Defoliate means the removal of leaves by cutting or other means to the degree that the plant's natural functions have been severely diminished or which results in the death of all or part of the tree.

Department means the Pinellas County Public Works Department.

Local government means a county or municipality.

Maintenance means the first and subsequent trimming intended to maintain the height and configuration of a mangrove area that was legally trimmed either pursuant to a valid exemption or a previously issued permit from the appropriate governmental agency. However, where a pattern of trimming has stopped such that the view or use otherwise intended and obtained by the trimming has been broken or lost for a prolonged period of time, further trimming will not be considered maintenance.

Mangrove means any specimen of the species *Laguncularia racemosa* (white mangrove), *Rhizophora mangle* (red mangrove), or *Avicennia germinans* (black mangrove).

Mangroves on lands that have been set aside as mitigation means mangrove areas on public or private land which have been created, enhanced, restored, or preserved as mitigation under a dredge and fill permit issued under F.S. §§ 403.91 through 403.929 (1984 Supplement, as amended), or a dredge and fill permit, management and storage of surface waters permit, or environmental resource permit issued under F.S. part IV of chapter 373, applicable dredge and fill

licenses or permits issued by a local government, a resolution of an enforcement action, or a conservation easement that does not provide for trimming.

Professional mangrove trimmer means a person who meets the qualifications set forth in section 58-608.

Public lands set aside for conservation or preservation means:

- (1) Lands and interests acquired with funds deposited into the Land Acquisition Trust Fund pursuant to s. 28(a), Art. X of the State Constitution;
- (2) Conservation and recreation lands under chapter 259, Florida Statutes;
- (3) State and national parks;
- (4) State and national reserves and preserves, except as provided in F.S. § 403.9326(3);
- (5) State and national wilderness areas;
- (6) National wildlife refuges (only those lands under federal government ownership);
- (7) Lands acquired under the Save Our Rivers Program;
- (8) Lands acquired under the Save Our Coast Program;
- (9) Lands acquired under the Environmentally Endangered Lands Bond Program;
- (10) Public lands designated as conservation or preservation under a local government comprehensive plan;
- (11) Lands purchased by a water management district, the Fish and Wildlife Conservation Commission, or any other state agency for conservation or preservation purposes;
- (12) Public lands encumbered by a conservation easement that does not provide for the trimming of mangroves; and
- (13) Public lands designated as critical wildlife areas by the Fish and Wildlife Conservation Commission.

Riparian mangrove fringe means mangroves growing along the shoreline on private property, property owned by a governmental entity, or sovereign submerged land, the depth of which does not exceed 50 feet as measured waterward from the trunk of the most landward mangrove tree in a direction perpendicular to the shoreline to the trunk of the most waterward mangrove tree. Riparian mangrove fringe does not include mangroves on uninhabited islands, or public lands that have been set aside for conservation or preservation, or mangroves on lands that have been set aside as mitigation, if the permit, enforcement instrument, or conservation easement establishing the mitigation area did not include provisions for the trimming of mangroves.

Special Magistrate means an individual charged with hearing appeals under this article. The special magistrate must be a current member in good standing of the Florida Bar with at least seven years of experience practicing law in the State of Florida. The special magistrate must have no disciplinary history with the Florida Bar or any other bar association of any jurisdiction. Additionally, the special magistrate must not have been an employee or agent of the county at any time over the past seven years preceding the applicable hearing date.

Trim means to cut mangrove branches, twigs, limbs, and foliage, but does not mean to remove, defoliate, or destroy the mangroves.

Sec. 58-605. Exemptions.

(a) The following activities are exempt from the permitting requirements of this division and any other provision of law if no herbicide or other chemical is used to remove mangrove foliage:

- (1) Mangrove trimming in riparian mangrove fringe areas that meet the following criteria:
 - a. The riparian mangrove fringe must be located on lands owned or controlled by the person who will supervise or conduct the trimming activities or on sovereign submerged lands immediately waterward and perpendicular to the lands.
 - b. The mangroves that are the subject of the trimming activity may not exceed ten feet in pretrimmed height as measured from the substrate and may not be trimmed so that the overall height of any mangrove is reduced to less than six feet as measured from the substrate.

This exemption applies to property with a shoreline of 150 feet or less. Owners of property with a shoreline of more than 150 feet may not trim, under an exemption, more than 65 percent of the mangroves along the shoreline.

(2) Mangrove trimming supervised or conducted exclusively by a professional mangrove trimmer, as defined in section 58-604, in riparian mangrove fringe areas that meet the following criteria:

- a. The riparian mangrove fringe must be located on lands owned or controlled by the professional mangrove trimmer or by the person contracting with the professional mangrove trimmer to perform the trimming activities, or on sovereign submerged lands immediately waterward and perpendicular to such lands.
- b. The mangroves that are the subject of the trimming activity may not exceed 24 feet in pretrimmed height and may not be trimmed so that the overall height of any mangrove is reduced to less than six feet as measured from the substrate.
- c. The trimming of mangroves that are 16 feet or greater in pretrimmed height must be conducted in stages so that no more than 25 percent of the foliage is removed annually.
- d. A professional mangrove trimmer that is trimming red mangroves for the first time under the exemption provided by this paragraph must notify the department in writing at least ten days before commencing the trimming activities.

This exemption applies to property with a shoreline of 150 feet or less. Owners of property with a shoreline of more than 150 feet may not trim, under an exemption, more than 65 percent of the mangroves along the shoreline.

(3) Mangrove trimming in riparian mangrove fringe areas which is designed to reestablish or maintain a previous mangrove configuration if the mangroves to be trimmed do not exceed 24 feet in pretrimmed height. The reestablishment of a previous mangrove configuration must not result in the destruction, defoliation, or removal of mangroves. Documentation of a previous mangrove configuration may be established by affidavit of a person with personal knowledge of such configuration, through current or past permits from the state or local government, or by photographs of the mangrove configuration.

Trimming activities conducted under the exemption provided by this paragraph shall be conducted by a professional mangrove trimmer when the mangroves that are the subject of the trimming activity have a pretrimmed height which exceeds ten feet as measured from the substrate. A person trimming red mangroves for the first time under the exemption provided by this paragraph must notify the department in writing at least ten days before commencing the trimming activities.

- (4) The maintenance trimming of mangroves that have been previously trimmed in accordance with an exemption or government authorization, including those mangroves that naturally recruited into the area and any mangrove growth that has expanded from the area subsequent to the authorization, if the maintenance trimming does not exceed the height and configuration previously established. Historically established maintenance trimming is grandfathered in all respects, notwithstanding any other provisions of law. Documentation of established mangrove configuration may be verified by affidavit of a person with personal knowledge of the configuration or by photographs of the mangrove configuration.
- (5) The trimming of mangrove trees by a state-licensed surveyor in the performance of her or his duties, if the trimming is limited to a swath of three feet or less in width.
- (6) The trimming of mangrove trees by a duly constituted communications, water, sewerage, electrical, or other utility company, or by a federal, state, county, or municipal agency, or by an engineer or a surveyor and mapper working under a contract with such utility company or agency, when the trimming is done as a governmental function of the agency.
- (7) The trimming of mangrove trees by a duly constituted communications, water, sewerage, electrical, or other utility company in or adjacent to a public or private easement or right-of-way, if the trimming is limited to those areas where it is necessary for the maintenance of existing lines or facilities or for the construction of new lines or facilities in furtherance of providing utility service to its customers and if work is conducted so as to avoid any unnecessary trimming of mangrove trees.
- (8) The trimming of mangrove trees by a duly constituted communications, water, sewerage, or electrical utility company on the grounds of a water treatment plant, sewerage treatment plant, or electric power plant or substation in furtherance of providing utility service to its customers, if work is conducted so as to avoid any unnecessary trimming of mangrove trees.
- (9) The removal of dead portions of mangroves that have been freeze-damaged provided the following criteria are met:
 - a. A period of six months has elapsed since the freeze event.
 - b. All trimming of trees in excess of ten feet in height and all trimming below six feet from the substrate is conducted by or under the direct supervision of a professional mangrove trimmer.
 - c. All trimmed branches and trunks are removed from the wetlands.

- d. The department is notified in writing of the trimming and the professional mangrove trimmer to be used (if applicable) a minimum of ten days in advance of the trimming.
- (b) Any rule, regulation, or other provision of law must be strictly construed so as not to limit directly or indirectly the exemptions provided by this section for trimming in riparian mangrove fringe areas except as provided in section 58-608(f), (g) and (h). Any rule or policy of the department, or local government regulation, that directly or indirectly serves as a limitation on the exemptions provided by this section for trimming in riparian mangrove fringe areas is invalid.
- (c) The designation of riparian mangrove fringe areas as aquatic preserves or Outstanding Florida Waters shall not affect the use of the exemptions provided by this section.
- (d) Trimming that does not qualify for an exemption under this section requires a permit as provided in section 58-606.

Sec. 58-606. Trimming of mangroves; permit requirement.

- (a) The department shall authorize mangrove trimming via a permit issued pursuant to this section, provided the trimming is consistent with the following criteria:
 - (1) The mangroves to be trimmed are located on lands owned or controlled by the applicant or on sovereign submerged lands immediately waterward and perpendicular to such lands;
 - (2) The mangroves to be trimmed are not located on uninhabited islands which are publicly owned or on lands set aside for conservation and preservation, or mitigation, except where necessary to protect the public health, safety, and welfare, or to enhance public use of, or access to, conservation areas in accordance with management plans approved by the state, county or municipality.
 - (3) The trimming of mangroves over ten feet in height is supervised or conducted exclusively by a professional mangrove trimmer;
 - (4) The mangroves subject to trimming under the permit do not extend more than 500 feet waterward as measured from the trunk of the most landward mangrove tree in a direction perpendicular to the shoreline;
 - (5) No more than 65 percent of the area (footprint) of mangroves at the subject site will be trimmed. Also, at least 25 percent of the mangroves in the trimmed area that are over 16 feet in pre-trimmed height may not be reduced in height. These trees, however, may be laterally trimmed provided that no portion of their canopies above 12 feet from the substrate is trimmed.
 - (6) No mangrove will be trimmed so that the overall height of any mangrove is reduced to less than six feet as measured from the substrate;
 - (7) No herbicide or other chemical will be used for the purpose of removing leaves of a mangrove;
 - (8) The trimming does not result in the removal, destruction, or defoliation of the mangroves;

- (9) All trimming of mangroves in excess of 16 feet in height must be conducted in stages so that no more than 25 percent of the pretrimmed foliage or height of the trees is removed annually. Regrowth from the previous year's trimming may be trimmed in addition to the 25 percent mentioned above;
- (10) Trimming may only be conducted from March 1 through November 30;
- (11) Only non-petroleum based lubricants must be used in chainsaws; and
- (12) All Brazilian pepper trees (*Schinus terebinthifolius*), punk trees (*Melaleuca quinquenervia*) and Chinese tallow (*Sapium sebiferum*) that are within 25 feet of the mangrove canopy must be removed from the applicant's property. Where the removal is to a degree that a potential for erosion is created, the area must be restabilized. Stumps and roots may be killed and left in place if desired.
- (13) All trimmed branches and trunks are removed from the wetlands.
- (b) The height and configuration of mangroves trimmed under permits issued pursuant to this section may be maintained under section 58-605(a)(4).
- (c) Requests for permits to trim mangroves must be submitted on the department's application form and must contain sufficient information to enable the department to determine the scope of the proposed trimming and whether the activity will comply with the conditions of this section.
- (d) The department shall grant or deny in writing each request for a permit within 30 days after receipt of a complete application, unless the applicant agrees to an extension. If the applicant does not agree to an extension and the department fails to act on the request within the 30-day period, the request is approved. The department's denial of a request for a permit is subject to appeal under section 58-611.

Sec. 58-607. Alteration of mangroves; permit requirement.

- (a) The department, when deciding to issue or deny a permit for mangrove alteration under this section, shall use the criteria in F.S. § 373.414(1) and (8) as follows:
 - (1) Whether the activity will adversely affect the public health, safety, or welfare or the property of others;
 - (2) Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
 - (3) Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;
 - (4) Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
 - (5) Whether the activity will be of a temporary or permanent nature;
 - (6) Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of F.S. § 267.061;
 - (7) The current condition and relative value of functions being performed by areas affected by the proposed activity; and

- (8) The cumulative impact of similar activities pursuant to F.S. § 373.414(8).
- (b) If the applicant is unable to meet these criteria, the department and the applicant shall first consider measures to reduce or eliminate the unpermittable impacts. If unpermittable impacts still remain, the applicant may propose, and the department shall consider, measures to mitigate the otherwise unpermittable impacts.
- (c) A request for a permit to alter mangroves must be submitted on the department's application form and with sufficient specificity to enable the department to determine the scope and impacts of the proposed alteration activities.
- (d) The use of herbicides or other chemicals for the purposes of removing leaves from a mangrove is strictly prohibited.
- (e) A permit from the department is not required under this article to trim or alter mangroves if the trimming or alteration is part of an activity that is permitted under F.S. part IV of chapter 373 or the County Water and Navigation Regulation set forth in article XV of chapter 58 of the County Code, as may be amended. The procedures for permitting under F.S. part IV of chapter 373 or the County Water and Navigation Regulations will control in those instances.

Sec. 58-608. Professional mangrove trimmers.

- (a) For purposes of this article, the following persons are considered professional mangrove trimmers:
 - (1) Certified arborists, certified by the International Society of Arboriculture;
 - (2) Professional wetland scientists, certified by the Society of Wetland Scientists;
 - (3) Certified environmental professionals, certified by the Academy of Board Certified Environmental Professionals;
 - (4) Certified ecologists certified by the Ecological Society of America;
 - (5) Landscape architects licensed under F.S. part II of chapter 481. Only those landscape architects who are certified in the state may qualify as professional mangrove trimmers under this division, notwithstanding any reciprocity agreements that may exist between this state and other states;
 - (6) Persons who have conducted mangrove trimming as part of their business or employment and who are able to demonstrate to the department, as provided in subsection (b), a sufficient level of competence to assure that they are able to conduct mangrove trimming in a manner that will ensure the survival of the mangroves that are trimmed; and
 - (7) Persons who have been qualified by the county through a mangrove-trimming qualification program as provided in subsection (b).
- (b) A person who seeks to assert professional mangrove trimmer status under subsection (a)(6) or (7) to trim mangroves under the exemptions and permits provided in sections 58-605 and 58-606, must request in writing professional mangrove trimmer status from the department. The department shall grant or deny any written request for professional mangrove trimmer status within 30 days after receipt of a complete application. If professional mangrove trimmer status has been granted by the department, no additional requests for professional

mangrove trimmer status need be made to the department to trim mangroves under the exemptions provided in section 58-605. Persons applying for professional mangrove trimmer status must provide to the department a notarized sworn statement attesting:

- (1) That the applicant has successfully conducted trimming on a minimum of ten mangrove-trimming projects authorized by the Florida Department of Environmental Protection or a local government program. Each project must be separately identified by project name, professional mangrove trimmer and permit number where applicable;
 - (2) That a mangrove-trimming or alteration project of the applicant is not in violation of F.S. §§ 403.9321 through 403.9333, this division, or any lawful rules adopted thereunder; and
 - (3) That the applicant possesses the knowledge and ability to correctly identify mangrove species occurring in this state.
- (c) The department may deny a request for professional mangrove trimmer status if the department finds that the information provided by the applicant is incorrect or incomplete, or if the applicant has demonstrated a past history of noncompliance with the provisions of F.S. §§ 403.9321 through 403.9333, this division, or any adopted mangrove rules.
 - (d) A professional mangrove trimmer status granted by the department may be revoked by the department for any person who is responsible for any violations of F.S. §§ 403.9321 through 403.9333, this article, or any adopted mangrove rules.
 - (e) The department's decision to grant, deny, or revoke a professional mangrove trimmer status is subject to appeal under section 58-611.
 - (f) All professional mangrove trimmers working in the county must register with the department by paying an annual registration fee and by demonstrating that they meet the criteria of section 58-608. The fee for first time registration shall be \$50.00 and annual renewals thereafter shall be \$25.00.
 - (g) All professional mangrove trimmers working in the county must notify the department prior to conducting any mangrove trimming or alteration including those activities authorized under the exemptions provided by section 58-605.
 - (h) All professional mangrove trimmers working in the county must be on site when mangrove trimming activities are performed under their supervision.
 - (i) Any local governmental regulation imposed on professional mangrove trimmers that has the effect of limiting directly or indirectly the availability of the exemptions provided by section 58-605 is invalid.

Sec. 58-609. Mitigation and enforcement.

- (a) A person may not alter or trim, or cause to be altered or trimmed, any mangrove within the landward extent of wetlands and other surface waters, as defined in chapter 62-340.200(19), Florida Administrative Code, using the methodology in F.S. § 373.4211, and chapter 62-340, Florida Administrative Code, when the trimming does not meet the criteria in section 58-605 except under a permit issued under section 58-606 or 58-607 by the department or as otherwise provided by this article. Any violation of this article is presumed to have occurred

with the knowledge and consent of any owner, trustee, or other person who directly or indirectly has charge, control, or management, either exclusively or with others, of the property upon which the violation occurs. However, this presumption may be rebutted by competent, substantial evidence that the violation was not authorized by the owner, trustee, or other person.

- (b) Any area in which five percent or more of the trimmed mangrove trees have been trimmed below six feet in height, except as provided in section 58-605(a)(3), (4), (6), (7), (8) and (9), destroyed, defoliated, or removed as a result of trimming conducted under sections 58-606 or 58-607 must be restored or mitigated. Restoration must be accomplished by replanting mangroves within six months, in the same location and of the same species as each mangrove destroyed, defoliated, removed, or trimmed, to achieve within five years a canopy area equivalent to the area destroyed, removed, defoliated, or trimmed; or mitigation must be accomplished by replanting offsite, in areas suitable for mangrove growth, mangroves to achieve within five years a canopy area equivalent to the area destroyed, removed, defoliated, or trimmed. Where all or a portion of the restoration or mitigation is not practicable, as determined by the department, the impacts resulting from the destruction, defoliation, removal, or trimming of the mangroves must be offset by donating a sufficient amount of money to offset the impacts, which must be used for the restoration, enhancement, creation, or preservation of mangrove wetlands within a restoration, enhancement, creation, or preservation project approved by the department; or by purchasing credits from a mitigation bank created under F.S. § 373.4135, at a mitigation ratio of no less than two-to-one and no greater than five-to-one credits to affected area. The donation must be equivalent to the cost, as verified by the department, of creating mangrove wetlands at no less than a two-to-one and no greater than a five-to-one, created versus affected ratio, based on canopy area. The donation may not be less than \$4.00 per square foot of created wetland area.
- (c) In all cases, the applicant, permittee, landowner, and person performing the trimming are jointly and severally liable for performing restoration under subsection (b) and for ensuring that the restoration successfully results in a variable mangrove community that can offset the impacts caused by the removal, destruction, or defoliation of mangroves. The applicant, landowner, and person performing the trimming are also jointly and severally subject to penalties.
- (d) If mangroves are to be trimmed or altered under a permit issued under section 58-607, the department may require mitigation. The department shall establish reasonable mitigation requirements that must include, as an option, the use of mitigation banks created under F.S. § 373.4135, where appropriate. The department's mitigation requirements must ensure that payments received as mitigation are sufficient to offset impacts and are used for mangrove creation, preservation, protection, or enhancement.
- (e) Any replanting for restoration and mitigation under this subsection must result in at least 80 percent survival of the planted mangroves one year after planting. If the survival requirement is not met, additional mangroves must be planted and maintained until 80 percent survival is achieved one year after the last mangrove planting.
- (f) The department shall enforce the provisions of this article in the same manner and to the same extent provided for in F.S. §§ 403.141 and 403.161, for the first violation, which includes, but is not limited to, the imposition of a civil penalty in an amount of not more than

\$15,000.00 per offense along with restoration of the mangroves consistent with the criteria of subsection (b) above.

- (g) For second and subsequent violations, the department, in addition to the provisions of F.S. §§ 403.141 and 403.161, shall impose additional monetary penalties for each mangrove illegally trimmed or altered as follows:
 - (1) Up to \$100.00 for each mangrove illegally trimmed; or
 - (2) Up to \$250.00 for each mangrove illegally altered.
- (h) In addition to the penalty provisions provided in subsections (b) through (g), for second and all subsequent violations by a professional mangrove trimmer, the department shall impose a separate penalty upon the professional mangrove trimmer up to \$250.00 for each mangrove illegally trimmed or altered.
- (i) Violations of this article are also subject to the provisions of section 1-8 which includes, but is not limited to, a fine not to exceed \$500.00 for violation of local ordinance.
- (j) Any violation of the provisions of this article may also be punished as provided for in Chapter 2, Article VIII of the Pinellas County Code.
- (k) Each day of the violation of the provision(s) of this article shall constitute a separate offense.
- (l) In addition to the sanctions contained in this section, the county may take any other appropriate legal action, including, but not limited to, emergency injunctive action, to enforce the provisions of this article. The county may also seek civil remedies pursuant to Chapter 90-403, Laws of Florida, as amended, the “Pinellas County Environmental Enforcement Act” (compiled in Chapter 58, Article II of the Pinellas County Code).

Sec. 58-610. Variance relief.

Upon application, the department may grant a variance from the provisions of this article if compliance therewith would impose a unique and unnecessary hardship on the owner or any other person in control of the affected property. Relief may be granted upon demonstration that such hardship is not self-imposed and that the grant of the variance will be consistent with the general intent and purpose of this article. The department may grant variances as it deems appropriate.

Sec. 58-611. Appeals.

- (a) Any person aggrieved by any final determination made by the department under this article may, within 30 days of such determination, appeal such determination to the special magistrate. The appeal must be filed with the department who will coordinate with the special magistrate to schedule a hearing within a reasonable time. The appeal must state the grounds upon which the department erred in its determination and how the appellant is aggrieved by such determination. Failure to file an appeal as provided in this section shall constitute acceptance of the department’s determination.
- (b) In hearing an appeal, the formal rules of evidence shall not apply but fundamental due process shall be observed and shall govern the proceedings. Upon determination of the special magistrate, irrelevant, immaterial or unduly repetitious evidence may be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a

trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

- (c) Any person aggrieved by the special magistrate's decision may file a petition for writ of certiorari with the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County within 30 days of the execution of the Special Magistrate's order.

Sec. 58-612. Notice of special magistrate hearing.

The department must mail to all property owners, as listed in the property appraiser's files, within a 500-foot radius of the property containing the project at issue, notice of any pending hearing before the special magistrate. The notice must contain the parcel identification number or address of the property containing the project, a brief description of the project and relief sought, and the date, time, and place of the hearing. All notices must be postmarked at least twenty days before the hearing date.

Sec. 58-613. Fees.

All applications for mangrove trimming permits shall be accompanied by a fee to be set by the board by resolution on an annual basis. Fees shall be sufficient to cover the cost of the review and issuance of the permit.

Sec. 58-614. Administration.

- (a) Permits issued pursuant to sections 58-606 and 58-607 shall expire one year from permit issuance if the project has not been completed, or if the initial trim has not been completed for those projects where trimming is to be phased in annually. Extensions may be granted by the department for good cause shown.
- (b) All permits issued under this article shall be prominently and openly posted in close proximity to the work allowed by the permit for the duration of the permit or until the work is complete.
- (c) The department may revoke any permit issued pursuant to sections 58-606 and 58-607 for fraud, misrepresentation or violation of the conditions imposed on the permit. Written notice of the intent of the department to revoke a permit shall be provided to the applicant, setting forth the specific reasons for the revocation. Upon notice of the department's intent to revoke the permit, the applicant shall immediately cease all trimming and alteration activities on site. The applicant shall have 30 days to show cause why the permit should not be revoked.
- (d) The department may issue a cease and desist order for any site where trimming or alteration has commenced and a permit has not been obtained but is required pursuant to this article. Any person receiving such an order for cessation of operations shall immediately comply with the requirements thereof. It shall be a violation of this article for any person to fail or to refuse to comply with a cease and desist order issued under the provisions of this section.
- (e) The regulation of mangrove protection under this article is intended to be complete and effective without reference to or in compliance with other statutory or Code provisions.

Secs. 58-615—58-649. Reserved.

SECTION 2. 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 shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

SECTION 3. Areas Embraced. This Ordinance shall be effective in the incorporated as well as unincorporated areas of the County.

SECTION 4. Inclusion in Code. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Pinellas County Code and that the sections of this Ordinance may be renumbered or re-lettered and the word “ordinance” may be changed to section, article or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 5. Filing of Ordinance; Effective Date. Pursuant to Section 125.66, Florida Statutes, a certified copy of this Ordinance shall 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 shall become effective upon filing of the ordinance with the Department of State.

PCAO 542686

APPROVED AS TO FORM

By: Yardley M. Collett
Office of the County Attorney