



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Land Use & Development Committee Members

FROM: Jimmy L. Morales, City Manager

DATE: January 22, 2014

SUBJECT **DISCUSSION OF THE CITY'S DRAFT TREE ORDINANCE PREPARED BY THE PARKS AND RECREATION DEPARTMENT'S GREEN SPACE MANAGEMENT DIVISION**

INTRODUCTION

The above item was referred by the City Commission to the Land Use & Development Committee at the November 14, 2012 Commission meeting.

BACKGROUND

The City of Miami Beach adopted the current version of the *Article II. Care and Maintenance of Trees and Plants Division 2 Trees* code on November 8, 2001. Since that time there has been substantial positive growth of the City's urban forest. A major reforestation effort was approved and initiated in FY 2006/2007 and has continued since. This effort, combined with neighborhood tree installations in conjunction with CIP improvements, has planted over 10,000+ reforestation trees in the city's streetscapes, parks and other public spaces.

The primary goal for any urban forestry program is sustainability. In order to adequately, protect and increase the value of the urban forest the development of a strong tree ordinance is of paramount importance. The City of Miami Beach is currently subject to Miami Dade County's tree preservation and protection ordinance. The present city tree code does not qualify for an exemption due to a lack of adequate specifications and is therefore not officially recognized. In that light the tree code was redrafted to incorporate many of the tenants present in the current Miami Dade County tree preservation and protection ordinance, with additional specifications uniquely tailored for the City of Miami Beach's urban forest. Adoption of the revised code will allow for official exemption from Miami Dade County tree removal permitting regulations, and also provide a potential urban forest management funding source.

ANALYSIS

Key Revision and Comparison Points:

- Miami Beach gains control over its urban forest. The city has qualified professional staff to manage the city's tree inventory, but at present, the city must obtain Miami Dade County, Regulatory and Economic Resources Environmental Resources Management Tree Program approval and a Tree Removal/Relocation Permit to relocate or remove trees. This delays recommended management activities and costs money every time the city applies for a tree removal/relocation permit.
- Defines the duties and authority of the city Urban Forester, establishing this person as individually responsible for managing the city's trees. The Urban Forester is the city official who is responsible for the management of the city's urban forest and who is assigned to carry

out the enforcement of this ordinance. In matters of tree planting, maintenance, removal, relocation, fertilization, bracing and all other activities and practices that require knowledge of trees and expertise in arboricultural practices, the Urban Forester is the city's designated authority.

- Creates a Tree Preservation Trust Fund to collect fees, penalties and donations. This fund shall solely be used for the planting of trees in Miami Beach and any other ancillary costs associated with the planting, establishment or preservation of trees.
- All fees, mitigation payments, and penalties will be paid to Miami Beach, rather than the county. At present there is no mechanism that requires payments collected for Miami Beach properties to be spent in Miami Beach. We can lose trees but get nothing in return. The City of Miami funds much of its tree planting with money collected as a result of its recently passed tree code. Mitigation in the revised code will be based on total trunk diameter of the removed trees, rather than amount of canopy removed as in the county code. Using trunk diameters is a more straightforward approach.
- Adopting the revised code would streamline permitting for tree removals and relocations by eliminating the need to involve and or obtain permission from county personnel which in turn saves time and costs for city residents.
- The revised code creates a Heritage Tree designation to recognize and protect trees of unique character and high value. This allows the city to protect any tree, palm or tree grouping with a historical value and also includes a strong mechanism to help prevent any unauthorized removals of these trees and understory. The process to determine the removal of Heritage Trees would be developed as the discussions of the final draft tree ordinance progress.
- The county defines Specimen Trees as those with a trunk diameter of 18" or greater. Mitigation for the removal of Specimen Trees requires more replacement trees and/or higher mitigation payments than for non-specimen trees. The revised Miami Beach code decreases the trunk diameter of Specimen Trees to 9". Trees of this size provide significant canopy cover, and many of our smaller native species never reach an 18" diameter. One of these trees could be the U.S. champion but still not be considered a specimen tree. This recommended change acknowledges the importance of trees smaller than 18", and is the biggest shift in previous policy concerning permitting and mitigation.
- Although the county code and the revised city code both require tree protection on construction sites, and specify generally the same types of protective measures, the revised city code provides more comprehensive specifications. Detailed requirements remove ambiguity, and promote better compliance. Provisions are included for adjustments to the requirements if authorized by the city urban forester.
- The revised code would require tree service providers to register with the city. When they register, contractors would be provided with a clearly written document that explains the city's code requirements and proper tree care techniques. They would agree to follow the requirements, and if they violate them would be subject to all penalties included in the code, and might be prohibited from working in the city. This helps shift responsibility for proper tree care and code compliance from the property owners, who may not know the rules, to the professionals, who should know the rules.
- The revised code provides definitions, language and punitive penalties designed to prevent improper tree and palm pruning, effective destruction of trees or palms and any unlicensed tree or palm removals of protected and heritage trees on private and public property.

- The appeals process, enforcement, fines, and civil remedies in the revised code generally follows the existing city policy as stated in the present tree code, so would require little change.

CURRENT STATUS

The final draft of the City of Miami Beach's revised tree code is undergoing internal review and commenting from the Miami Dade County Department of Regulatory and Economic Resources Environmental Resources Management Tree Program, for compliance with the minimum requirements for exemption from Miami Dade County's Environmental Code.

CONCLUSION

The Administration requests the Land Use & Development Committee please discuss this matter and provide further direction.

Attachments: Miami Beach Tree Code Draft

JM/MT/JR/JO/MW

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DIVISION 2. TREES*

***Editor's note:** Ord. No. 2000-3279, § 1, adopted November 8, 2000, repealed the former Division 2, §§ 46-56, 46-57, and enacted new provisions as set out herein. Formerly, Division 2 pertained to similar subject matter and derived from Code 1964, §§ 2-83, 25-96.1; Ord. No. 932844, § 3, adopted April 21, 1993.

Sec. 46-56. Definitions

Arborist: An individual who is a specialist in the care and maintenance of trees and is a Certified Arborist by the International Society of Arboriculture (ISA).

Caliper: A measurement of trunk diameter of nursery trees, measured 6 inches above the ground for trunks with a diameter of 4 inches or less, and 12 inches above the ground for trunks with a diameter larger than 4 inches.

Consulting Arborist: An individual who is a specialist in the care and maintenance of trees and is a Registered Consulting Arborist certified by the American Society of Consulting Arborists (ASCA)

Critical Root Zone: Portion of the root system that is no less than 10' from the trunk of the tree. This number may be adjusted by the City Urban Forester and or his/her designee per an individual tree assessment. Encroachment or damage to the critical root zone will put the tree at risk of failure.

DBH (diameter at breast height): the measurement of a tree's trunk diameter taken 4 ½ feet above the ground. In the case of multiple-trunk trees, the DBH shall be the sum of the diameters of all trunks at 4 ½ feet above the ground.

Drip line: an imaginary vertical line running to the ground from the outer-most horizontal extension of a tree's canopy. For trees with canopies set off-center, the drip-line will be projected based on the average diameter of the existing drip-line, using the tree trunk as its point of origin.

Effectively destroy: An Act of God (hurricane, lightning strike or other severe weather event) that causes a tree to die or go into immediate decline, and to cause, suffer, allow or permit any act which will cause a tree to die or go into a period of unnatural decline. Acts which may effectively destroy a tree include, but are not limited to, damage inflicted upon the root system by heavy machinery, excessive root removal or cutting, excessive trimming including hatracking, removal of live palm fronds originating above the horizontal plain, tears and splitting of limb ends or peeling and stripping of bark caused by improper tree and palm pruning techniques not in accordance with the latest edition of the ANSI A-300 Pruning Standards, use of climbing spikes on trees or palms not designated for removal, trenching or excavating in the critical root zone, changing the natural grade above the root system or around the trunk, damage intentionally inflicted on the tree which permits infection or pest infestation, application of herbicides or other

chemical agents, intentional fire damage to the tree, the infliction of a trunk wound through girdling, spiking and bark removal, or the removal of sufficient canopy to cause the unnatural decline of the tree.

Girdling: The removal of a strip of bark around a tree trunk or a branch of a tree. This practice is sometimes employed to kill a tree.

Hatracking: To flat-cut the crown of a tree by severing the leader or leaders; or to prune a tree by stubbing off branches three (3) inches or greater in diameter; or to remove more than 25 percent of a tree's canopy; or to reduce the size or spread of a tree's crown in a manner not in conformance with the most recently published American National Standards Institute (ANSI), A-300 standards.

Heritage Tree: a tree so designated by the City of Miami Beach Commission because of its unique or intrinsic value to the community with regards to its historic value, size, age, location, distinctive form, exceptional characteristics, ecological value, or other relevant criteria.

Historic District: Area or site with significant historic, architectural or archeological value to the public as so designated by the City of Miami Beach Commission and or Miami Beach Historic Preservation Board.

Non-viable: A tree that is not capable of existing and continuing to provide the biological or aesthetic qualities associated with a healthy, functioning tree resource.

Prohibited tree species: Those tree species listed in Chapter 24 of the Miami Dade County Code, as amended from time to time, and whose sale, propagation, planting, importation or transportation shall be prohibited. These species, if present, shall be removed prior to site development or redevelopment.

Protected tree: Any tree that is not designated by the City of Miami Beach as an exempt tree, and:

- a. on private property in single family zoning districts, has a trunk diameter at breast height (DBH) of equal to or greater than nine (9) inches, or
- b. on public land or zoning districts other than single family districts, has no less than a three (3) inch DBH or ten (10) foot mature height, as defined in this section, or
- c. is a replacement tree or any non-exempt tree that is represented in a planning document for the purposes of securing an approved building or demolition permit.

Protective barrier: Fences or like structures at least four (4) feet in height that exclude damage or disturbance to trees and tree roots on construction sites.

Pruning/trimming: The selective removal or reduction of tree limbs to benefit the overall health and safety of a tree. Pruning shall be done according to current standards

established by the International Society of Arboriculture (ISA) and the American National Standards Institute ANSI A-300 pruning standards (Part1).

Public nuisance tree: a dead or dying tree, or a tree with an infectious disease or insect infestation, or any tree that poses a threat to public safety or the health of other trees in the vicinity, as determined by the City of Miami Beach's Urban Forester.

Removal: To cut down, dig up, destroy, or effectively destroy any tree, or the unapproved relocation of a tree.

Right-of-way: Land provided by dedication, deed or easement which is devoted to, required for or intended for the use by the public as a means of public traverse.

Specimen tree: Any tree with an individual trunk that has a diameter at breast height (DBH) of nine (9) inches or greater or any multiple-trunk tree in which the sum of the diameters of all the trunks at breast height is nine (9) inches or greater, but not including non-native species of the genus Ficus.

Spiking: The insertion, whether vertically or horizontally, of foreign objects into the trunk of the tree or its root system with the intention of killing the tree.

Topping: See Hatracking.

Tree: Any self-supporting woody dicotyledonous or monocotyledonous perennial plant that has a trunk diameter at 4.5 feet above the ground of no less than three (3) inches or normally grows to an overall mature height of no less than ten (10) feet in Southeast Florida.

Tree work permit: The permit required to remove or relocate existing tree(s) on or from a subject property, or to prune roots with a diameter of two (2) inches or greater, or to remove more than 25 percent of a tree's crown.

Tree Service: Any business or individual who accepts or solicits compensation for trimming, removing, or relocating trees, or who trims, removes, or relocates trees as part of landscape or yard maintenance activities for which compensation is accepted.

Urban Forester: The City of Miami Beach official with specialized knowledge of urban forest management, arboricultural and horticultural practices, who has been designated to manage the City of Miami Beach's urban forest, to provide direction for tree planting, maintenance, removals and all arboricultural practices and tree-related activities, and to carry out the enforcement of this ordinance.

Viable: A tree that is capable of existing and continuing to provide the biological or aesthetic qualities associated with a healthy, functioning tree resource.

Sec. 46-57. Purpose and Intent

It is recognized that trees are a vital part of the City of Miami Beach's infrastructure, providing numerous environmental, economic, and social benefits. Trees improve air quality, save energy by reducing air conditioning costs, ameliorate high urban temperatures, reduce storm water runoff, increase property values, improve productivity, reduce stress and crime, and beautify residential and commercial neighborhoods. Trees also decrease urban noise, encourage tourism and economic growth, preserve community character and identity, provide habitat for wildlife, and shade pedestrian walkways. Each year, trees provide millions of dollars of benefits to the community. It is the purpose and intent of Division 2 to establish policies, regulations and standards to ensure that the City of Miami Beach, its residents and its visitors will realize the full benefits of a healthy, well-managed urban forest. The provisions of this Division are enacted to:

1. Promote the establishment and maintenance of the optimum sustainable amount of tree cover on public and private lands.
2. Establish and maintain diversity in tree species and age classes to provide a stable and sustainable urban forest.
3. Minimize the removal or loss of protected trees.
4. Require mitigation for the removal of protected trees on public and private property.
5. Establish procedures to designate and protect Heritage Trees of unique or intrinsic value to the community, as defined in this Division.
6. Maintain City of Miami Beach trees in a healthy and non-hazardous condition through good management practices.
7. Minimize maintenance costs and damage to sidewalks, streets, and other infrastructure by planting tree species that are appropriate for existing site conditions and available growing space.
8. Preserve the community's character and quality of life well into the future.

Sec. 46-58. Scope, applicability and exemptions

It shall be unlawful for any person, unless otherwise permitted by the provisions of Division 2, to perform tree removal work or effectively destroy any tree located within the boundaries of the City of Miami Beach, either public or private property without first obtaining a Tree work permit. The provisions of Division 2 shall apply to all protected trees on public or private property within the City of Miami Beach limits, unless expressly exempted in Sec. 46-58 4. (Exemptions).

1. Trees that are subject to review shall include those trees with a DBH of three (3) inches or greater or a mature height of ten (10) feet or greater on all public and private property, except on private property in single family zoning districts. On private property in single family zoning districts, only Specimen trees with a DBH of nine (9) inches or greater shall be subject to review.

2. For tree and palm work or removals, including prohibited species, on public or private property or on property owned or controlled by the City of Miami Beach East of the Coastal Construction Control Line (CCCL) the work plan must be approved by the City of Miami Beach Public Works Environmental Division and a Tree Work Permit shall be required from the City of Miami Beach. A State of Florida Department of Environmental Protection permit shall also be required.
3. Any tree work on a public or private right-of-way or on property owned by the City of Miami Beach shall also require a permit from the Public Works Department. All mangrove trees and any tree located upon land which is wetlands as defined in F.S. § 373.019, as amended from time to time, shall also be subject to the permitting requirements of Article IV of Chapter 24 of the Code of Miami-Dade County, Florida, as amended.

4. Exemptions

The following shall be exempt from the provisions of this ordinance and do not require a tree work permit:

- a. Removal of prohibited species that do not have a Heritage tree designation or are located in a designated Historic Area. A site visit by Miami Beach Parks and Recreation Department staff is required to verify proper species identification.
- b. Dead or effectively destroyed trees after confirmation by the Miami Beach Parks and Recreation Department. This exemption does not apply to any trees or palms effectively destroyed through violations of Division 2.
- c. Any tree that, as the result of damage, disease or other cause, poses imminent danger to health, safety or property and therefore requires immediate removal, can be removed after verbal authorization by the Miami Beach Parks and Recreation Department without obtaining a written tree work permit, provided that the owner of the property can document (photographs, etc.) that such hazardous condition(s) existed prior to the removal. Canopy mitigation shall be required in accordance with **Sec. 46-62 Tree Replacement** and **Sec. 46-65 Specimen Tree Standards** as applicable.
- d. Removal of trees within the yard area of an existing single-family residence, provided the trees are not Specimen trees with a DBH of nine (9) inches or greater. This exemption does not apply to trees which are growing on public rights-of-way adjoining existing single-family residences.
- e. Removal of trees within licensed plant nurseries and botanical gardens, provided said trees were planted and are growing for the display, breeding, propagation, sale or intended sale to the general public in the ordinary course of business.

- f. Removing, trimming, cutting or altering of any mangrove tree or removal of any tree located upon land which is wetlands as defined in Section 24-5 of the Code of Miami-Dade County, Florida. Trees located upon land which is wetlands as defined in Section 24-5 and mangrove trees located anywhere in the City of Miami Beach shall be subject to the permitting requirements of Article IV of Chapter 24 of the Code of Miami-Dade County, Florida.
- g. The Miami Beach City Manager can suspend the provisions of this ordinance by determining in writing that tree removal permitting requirements will hamper private or public work to restore order to the City of Miami Beach after a declared state of emergency by the City of Miami Beach Commission, for example, following a hurricane or other disaster. Suspension of the ordinance shall apply only to trees that must be removed to restore the City of Miami Beach's transportation corridors and infrastructure and to damaged trees that pose an imminent threat to life or property, or prevent a person from using or employing his/her property, providing the owner of the property can document that such conditions existed prior to removal.

Nothing in this article shall be construed to prevent the pruning or trimming of trees on private property where necessary for proper landscape maintenance and safety, provided that no more than twenty-five (25) percent of the crown or foliage is removed annually and that the pruning performed does not effectively destroy the tree.

Sec. 46-59. Tree work permit application processing, requirements, and review

- 1. *Permit, when required.* A tree work permit shall be required:
 - a. for the removal or relocation of any tree within the City of Miami Beach that is subject to review as specified in section 46-58 unless exempted by section (Exemptions);
 - b. for pruning or trimming that removes more than twenty-five (25) percent of the canopy of a tree; and
 - c. for the pruning of tree roots with a diameter of two (2) inches or greater, except that no permit shall be required for the pruning of roots when such pruning is essential to any emergency repairs.

No person, agent or representative thereof, directly or indirectly, shall trim more than 25% of a tree's canopy, or cut down, remove, relocate, or effectively destroy any tree situated on any property described in Sec. 46-58, or prune roots two (2) inches in diameter or larger, without first obtaining a tree work permit as hereinafter provided. No building permit shall be issued by the Miami Beach Building Department, and no right-of-way permit shall be issued by the Miami Beach Public Works Department for any work that has the potential to affect trees, including new construction, additions, carports, pools, decks, fences, driveways, parking lots, tennis courts, demolition, or similar work, unless the Urban Forester or designated

representative has determined that no tree work permit is required, or a valid tree work permit has been issued in accordance with this Division.

2. *Application requirements.* Applications for tree work permits shall be made on the form provided for that purpose by the Miami Beach Public Works Department, which will act as the lead agency. The application shall include a written statement indicating the reasons for the removal or relocation of each tree, or for removing more than 25% of a tree's canopy, or for cutting roots two (2) inches in diameter or larger, and shall describe the proposed tree work. The following documentation and any applicable fees shall accompany applications:
 - a. Applications for all locations except for existing single family homes. For applications for tree work in conjunction with any new construction, including new single family homes and additions, a tree survey drawn to scale identifying the species and listing the height, spread and DBH of all existing trees shall be provided. Said survey shall be prepared by and bear the seal of a professional land surveyor, licensed in the State of Florida. In addition, a tree disposition and site plan drawn to scale identifying and listing all existing trees and specifying the condition of each tree and whether said trees are to remain, to be removed, to be relocated, to have more than 25% of the canopy removed, and/or to have roots two (2) inches in diameter or larger cut shall be provided. This plan shall also illustrate the location of all existing structures and/or all proposed new construction, as applicable, the location of any overhead and/or underground utilities, the new locations of existing trees to be relocated on site, and all areas affected by construction-related activities, such as access routes to the property, and staging area. Said plan shall be prepared by and bear the seal of a landscape architect currently licensed to practice in the State of Florida.
 - b. Applications for existing single family homes. For applications for tree work at existing single family homes, a site sketch indicating the approximate location and disposition of the tree(s) shall fulfill the requirement for a tree survey and site plan.
 - c. A tree replacement plan prepared in accordance with **Sec. 46-62 Tree Replacement**.
 - d. Applications that have fulfilled criteria a. through c. above as determined by Miami Beach Public Works Department staff, shall be deemed complete.
3. *Review of application.* Upon receipt of a completed application, the Miami Beach Public Works Department shall forward the application to the Miami Beach Parks and Recreation Department which shall review said application for compliance with the regulations as set forth in this article. Such review shall include a field inspection of the site and referral of the application to the Miami Beach Planning Department, Miami Beach Public Works Department, and other departments or agencies as necessary. In historic districts or sites, a certificate of appropriateness may also be required for proposed tree and or palm impacts as per **Article X – Historic Preservation, Division 3, Sec. 118-564**. Within thirty (30) calendar days from the date an application is deemed complete, the Miami Beach Parks and Recreation

Department shall issue an intended decision approving, denying or approving with conditions said application.

4. *Notice.* Within twenty-four (24) hours of the issuance of an intended decision to approve or deny an application for a tree work permit, the Miami Beach Parks and Recreation Department shall notify the applicant and post a notice of the intended decision on or adjacent to the subject property in a location visible to the general public. The posting is to remain visible on the subject property for ten (10) calendar days from the posting date. Appeal of the Miami Beach Parks and Recreation Department's decision on an application shall be to the special master.
5. *Issuance of permit.* If no appeal, in accordance with Section (Appeals), is filed within ten (10) calendar days of the issuance of the intended decision, the tree work permit, if originally approved by the Miami Beach Parks and Recreation Department, shall be issued. The property owner shall be responsible for insuring that the tree work permit is displayed until the authorized work is completed. If the permitted work is not completed within one year from the issuance date, the permit shall become null and void.
6. *Fees.* Fees for tree work permits shall be established by the Miami Beach City Commission. Applications from government agencies for tree removals solely in areas dedicated to public use may, at the discretion of the Miami Beach City Commission, be exempted from application and permit fees.
7. *Final inspection.* No later than six (6) months following the completion of the authorized work, the applicant shall schedule a final inspection with the Miami Beach Parks and Recreation Department for verification and acceptance of the final authorized work. The inspection shall be conducted by the Urban Forester or designated Miami Beach Parks and Recreation staff with specialized knowledge of arboricultural and horticultural practices. All new, relocated or mitigation trees within the project area shall be replaced if they are not alive and viable one (1) year after the final inspection.
8. The City of Miami Beach shall endeavor to ensure that the provisions of this Division are not used to unduly burden a property owner, or prevent them from the use of their property.

Sec. 46-10 Criteria and conditions for tree removal and relocation

1. *Criteria for non-specimen tree removal.* No permit shall be issued for tree removal from the site unless one of the following criteria exists:
 - a. The tree is located in the proposed building footprint or yard area where a structure or improvement may be placed and unreasonably restricts the permitted use of the property. Trees located in the property frontage (within the City of Miami Beach's required setback), shall not be considered to be located within the building footprint or yard. Ingress and egress to garages are not

considered the building footprint or yard. Trees on the public right-of-way shall not be considered for removal as a result of restriction to or from ingress or egress to the garages or parking on the site, provided however, that if there is no other reasonable access to and from the structure or to the property from the public right-of-way, as determined by the Urban Forester and Miami Beach Planning Department, this requirement shall be waived. All project drawings must include all existing trees on the private property and public right-of-way accurately drawn to scale. Authorization to remove trees, including right-of-way trees, shall be approved prior to issuance of a building permit.

- b. The tree is diseased, damaged or in danger of falling; interferes with utility service; creates unsafe vision clearance that cannot be corrected through pruning without effectively destroying the tree; or materially impairs the structural integrity of an existing structure.
- c. The tree is an undesirable or non-native tree species and will be replaced with a South Florida native tree species to promote good forestry practices; or is an undesirable or non-native species and interferes with native tree species.
- d. The tree creates a health hazard, or it is in the general welfare of the public that the tree be removed for a reason other than set forth above.

2. *Conditions for tree removal, relocation and replacement of non-specimen trees.* Any or all of the following conditions may be required:

- a. The applicant may be required to redesign the project to preserve non-specimen tree(s), or any other tree determined by the Miami Beach Parks and Recreation Department or Miami Beach Planning Department to be of substantial value due to its species, size, age, form and/or historical significance, and to provide an alternate plan, when feasible, which shall include the preservation of said tree(s) and design alterations within the scope and intent of the initially proposed plan.
- b. Where practical, as determined by the Urban Forester, Specimen trees, or any other tree determined by the Miami Beach Parks and Recreation Department or Miami Beach Planning Department to be of substantial value due to its species, size, age, form and/or historical significance, that is proposed for removal shall be relocated on or off-site. The applicant shall adhere to acceptable tree relocation specifications, in accordance with the most current ANSI A-300 Standards.
- c. If the Urban Forester determines it is not reasonably possible to relocate said tree(s) either on or off-site, because of age, type, size, or condition, the applicant shall be required to replace all trees permitted to be removed in accordance with the tree replacement requirements in **Sec. 46-62 Tree replacement.**
- d. The Miami Beach Parks and Recreation Department may require that the applicant provide a written report from an ISA Certified Arborist and or ASCA Registered Consulting Arborist before making any determinations in conjunction with this Section. The Miami Beach Parks and Recreation Department may also require monitoring by an ISA Certified Arborist and or ASCA Registered Consulting Arborist during construction to assure tree preservation.

Sec. 46-61 Criteria and conditions for the removal of more than 25% of a tree's canopy or for cutting roots two inches in diameter or larger.

1. *Criteria.* No permit shall be issued for the removal of more than 25% of a tree's canopy or for cutting roots two inches in diameter or larger unless one of the following criteria exists:
 - a. The tree is located in the proposed building footprint area or yard area where a structure or improvement may be placed and unreasonably restricts the permitted use of the property. Trees located in the property frontage (within the City of Miami Beach's required setback), shall not be considered to be located within the building footprint or yard. Ingress and egress to garages are not considered the buildable area or yard. Trees on the public right-of-way shall not be considered for removal of more than 25% of a tree's canopy or for cutting roots two inches in diameter or larger as a result of restriction to or from ingress or egress to the garages or parking on the site, provided however, that if there is no other reasonable access to and from the structure or the property from the public right-of-way, as determined by the Urban Forester and Miami Beach Planning Department, this requirement shall be waived. All project drawings must include all existing trees on the private property and public right-of-way drawn to scale. Authorization to remove more than 25% of a tree's canopy or to cut roots two inches in diameter or larger, including right-of-way trees, must be approved prior to issuance of a building permit.
 - b. The tree is diseased or damaged; creates hazardous conditions; interferes with utility service; creates unsafe vision clearance; or materially impairs the structural integrity of an existing structure.
2. *Conditions.* Any or all of the following conditions may be required:
 - a. The applicant may be required to redesign the project to preserve the structural integrity and minimize impacts to Specimen tree(s), or any other tree determined by the Miami Beach Parks and Recreation Department or Miami Beach Planning Department to be of substantial value due to its species, size, age, form and/or historical significance, and to provide an alternate plan, when feasible, which shall include the preservation and protection of said tree(s) and design alterations within the scope and intent of the initially proposed plan. For all permitted tree work, the applicant shall adhere to International Society of Arboriculture (ISA) Best Management Practices, and to ANSI A300 Standards as published in the most current edition of *ANSI A300, The American National Standard for Tree Care Operations – Tree, Shrub, and Other Woody Plant Maintenance – Standard Practices*.
 - b. The Miami Beach Parks and Recreation Department may require that the applicant provide a written report from an ISA Certified Arborist and or ASCA Registered Consulting Arborist before making any determinations in conjunction with this Section. The Miami Beach Parks and Recreation Department may also require monitoring by an ISA Certified Arborist and or ASCA Registered Consulting Arborist during construction to assure tree preservation and protection.

Sec. 46-62 Tree replacement

1. *Tree replacement chart.* The tree replacement chart, below, shall be used to determine the total number and size of trees that shall be planted as replacement trees for all trees permitted to be removed. The replacement trees are based on the diameter in inches (DBH) of the trees to be removed. To determine the required replacement trees, calculate the total sum in inches of the diameters of all trees to be removed. This sum will result in one (1) single number in inches that represents the combined total of the diameters of all trees to be removed. Diameter measurement shall be rounded up to the nearest inch. All replacement trees shall have a height and root-ball size appropriate for the DBH, as stated in *Grades and Standards for Nursery Plants*, Florida Department of Agriculture and Consumer Services. Refer to **Sec. 46-65 Specimen Tree Standards** for tree replacement requirements for Specimen trees.

a) Tree replacement chart

TABLE INSET:

Total diameter of tree(s) to be removed (Sum of inches at DBH)	Total number of replacement trees required (2" DBH minimum each; 12' minimum height)	OR	Total number of replacement trees required (4" DBH minimum each; 16' minimum height)
3"--6"	2	or	1
7"--12"	4	or	2
13"--18"	6	or	3
19"--24"	8	or	4
25"--30"	10	or	5
31"--36"	12	or	6
37"--42"	14	or	7
43"--48"	16	or	8
49"--60"	20	or	10

If the sum of the diameter of trees to be removed exceeds a total of sixty (60) inches, the additional inches shall be added cumulatively from the top of the chart, down to the bottom of the chart, to calculate the number of trees required as replacement trees.

2. *Tree species and diversity standards.* Tree(s) installed as replacement trees shall be tree(s) of native or non-native species and shall be planted according to ISA best management practices, and to ANSI A300 Standards as published in the most

current edition of ANSI A300, *The American National Standard for Tree Care Operations – Tree, Shrub, and Other Woody Plant Maintenance – Standard Practices*. When more than ten (10) trees are installed as replacement trees, a diversity of species shall be required as per the Tree Species Diversity Chart, below.

a) Tree species diversity chart

TABLE INSET:

Required number of trees	Required minimum number of species
11--20	2
21--50	4
51 or greater	6

The number of trees of each species planted shall be proportional to the number of species required. A minimum of fifty (50) percent of all replacement trees planted shall be native to Miami-Dade County, and no more than fifty (50) percent of the replacement trees shall be palms. Palms may be installed only to replace palms. When trees native to South Florida are removed, all replacement trees shall be native to South Florida. South Florida is geographically defined as the Southern tip of Florida South of Lake Okechobee and includes hardiness zones 10 & 11.

3. *Prohibited species.* Replacement trees shall not be required for the removal of any prohibited species, and no fees shall be charged. However, Miami Beach Historic Preservation Board approval is required before any Specimen tree, including prohibited species, is removed from public or private property within a designated historic district.
4. *Tree quality.* Trees installed as replacement trees in accordance with this section shall conform to, or exceed, the minimum standards as Florida Number One or better as provided in the most current edition of "Grades and Standards for Nursery Plants, Part I and II," prepared by the Florida Department of Agriculture and Consumer Services. Trees shall be planted according to ISA best management practices and ANSI A300 Standards as published in the most current edition of ANSI A300, *The American National Standard for Tree Care Operations – Tree, Shrub, and Other Woody Plant Maintenance – Standard Practices*.
5. *Off-site replacement trees.* If the total number of trees required as replacement trees cannot be reasonably planted on the subject property, the applicant may enter into an agreement with the City of Miami Beach, as approved by the Miami Beach Parks and Recreation Department, to plant the excess number of replacement trees on an approved alternate location of publicly owned land or publicly accessible parcel.

6. *City of Miami Beach Tree preservation trust fund.* If the total number of trees required as replacement trees cannot be reasonably planted on the subject property, and there is insufficient planting space available at a Miami Beach Parks and Recreation Department approved alternate location of publicly owned land or publicly accessible parcel, the applicant shall contribute into the City of Miami Beach's tree preservation trust fund the sum of one thousand dollars (\$1,000.00) for each two-inch DBH tree required as replacement trees in accordance with the Tree Replacement Section. Fees for the tree preservation trust fund shall be reviewed annually by the Miami Beach City Commission to reflect cost of living adjustments and/or market conditions and may be modified by approval of the Miami Beach City Commission. In establishing fees, the City of Miami Beach shall consider the cost of material, labor, transportation, planting, watering and mortality rate of replacement trees.
7. *Completion.* The replacement tree process shall be completed prior to the issuance of a certificate of occupancy, temporary certificate of occupancy and in accordance with specific conditions as included in an issued tree work permit.

Sec. 46-63 Tree preservation and protection requirements, root cutting and tree relocations

1. *Tree protection requirements during construction*
 - a. *General.* During site development and construction on private or public property all reasonable steps shall be taken to prevent the destruction or damaging of trees for which no tree work permit has been issued. Any owner, tenant, contractor or agent thereof who fails to provide tree protection as stated herein shall be guilty of tree abuse. Trees destroyed or receiving major damage must be replaced by trees of equal environmental value, as specified by the Miami Beach Planning Department and Miami Beach Parks and Recreation Department, before occupancy or use unless approval for their removal has been granted under permit. Tree protection zones must be established for all trees that remain in place on site and for any trees relocated within or to the site. When proposed development activities may damage the root systems or canopies of trees to be retained or relocated on site, alternatives to the proposed activities, or effective protective measures, shall be identified and used.
 - b. *Permit/construction drawings.* All permit/construction drawings of the site shall show the tree protection zones, as prescribed by the Miami Beach Parks and Recreation Department, as shaded areas which are accurately drawn to scale and labeled as such on the drawings. The tree protection zones shall be shown on all drawings that include any underground utility installations, including but not limited to, irrigation, plumbing, electrical, telecommunication or streetlight lines. The tree protection zones shall also be shown on all

drawings that include structural installations that will require excavation, such as footings, and for above-ground installations, such as walkways, streetlights, overhead wires or other types of infrastructure.

- c. Approval of the Miami Beach Parks and Recreation Department Director or the Director's designee as related to these tree protection issues is a requirement for permitting. The City of Miami Beach shall provide a copy of these specifications and they shall be made part of the permit set plans and specifications associated with permits issued for a project, and a copy shall be provided to all contractors or subcontractors working on the site. No permits shall be issued in conflict with these requirements without the written consent of the Miami Beach Parks and Recreation Department Director or the Director's designee.

2. *Tree protection requirements*

As a condition of approval of the site plan for any project, the following tree protection, root pruning, and tree relocation specifications shall be followed. Additional protective measures may be required if so determined by the Urban Forester. The Urban Forester or designated Miami Beach Parks and Recreation Department employee shall have the authority to enter the subject property to ensure compliance with required tree protection measures.

a. *Protective Barriers*

- i) Placement. Protective barriers shall be placed at the dripline of each tree, cluster of trees, or preservation area, and in no case less than ten (10) feet from the trunk of any protected tree, tree cluster or preservation area unless the Urban Forester determines that a lesser or greater distance is required. In situations where trees have been transplanted to the project site, the protective fencing shall be placed not closer to the tree than a point one to two feet outside the root ball, or at the dripline, whichever is greater. The fenced tree protection zones shall be extended where necessary to protect tree canopies as well as roots. If trees are to be preserved in place and root pruning is required to accommodate new construction, the root pruning locations shall be identified and approved by the Miami Beach Parks and Recreation Department, and fencing shall be installed one (1) to two (2) feet beyond the edge of the root ball. The installation of the fencing shall be coordinated with any phased root pruning that must occur. Tree maintenance measures such as irrigation must be in place prior to any root pruning or transplanting.
- ii) Timing and Duration. All protective barriers shall be installed prior to the start of any construction or site development, including tree removal, demolition or land-clearing activities, and shall remain in place throughout all phases of construction. The Miami Beach Parks and Recreation Department shall be called to inspect the installed fence prior to commencement of any activity on the site. Protective

barriers shall be maintained in place until development is completed, and shall not be removed until the Miami Beach Parks and Recreation Department inspects the site and authorizes their removal. A review of the plans will be made at this point in order to ensure that all forthcoming activities will not violate the established tree protection zones.

iii) Barrier Specifications. Sturdy temporary barriers shall be installed around all tree protection zones. Barriers shall be a minimum of four feet high, and shall be constructed of continuous chain link fence with metal posts at 8-foot spacing, or of two-by-four-inch posts with three equally spaced two-by-four-inch rails. Posts may be shifted to avoid roots. Other types of barriers shall not be used unless authorized by the Urban Forester. A monetary performance assurance instead of or in addition to a protective barrier may be required to ensure protection of a tree or trees or to guarantee restoration of an equivalency. The amount of said assurance shall be based upon the equivalent value of the tree or trees specifically covered, as determined by an International Society of Arboriculture (ISA) Certified Arborist and or American Society of Consulting Arborists (ASCA) Registered Consulting Arborist hired by the developer. Any assurance required for a "protected tree" shall be four (4) times the equivalent value for that tree.

b. Activities Within Tree Protection Zones Enclosed By Protective Barriers

- i) Understory plants within areas surrounded by protective barriers shall be protected.
- ii) No oil, fill, equipment, building materials, building debris, or any other material shall be placed within the areas surrounded by protective barriers
- iii) No disposal of any waste material such as paints, oils, solvents, asphalt, concrete, mortar, or any other material shall occur within the areas surrounded by protective barriers.
- iv) Natural grade shall be maintained on areas surrounded by protective barriers. In the event that the natural grade of the site is changed as a result of site development such that the safety of the tree may be endangered, tree wells or retaining walls are required. Only hand digging and grading activities will be permitted within the tree protection zone. All surrounding areas must be graded to a point that meets the outside of the tree protection zone
- vi) Underground utility lines, including, but not limited to, irrigation, plumbing, electrical, or telecommunication lines, shall be placed outside the areas enclosed by protective barriers. If said placement is not possible, disturbance and root damage shall be minimized by using techniques such as tunneling, hand digging, excavation with an air spade, or the use of overhead utility lines.
- vii) No vehicles or equipment shall be permitted within areas surrounded by protective barriers

- c. Fences, walkways, and walls shall be constructed to avoid disturbance to any protected tree. Post holes and trenches located close to trees shall be dug by hand and adjusted as necessary, using techniques such as discontinuous footings, to avoid damage to major roots.
- d. No attachments or wires other than those of a protective or non-damaging nature shall be attached to any trees during site development or construction.
- e. Relocated trees shall be braced in such a fashion as to not scar, penetrate, perforate, or otherwise inflict damage to the tree
- f. All trees planted or transplanted pursuant to this article shall be maintained alive and healthy in the site of planting or transplantation for a period of twelve months after final acceptance by the Miami Beach Parks and Recreation Department. Any of such trees that die or are effectively destroyed within twelve months shall be replaced by the applicant. The Miami Beach Parks and Recreation Department shall retain jurisdiction to insure compliance with this Section.

3. *Root cutting*

The cutting of roots with a diameter of two inches or larger is prohibited unless there is no feasible construction alternative, as determined by the Urban Forester and Miami Beach Planning Department. The City of Miami Beach may require that construction activities, such as trench lines and walkway construction, be redirected away from trees.

Root cutting, when determined to be necessary, shall be done according to approved techniques as outlined herein:

- a. Before roots are cut, trees shall be evaluated by the Urban Forester or designated Miami Beach Parks and Recreation Department staff to determine whether the root cutting will destabilize the tree or cause unacceptable damage to the tree.
- b. Unless unavoidable because of sidewalks, pavement, or other infrastructure, root cuts shall be made, at minimum, a distance from the trunk equivalent to three times the tree's trunk diameter at 4.5 feet above ground (DBH). Preferably cuts shall be made at a distance from the trunk equivalent to five times the tree's DBH or greater.
- c. Roots may not be torn off with power equipment, and cut roots shall not be left with ripped, ragged or shredded ends. Roots must be cleanly severed with sharp hand tools or power root saws.
- d. When tunneling or otherwise avoiding roots is not possible, the trench shall be carefully excavated by hand or machine and, when a root with a diameter of 2 inches or greater is encountered, a final clean cut shall be made with a saw. The cut shall be made flush with the side of the trench closest to the tree. The root pruning trench shall be backfilled with soil.
- e. When adjacent to new curbing, uncurbed paved areas, or areas of grade changes, roots shall be cut no more than 18 inches towards the tree from the back of the curb, the edge of the pavement, or the point of intersection of old and new grades, respectively. After root pruning, no excavation for the

installation of forms or for any other reason may be performed any closer than six inches outside of the root pruning cut. The root pruning trench shall be backfilled with soil.

4. *Tree relocations*

- a. For trees that will be relocated, irrigation must be present and applied effectively for two to four weeks prior to root pruning, through the period of root pruning, and after root pruning and transplantation until the tree has been completely reestablished at the new planting space. This may be several years from the point of root pruning. Irrigation shall be operated automatically with water being applied directly to and just outside of the remaining intact root system. Watering frequency shall be such so as to insure that free water is available to the root system at all times. Any temporary disruption in automatic operation shall be supplemented by hand watering.
- b. There should be no canopy pruning or a minimum of canopy pruning before or after root pruning, as the presence of leaves helps root systems recover. Only dead, diseased or damaged branches shall be pruned at this time.
- c. The root system of a tree to be relocated shall be well watered before the tree is dug and lifted to ensure that the tree is properly hydrated, and to improve cohesiveness of the root ball.
- d. All planting, transplanting and relocating of trees or palms shall, at minimum, be done in compliance with standards set forth in the most recently published edition of the American National Standards Institute ANSI A-300 Standards. This requirement includes all procedures, techniques, standards for minimum rootball size, and any other standards included in ANSI A-300 Standards.

Exceptions to the requirements of subsections (1) and/or (2) and/or (3) of this section shall be approved only when the property owner receives specific written authorization from the Miami Beach Parks and Recreation Department Director or the Director's designee. The Miami Beach Parks and Recreation Department Director or the Director's designee shall not issue written approval unless the Miami beach Parks and Recreation Department Director or the Director's designee determines that the affected trees can be adequately protected and maintained without meeting the requirements of subsections of this section, or that, due to exceptional circumstances, it is not practical or reasonable to meet the requirements of subsections of this section.

Sec. 46-64 Heritage trees

1. *Designation:* Heritage Trees shall be those trees or grouping of trees designated as such by a resolution of the Miami Beach City Commission in recognition that the trees or grouping of trees are of unique or intrinsic value to the general public. Trees of any species, including prohibited species, may be designated as Heritage Trees if they meet the required criteria. Trees may be so designated if one of the following criteria applies:

- a. It is an historic tree, which is a tree of notable historical interest and value to the City of Miami Beach because of its location or historical association with the community.
- b. It is a tree or grouping of trees of high value to the community because of its species, size, age, location, distinctive form, exceptional characteristics, ecological value, aesthetic value or other relevant criteria.
- c. It is a champion tree, which is a tree that has been identified by the State of Florida Division of Forestry as being the largest of its species within the state or by the American Forestry Association as being the largest of its species in the United States or the world.

Designations can be initiated by any person with the written consent of the property owner(s) of such tree(s) by making application to the Miami Beach Parks and Recreation Department, or on City of Miami Beach owned property by City of Miami Beach staff. After initiated, designation shall be reviewed by City of Miami Beach staff and those trees meeting the requirements of this section shall be presented to the Miami Beach City Commission who shall decide whether to designate a tree(s) as a Heritage Tree. A variance from Miami-Dade County is required by Chapter 24-49.9 of the Miami-Dade County Code must be obtained prior to the designation of any prohibited species as a Heritage tree. After Miami Beach City Commission approval of a Heritage Tree designation, the Miami Beach City Clerk shall notify the property owner(s) in writing. A listing of designated Heritage Trees, including the specific locations thereof, shall be kept by the Miami Beach Parks and Recreation Department.

2. *Protection:* Any tree designated as a Heritage Tree shall be subject to the provisions of this Code.

- a. All areas within the drip-line of a Heritage Tree shall be protected from any activity that may disturb or injure the tree.
- b. Prior to the commencement of any development activities or other potentially disturbing activities that may impact a Heritage Tree, and for the duration of said activity, protective barriers as required by **Sec. 46-63 Tree preservation and protection requirements, root cutting and tree relocations** shall be placed a minimum of fifteen (15) feet from the trunk of the tree or at the drip-line of the tree, whichever is greater.
- c. Where development activity or other potentially disturbing activity is permitted within the drip-line of a Heritage Tree, the Urban Forester or his designee may require additional protection provisions to be incorporated in the conditions of the permit to assure protection of the Heritage Tree.
- d. A variance of the required minimum front, rear, and side-yard setbacks may be granted to allow the preservation of Heritage Trees.

3. *Removal:* No tree work permit shall be issued for removal of a Heritage Tree without a written evaluation by an ISA Certified Arborist and or ASCA Registered Consulting Arborist demonstrating that removal is necessary to avoid an immediate peril to life and/or property, and/or the tree is dead, non-viable, or deteriorated to the point that removal is warranted. Furthermore, the tree work permit shall not be issued until the

Urban Forester or his designee evaluates the tree and determines that removal is necessary. Removal of Heritage Trees must be approved by the Miami Beach City Commission and the replacement shall be determined by the Miami Beach City Commission.

Sec. 46-65 Specimen tree standards

1. *Specimen trees.* Specimen trees that have not been classified as prohibited species shall be preserved whenever reasonably possible. Upon receipt of an application to remove a Specimen tree, the City of Miami Beach shall consider the following factors in evaluating said application:
 - a. Size and configuration of the property.
 - b. Size and configuration of any proposed development.
 - c. Location of the tree relative to any proposed development.
 - d. Whether or not the tree can be preserved under the proposed plan or any alternative plan.
 - e. Health, condition and aesthetic qualities of the tree.
 - f. Whether the tree poses a threat to persons or property.
2. *Alternate plans.* If, upon review of the factors enumerated in *Sec. 46-59. Tree work permit application processing, requirements, and review* the City of Miami Beach determines that a Specimen tree cannot reasonably be preserved under the proposed plan, then the applicant shall provide an alternate plan when feasible, which shall include preservation of the specimen tree and design alterations consistent with the scope and intent of the initially-proposed plan. Alterations consistent with the scope and intent of the initially-proposed plan may include, but shall not be limited to:
 - a. An adjustment of building orientation on a site.
 - b. An adjustment of lot lines within a site proposal for more than one (1) lot when said adjustment will not cause an unreasonable loss of usable space. An applicant shall have the burden of proof in the determination of what constitutes an unreasonable loss of usable space.
3. *Specimen tree relocation.* If preservation of the Specimen tree and any alternate design consistent with the scope and intent of the initial plan are mutually exclusive, then the Miami Beach Parks and Recreation Department may issue a permit to relocate the Specimen tree. If the tree removal permit requires relocation, then the applicant shall be required to relocate the tree in accordance with the standards set forth in **Sec. 46-63 Tree preservation and protection requirements, root cutting and tree relocations.**
4. *Removal of Specimen trees.* If relocation of the Specimen tree is not reasonably possible, due to the size, health, location, species or any other factor, then a permit may be issued for removal, and tree replacement shall be required.

5. *Replacement requirements for Specimen trees.* As a condition of the issuance of a tree removal permit for the removal of a Specimen tree, tree replacement requirements shall be twice those specified in **Sec. 46-62 Tree replacement** as well as an equitable contribution to the Miami Beach Tree Preservation Trust Fund. In the event that replacement tree installation is not feasible on-site, then alternative off-site replacement shall be required on City of Miami Beach approved publicly owned land or publicly accessible parcels as well as an equitable contribution to the Miami Beach Tree Preservation Trust Fund. In the event that there is insufficient planting space available at a City of Miami Beach approved offsite location, there shall be an equitable contribution to the City of Miami Beach Tree Preservation Trust Fund for two times the amount of \$1,000 for each two-inch DBH tree required as replacement trees in accordance with the Tree Replacement Section.
6. *Exemptions from Specimen tree replacement requirements.* An applicant may be exempt from the Specimen tree replacement requirements of **Sec. 46-65 Specimen tree standards** but subject to the tree replacement requirements in **Sec. 46-62 Tree replacement** under the following circumstances.
- a. Upon submittal of a statement and supporting documentation including but not limited to a tree appraisal report or tree risk assessment report from a landscape architect registered in the State of Florida, ISA Certified Arborist and or ASCA Registered Consulting Arborist which indicates that a Specimen tree, due to disease, condition, growth habit or any other reasonable botanical factor, does not provide the aesthetic or environmental contribution associated with a Specimen tree. Said statement shall include the specific reason(s) for the claimed exemption from the provisions of **Sec. 46-65 Specimen tree standards**.
 - b. When preservation of the Specimen tree would cause a foreseeable risk to property.
 - c. When a site contains more than one (1) Specimen tree, and fifty (50) percent or more of the existing Specimen trees and at least fifty (50) percent of the existing Specimen tree canopy area is preserved.
 - d. All proposed Specimen tree exemptions are subject to review and approval by City of Miami Beach Parks and Recreation Department staff.

Sec. 46-66 City of Miami Beach Tree preservation trust fund.

1. *Establishment of trust:* There is hereby created the Miami Beach Tree Preservation Trust Fund (the "trust") for the purpose of accepting and disbursing the replacement fees paid to the City of Miami Beach as part of tree work permits and any other monies deposited with the Miami Beach Parks and Recreation Department for tree preservation purposes. This fund shall solely be used for the planting of trees on publicly owned land or publicly accessible parcels in the City of Miami Beach and any other ancillary costs associated with the planting, establishment or preservation of trees.

2. *Term of existence:* The trust shall be self-perpetuating from year to year unless specifically terminated by the Miami Beach City Commission.

3. *Trust assets:* All monies received hereunder from public or private concerns shall be placed in trust for and inure to the use and benefit of the Miami Beach Parks and Recreation Department and its successors and assigns in interest. Said funds shall be expended, utilized and disbursed only for the planting, establishment or preservation of trees as designated by the Miami Beach Parks and Recreation Department on publicly owned land or publicly accessible parcels.

4. *Trust administration:*

- a. Trust funds shall be expended, utilized and disbursed only for the purposes designated by the Miami Beach Parks and Recreation Department.
- b. All monies deposited hereunder shall be deposited in the trust, which shall be a separate account established and maintained apart from the general revenue funds and accounts of the City of Miami Beach.
- c. Monies obtained hereunder may be accepted on behalf of the Miami Beach Parks and Recreation Department by the Director or the Director's designee and upon receipt shall be delivered to the Miami Beach Department of Finance, which shall cause the same to be credited to the trust.

5. *Disbursal or conversion of assets:*

- a. The expenditures to be made by the Miami Beach Parks and Recreation Department will be made in accordance with the guidelines of the Administrative Code pertaining to contracting and purchasing.
- b. Trust funds will be used to obtain trees, landscaping, irrigation systems, and any other items or materials necessary and proper for the preservation, maintenance, relocation or restoration of trees and the urban forest on any publicly owned land or publicly accessible parcels in Miami Beach. These monies may also be used to cover the expense of distributing saplings to the public, for example, within a City of Miami Beach Adopt-a-Tree program.

Sec 46-67 Tree services and arborists

Tree Services are any businesses or individuals who accept or solicit compensation for trimming, removing, or relocating trees, or who trim, remove, or relocate trees as part of landscape or yard maintenance activities for which compensation is accepted. Arborists are tree specialists certified by the International Society of Arboriculture (ISA).

- 1. All tree services and arborists working within the City limits of Miami Beach shall be required to register with the Miami Beach Parks and Recreation Department.

2. Vehicles used by a tree service or arborist operating within the City of Miami Beach shall be clearly marked with the name of the tree service/arborist. ISA Certified arborists shall display the certified logo and registration number, if any.
3. A photocopy of the current occupational license and City of Miami Beach registration shall be available for inspection at each job site.
4. Persons engaged in business as a tree service or providing tree services in the City of Miami Beach shall adhere to the American National Standards Institute, A-300 Standards, and shall comply with all articles contained in this ordinance.
5. Persons engaged in business as a tree service or providing tree services in the City of Miami Beach who fail to comply with the stated standards shall be excluded from removing, relocating, pruning or treating trees within the City limits of Miami Beach.
6. Persons engaged in business as a tree service or providing tree services in the City of Miami Beach who violate the provisions of this ordinance shall be subject to all penalties stated herein.

Sec. 46-68 Trees constituting a public nuisance

1. Any tree, dead tree or tree stump upon any parcel of land within the City of Miami Beach which imminently threatens or endangers the public health, safety or welfare, or which the Urban Forester or his/her designee determines to be a threat to the City of Miami Beach urban forest due to an untreatable disease or infestation, is declared a public nuisance.
2. Trees or other woody plant species, on property bordering on any street, which obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct sight lines at any street or alley intersection are declared a hazard.
3. It shall be the duty of any person owning or occupying real property on which there may be nuisance trees, dead trees, stumps or hazards as described in (1) and/or (2) to remove them when corrective pruning or treatment cannot alleviate the hazard or nuisance, correctively prune in accordance with American National Standards Institute A-300 Pruning Standards (part 1), or treat those hazards and nuisances in such manner as to eliminate the threat to public safety or the possibility of invading or infesting surrounding plant life. Canopy mitigation shall be required in accordance with **Sec. 46-62 Tree Replacement** and **Sec. 46-65 Specimen Tree Standards** as applicable.

The City of Miami Beach shall give notice to the owner upon whose parcel of land such hazard or nuisance is located, advising the owner of the same.

5. Such notice shall be served by personal service or certified mail. In the event that the address of the owner is unknown or such certified mail is returned unclaimed or refused, such notice may be served by posting the same in a conspicuous place on the premises upon which the nuisance is located.
6. Such notice shall command the owner to forthwith remove, correctively prune, or treat such tree, dead tree or stump no later than ten (10) days after receipt or posting of the aforementioned notice, whichever is applicable. In the event that such hazard or nuisance is not corrected by the owner, the City of Miami Beach may remove, correctively prune, or treat the same or have the same removed,

correctively pruned or treated and the exact cost thereof shall be assessed to the owner as provided by law in the case of special assessments.

7. Liens shall be forthwith due and payable, unless the time for payment thereof shall be extended by the Miami Beach City Commission, and there shall be applicable thereto the same penalties and rights for sale and forfeiture as may be provided by law for special assessments for the cost of local improvements.
8. Each day any such violation exists shall constitute a separate offense.

Sec. 46-69 Appeals, appellate fees

1. *Appeals to the special master.* The property owner, the applicant, or any aggrieved party having standing under Florida law may appeal to the special master any tree work permit or any decision on matters relating to applications for tree work permits by filing within fifteen (15) calendar days after the date of the decision a written notice of appeal. All appeals to the special master in accordance with this Section shall be accompanied by a fee of five hundred dollars (\$500.00), plus three dollars and fifty cents (\$3.50) per mailed notice, provided, however, that no fees shall be charged for such appeals initiated by an owner of a property which abuts the property for which a tree work permit is sought, including those across a street or alley, or by a nonprofit corporation dedicated to conservation and protection of the natural and physical environment, or by a homeowner association which has one member who owns property within five hundred (500) feet of the property for which the tree work permit is sought. The notice of appeal shall set forth concisely the decision appealed from and the reasons or grounds for the appeal. The special master shall hear and consider all facts material to the appeal and may affirm, modify or reverse the decision, or may grant or deny the appeal of the issued tree work permit. The decision of the special master shall constitute final administrative review, and no petition for rehearing or reconsideration, shall be considered by the City of Miami Beach. Appeals from decisions of the special master may be made to the courts as provided by the Florida Rules of Appellate Procedure.
2. *Notice.* All public hearings on appeals shall be noticed as follows. Notice of the time and place of the public hearing shall be mailed at least ten (10) days in advance of the hearing to the owner of the subject property and the owners of the adjacent properties. At least ten (10) days in advance of the hearing, the subject property shall be posted with a sign in accordance with the relevant section of the City of Miami Beach Code.
3. *No tree removal permitted during an appeal.* Upon timely submission of an appeal made pursuant to the requirements of this Section, no removal of any trees which could be affected by the subject appeal shall occur, pending final disposition of the appeal. A violation of this subsection will automatically result in an additional five hundred dollar (\$500.00) fine payable to the City of Miami Beach Tree Preservation Trust Fund for each separate violation of this Section.

Sec. 46-70. Enforcement/civil remedies

1. Enforcement

- a. *Jurisdiction.* The City of Miami Beach's Parks and Recreation Department, in conjunction with the City of Miami Beach's Code Compliance Division, which shall have the power of enforcement, shall have the power to promulgate and enforce rules, regulations and specifications concerning the trimming, spraying, removal, planting, pruning, cutting and protection of trees citywide. These City of Miami Beach entities shall have jurisdiction for the proper and effective enforcement of all provisions of this Division, and shall have the right to inspect subject properties in accordance with the approved tree work permit and the provisions of this Division.
- b. *Individual enforcement.* Each tree removed without a tree work permit shall constitute a separate and distinct violation and shall be the subject of individual enforcement.
- c. *Tree viability after project completion.* If the Miami Beach Parks and Recreation Department determines that any tree is not viable, live and growing one year after all associated development activity on the property is completed, the Miami Beach Parks and Recreation Department shall require that said tree be replaced with the same tree species and size which was originally planted or relocated, as per the approved tree work permit.

2. Civil remedies

The cost of repair or replacement or the appraised dollar value of such tree, as determined by an ISA Certified Arborist and or (ASCA) Registered Consulting Arborist, shall be borne by the party in violation. Any person or agent thereof, in violation of any provision of this Division shall be subject to the procedures for enforcement as set forth in Sections 46-71 through 46-80 of the Miami Beach City Code. Anyone found in violation of any of the provisions herein shall be subject to a maximum fine of \$25,000.00 for each violation. In addition, maximum costs may be in the amount which is necessary to replace a tree of the same size and species that was removed or destroyed.

- a. *Fine.* Any person, or agent thereof, who removes a tree without a tree work permit, shall be fined one thousand dollars (\$1,000.00) per violation, per day for the first violation, and shall be fined five thousand dollars (\$5,000.00) per tree for every repeat violation of this ordinance, or a greater penalty as provided by law, and in addition undergo the tree replacement process in the form of replacement trees pursuant to the Tree Replacement section. Each tree removed without a tree work permit shall constitute a separate and distinct violation, subject to a separate fine and tree replacement pursuant to the Tree Replacement section.

b. *Tree replacement required.* In addition to the monetary fine established above, the planting of replacement trees shall be required. The number of trees required as replacement for each tree that was removed without a permit shall be based on the "Tree replacement chart for trees removed without a permit," below. As shown in the chart, the number of required replacement trees for trees removed without a permit shall be double the number of required replacement trees for trees removed with a permit. If the total number of trees required as replacement trees cannot be reasonably planted on the subject property, or at a Miami Beach Parks and Recreation Department approved offsite location on publicly owned land or publicly accessible parcel the applicant may contribute into the City of Miami Beach's Tree Preservation Trust Fund in an amount based upon the below chart. **The number of trees required as replacement for each Specimen tree that is removed without a permit shall be two times the requirements of the "Tree replacement chart for trees removed without a permit," below.**

c. **Tree replacement chart for trees removed without a permit**

TABLE INSET:

Diameter (DBH) of each tree removed without a permit	Number of replacement trees required (2" DBH minimum each; 12' minimum height)	OR	Number of replacement trees required (4" DBH minimum each; 16' minimum height)	OR	Contribution into Tree Trust Fund
3"--6"	4	or	2	or	\$2,000.00
7"--12"	8	or	4	or	\$4,000.00
13"--18"	12	or	6	or	\$6,000.00
19"--24"	16	or	8	or	\$8,000.00
25"--30"	20	or	10	or	\$10,000.00
31"--36"	24	or	12	or	\$12,000.00
37"--42"	28	or	14	or	\$14,000.00
43"--48"	32	or	16	or	\$16,000.00
49"--60"	40	or	20	or	\$20,000.00

If the sum of the diameter of trees to be removed exceeds a total of sixty (60) inches, the additional inches shall be added cumulatively from the top of the chart, down to the bottom of the chart, to calculate the number of trees required as replacement trees.

In cases where tree removal has occurred and no data is available or obtainable in regards to diameter breast height (DBH) the total square footage of canopy removed

shall be calculated by the Urban Forester and or his/her designee utilizing the latest available overhead aerials and or applicable geographic information system (GIS) data. Tree replacement requirements for tree removal with no (DBH) data available or obtainable shall take into account tree species and growth habit, and may be adjusted upwards or downwards by the Urban Forester and or select Miami Beach Parks and Recreation staff accordingly.

- d. *Irreparable or irreversible violations.* In the event the special master finds the effective destruction of any tree without the required permit to be irreparable or irreversible in nature, the special master may impose a fine not to exceed twenty five thousand dollars (\$25,000.00) per violation, or a greater penalty as provided by law, plus mitigation in the form of replacement trees. In determining the amount of the fine, the special master shall consider the following factors:
 - 1. The gravity of the violation;
 - 2. Any actions taken by the violator to correct the violation; and
 - 3. Any previous violations committed by the violator.
- e. *Withholding of a new building permit.* The removal of any tree in violation of this Article shall constitute grounds for withholding new building permits and certificate of occupancy directly related to said tree removal until the violation has been corrected, including the payment of all fines and the planting of all trees required as replacement trees, pursuant to this Section. Alternatively, in order to obtain the new building permit, the person in violation may post a payment and performance bond naming the *City of Miami Beach as obligee*. The bond shall be in the amount of ten (10) percent of the construction cost or ten percent of the appraised value of the property, if no construction exists. The bond will be maintained in place until the violation has been corrected, pursuant to this Section. In the event a bond is not feasible, the City of Miami Beach may accept an irrevocable, unconditional letter of credit, in the previously stated percentages, naming the *City of Miami Beach as payee*. This Section shall not apply to complete applications submitted to the City of Miami Beach on the effective date of this ordinance.
- f. *Withholding of a certificate of occupancy.* The City of Miami Beach shall not approve the zoning inspection required for a temporary or final certificate of occupancy until all violations of this Division have been corrected, including the payment of all fines and the planting of all trees required as mitigation, pursuant to this Section.
- g. *Remedies cumulative.* The remedies provided in this Division shall be cumulative to all remedies provided by law and/or equity, and the election of one shall not preclude the other.

3. Judicial remedies

In addition to any other remedies provided by this Division, the City of Miami Beach shall have the following judicial remedies available for violations of this Division or any permit condition promulgated under this Division:

- a. The City of Miami Beach may institute a civil action in a court of competent jurisdiction to establish liability and to recover damages for any injury caused by the removal or abuse of trees in contravention of the terms of this article.
- b. The City of Miami Beach may institute a civil action in a court of competent jurisdiction to impose and recover a civil penalty for each violation in an amount of not more than \$25,000.00 per violation. However, the court may receive evidence in mitigation. Each tree unlawfully removed or abused under the provisions of this Division shall constitute a separate violation hereunder.
- c. The City of Miami Beach may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with this Division to enjoin any violation thereof; and to seek injunctive relief to prevent irreparable injury to the trees or properties encompassed by the terms of this Division. (Ord. No. 2000-3279, § 1, 11-8-00)
- d. In the event the City of Miami Beach institutes any civil action to enforce the terms of this article in a court of competent jurisdiction, the City of Miami Beach shall be entitled to recover the fines imposed pursuant to the violation(s), the cost of trees required as mitigation, the costs associated with the investigation and prosecution, inclusive of a reasonable attorney's fee for the prosecuting attorney, together with any equitable and legal remedies deemed reasonable and proper by the court.

Sec. 46-71 Prohibited species

This Division incorporates by reference the Miami-Dade County Landscape Manual listing of prohibited species. If present on a development or redevelopment site, they shall be removed prior to development or redevelopment, and their sale, propagation, planting, importation or transportation shall be prohibited. **The only exceptions to this shall be if the particular site contains prohibited species trees that have been designated as Heritage trees or are located in a designated Historic District as so defined in Sec. 46-56 Definitions, provided a variance has been obtained from Miami Dade County as required pursuant to Section 24-49.9 of the Miami-Dade County Code.** No fees shall be charged for their removal, and replacement trees may be required for the removal of any prohibited species in accordance with City of Miami Beach Code Sec. 118-251. Design review criteria. Final decisions on canopy replacement for prohibited species shall involve review and approval from City of Miami Beach Parks and Recreation staff. The current list of prohibited species is included below. This list may be amended from time to time as defined per Miami Dade County code Sec. 24-49.9. The Miami Beach Parks and Recreation Department shall be responsible for making the list available to applicants.

BOTANICAL NAME	COMMON NAME(S)
<i>Acacia auriculiformes</i>	Earleaf Acacia
<i>Adenanthera pavonina</i>	Red Sandalwood,
<i>Albizia lebbek</i>	Woman's Tongue
<i>Araucaria heterophylla</i>	Norfolk Island Pine
<i>Bishofia javanica</i>	Bishopwood; Toog
<i>Casaurina</i> spp.	Australian Pine
<i>Cupaniopsis anacardioides</i>	Carrotwood
<i>Dalbergia sissoo</i>	Indian Rosewood; Sissoo
<i>Ficus altissima</i>	Lofty Fig; False Banyan
<i>Ficus bengalensis</i>	Indian Banyan; Banyan Tree
<i>Ficus microcarpa</i> (= <i>F. nitida</i> ; <i>F. retusa</i> var. <i>nitida</i>), except for 'Green Island' cultivar	Laurel Fig; Indian Laurel; Chinese Banyan
<i>Flacourtia indica</i>	Governor's Plum
<i>Hibiscus tiliaceus</i>	Sea Hibiscus, Mahoe
<i>Leucaena leucocephala</i>	Lead Tree; Leucaena
<i>Melaleuca quinquenervia</i>	Melaleuca; Paperbark Tree; Punk Tree
<i>Metopium toxiferum</i>	Poison Wood
<i>Mimosa pigra</i>	Catchall Mimosa
<i>Ricinus communis</i>	Castorbean
<i>Schefflera actinophylla</i> (= <i>Brassia actinophylla</i>)	Schefflera; Queensland Umbrella Tree
<i>Schinus terebinthifolius</i>	Brazilian Pepper; Florida Holly
<i>Thespesia populnea</i>	Southern Mahoe

Sec. 46-72 Duties and authority of the urban forester

The Urban Forester is the City of Miami Beach official who is responsible for the management of the City of Miami Beach's urban forest and who is assigned to carry out the enforcement of this ordinance. In matters of tree planting, maintenance, removal, relocation, fertilization, bracing and all other activities and practices that require knowledge of trees and expertise in arboricultural practices, the Urban Forester is the City of Miami Beach's designated authority.

1. The Urban Forester shall have the authority to promulgate rules and regulations, including arboricultural specifications governing the planting, maintenance, removal, fertilization, pruning, and bracing of trees on the streets or other public sites in the City of Miami Beach, and shall direct, regulate, and control the planting, maintenance, and removal of all trees growing now or hereafter in any public area of the City of Miami Beach.

- a. He/she shall cause the provisions of this ordinance to be enforced. In the absence of the Urban Forester these duties shall be the responsibility of a qualified alternate, with the requisite knowledge of arboricultural and horticultural practices, designated by the Director of the Miami Beach Parks and Recreation Department.

- b. He/she shall review plans for all projects on public property that may impact existing vegetation or propose new plantings.
2. The Urban Forester shall have the authority and jurisdiction of regulating the planting, maintenance, and removal of trees on streets and other publicly owned property to insure safety or preserve the aesthetics of such public sites.
- a. The Urban Forester shall have authority over City of Miami Beach tree crews, staff or contracted labor as required to ensure proper planting, maintenance and removal of trees on streets or other publicly owned property.
- b. The Urban Forester shall advise all other City of Miami Beach departments on matters relating to planting, maintenance, or removal of trees on public lands as requested by the various department heads, and shall be consulted by other departments whenever work is scheduled within a distance of six (6) feet from the trunk of a tree, or which may result in the cutting of roots larger than two (2) inches in diameter. Emergency work and emergency repairs are excluded from this provision. However, the Urban Forester shall be consulted after the work is done, but in any case prior to backfilling the excavations resulting from the emergency work.
3. *Supervision.* The Urban Forester shall have the authority and it shall be his duty to supervise or inspect all work done under a permit issued in accordance with the terms of this ordinance.
4. *Condition of Permit.* The Urban Forester shall have the authority to affix reasonable conditions to the granting of a tree work permit in accordance with the terms of this ordinance.
5. No person shall hinder, prevent, delay, or interfere with the Urban Forester or other Miami Beach Parks and Recreation Department staff designated to enforce this ordinance, while engaged in carrying out the execution or enforcement of this ordinance; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the municipality.

Secs. 16-73-46-90. Reserved