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MEMORANDUM

TO: The Honorable Dave Kerner, Mayor
and Members of the Board of County Commissioners

FROM: Jon MacGillis, ASLA, Zoning Director

DATE: November 23, 2020

**RE: Presentation regarding the History and Current Practice of the
Tree Policy in the Unified Land Development Code (ULDC)**

This memorandum serves to follow up to the July 30, 2020 Zoning BCC Hearing, and direction to staff to prepare a presentation to address several areas of the PBC Landscape Code raised by Commissioner McKinlay:

- Tree policies/code requirements
- Regulations on Preservation and Canopy trees,
- Tree Canopy Study, and;
- Legislature that limits or restricts tree use.

Tree Policy-Code requirements

Palm Beach County adopted regulations relative to landscape in 1973 and has had many amendments over the year as outlined in Attachment A. The 1986 Code was prepared by Zoning staff using the South Florida Water Management District Model Code which greatly expanded provisions relative to the preservation of native vegetation and canopy cover and removal of prohibited vegetation. In 1989 the Department of Environmental Resource Management (ERM) was created and adopted regulations to protect the environment, one of those ordinance was the Native Vegetation Protection Ordinance. Under ORD 1992-020, the ULDC included regulations that required a minimum 50% vegetation installed with new development be Florida Native material. Additionally, it required 100% replacement vegetation be Florida native. In 2003 the BCC adopted a comprehensive rewrite of the Landscape Code. The County hired a Consultant to help prepare the code and to focus on distinguishing the landscape provisions and requirements for the various Tiers in the County.

Overall PBC has been proactive in seeking amendments to the Landscape Code with input from various interest groups and professionals in the landscape industry. Over the years the Land Development Regulation Board (LDRAB) has convened Landscape Subcommittees Meeting where interested parties and landscape professionals have discussed and made recommendations to code amendments that have been adopted by the BCC.

Regulations on Preservation and Canopy Trees

As stated above both the Department of ERM and PZB oversee the review, implementation and enforcement of tree preservation requirements. These



regulations are found in the ULDC Article 7, Landscape Code and Art 14 Vegetation Protection.

- Pursuant to Articles 7, Landscaping and 14, Environmental Resource Management (ERM) the Unified Land Development Code (ULDC) provide requirements for the preservation of existing native vegetation. Both ERM and Zoning Staff coordinate with an Applicant to ensure the maximum amount of vegetation that exists is preserved on site, or mitigated through other requirements. Permits and procedures are adopted to assist in the application of protecting the existing vegetation.
- Article 7, also provides for minimum number of canopy trees, palms, and pines that must be planted for a proposed development, and includes a limitation on the maximum percentages of palms/pines (25%). The ULDC also includes restrictions on placement of specific species in relation to roadways and sidewalks.
- Article 7 has minimum percentages of native vegetation (60%) to promote more viable plant material and life, and to assist in reduction of our water resources, can survive in the south Florida environment

Tree Barricade Permit:

- A Tree Barricade permit is required prior to any vegetation removal from any site. The Tree Barricade Permit requires vegetation that is identified by Zoning and ERM staff to be preserved and clearly identified on this site to be protected during all phases of construction. This newly adopted code requirement has ensured, when the approval is adhered to by the developer, additional native tree canopy is being preserved in the County. The Zoning Division is currently doing a study of the Tree Barricade Permit process to confirm if the process is successfully being implemented and enforced and if additional code amendments are need to strengthen the provisions.

Tree Canopy Study

At this time Palm Beach County has not conducted a Tree Canopy Study to evaluate the gain or loss of canopy cover. The Office of Resilience (OOR) advised Zoning Staff that the Department of Parks and Recreation started a study, specifically for parks, but it has not been completed. OOR has not started a study for the remainder of the unincorporated area at this time.

Legislature that limits or restricts tree use

The Zoning Staff monitors pending legislature and responds to the PBC Legislative Director on possible impacts of the legislation on current County regulations. Once the legislative document is signed into law zoning staff ensures any necessary amendments to the ULDC are prepared for the BCC review and adoption. Some recent legislature that impacted vegetation are:

- **HB 2019-1159**
 - HB 2019-1159 was codified into the ULDC under Ordinance 2020-001. The state implemented regulations that pre-empt the local government from requirement permits for residential developments to remove vegetation that is a danger to their property and does not require the vegetation to be replaced. The vegetation removal must be confirmed by a Registered Landscape Architect or Arborist in the



state of Florida. The Zoning Division has Registered Landscape Architects and Certified Arborists on Staff to confirm accuracy of the proposed danger for removal.

- Florida Legislature has not restricted the County effort to preserve existing vegetative canopy.

If you should have any questions or require additional information, please contact me at (561) 233-5234.

JM/WH/am

C: Jon MacGillis, Zoning Director
Wendy Hernández, Deputy Zoning Director
Jeff Gagnon, Principal Site Planner
Adam Mendenhall, Senior Site Planner

File Location

U: Zoning/Code Rev/Administration/Memo and letters



Attachment A

A Landscape History

1973 (Ord 73-01) First Landscape Code for:

- Certain Yard and Off Street Parking areas
- Perimeter Buffers for abutting properties
- Landscape Plan Approval
- Enforcement of Landscaping requirements

1986 (Ord 86-20) Landscape Code & Vegetation Protection – new Official Landscape Code – based on the SFWMD Model Landscape Code which amended language for:

- Vegetation protection and preservation – Native vs Non-native
- Removal of prohibited plant species
- Review of Vegetation removal permits
- Requirement of a Vegetation Survey to be submitted
- Added some supplemental definitions

1993 (Ord 93-17) Code amendment to:

- Provide direction on when and how pruning of trees within buffers and parking areas would be permitted

1997 (Ord 97-62) Code amendment to:

- Update vegetation protection and preservation to identify standard permit options such as Cash Payment in lieu of establishing preserve area, severability and inclusion in the ULDC.
- Natural Area preserve exemption for single family use and buffering section to:
 - Allow Alternative Landscape Plans,
 - Some images depicting how trees and palms are to be measured and parking island standards,
 - Refine language and detail within each subsection for application of the code purposes,
 - Add tree credit and replacement table and criteria,
 - Change labeling of buffers from A, B or C to Type 1, 2 or 3,
 - Introduce landscape barriers,
 - Allow landscape diamonds to be used,
 - Add landscape protection measures such as curbing and wheel stops,
 - Add phasing criteria to indicate when vegetation will be planted,
 - Create water conservation requirements and table.

1998 (Ord 98-3) Creation of ERM code:

- Established Art 9 in the ULDC for the Wetlands Protection specifically under the review of Environmental Resource Management department which further refined language specifically for the protection and preservation of natural vegetation and wetlands.

2003 (Ord 03-11 and Ord 03-67) Code amendment – ERM:

- Further refinement of Art 9 for the removal of invasive non-native vegetation, and providing for Incentives.
- Further organize content of the landscaping code,



- Provided additional information about types of tree or palm and number of trees or palms that can be used within a development to maintain a mix of vegetation.
- 2005** (Ord 05-002 and Ord 05-041) Code amendment to:
- Update elements within tier requirements such as making fences/walls optional, identify pervious surface area, and changes to landscape islands.
 - Add requirements for hedge height, measurement for berms and maintenance of vacant lots.
 - Updated language for enforcement of landscape standards.
- 2006** (Ord 06-004) Code amendment to:
- Update language for landscaping in easements to remove lake maintenance easement as area allowed for planting.
- 2007** (Ord 07-001 and Ord 07-013) Code amendment to:
- Completely rewrite language for Alternative Landscape Plans to add more approval and governing criteria for use of alternative landscape,
 - Add language recommending walls be located on top of a berm.
 - Add language allowing fence or wall to be adjacent to property lines when using compatibility buffer,
 - Update location of planning material when a fence or wall is used.
- 2008** (Ord 08-037) Code amendment to:
- Update language to improve enforcement of maintenance and pruning of vegetation.
- 2010** (Ord 10-022) Code amendment to:
- Add language that allows a Type 1 Variance or vacant lots,
 - Modify exemptions for landscape protection measures to allow wheel stops for divider medians in lieu of continuous curb for agricultural zoned areas and created an alternative for PO properties.
- 2012** (Ord 12-027) Code amendment to:
- Add language to allow Type 1 Waiver for existing wall or fence to be maintained as CBS.
 - Created allowance for Type 1 Waiver to remove incompatibility buffer for pods adjacent to open space.
- 2013** (Ord 13-018 and Ord 13-021) Code amendment to:
- Add language for an exception to not require vegetation inside of an electrified fence or wall.
 - Update language to foundation planting to now be required along drive through and ATM establishments.
- 2014** (Ord 14-025) Code amendment to:
- Add language to include additional housing types for interior landscaping requirements,
 - Modify language for canopy trees to further refine height and caliper of trees,
 - Add language to allow pines to substitute for canopy trees,
 - Adjust hedge heights for residential and non-residential developments,
 - Add language to allow foundation planting to be located within 30 feet of a foundation,



- Update language to allow DRO to reduce width of ROW buffers adjacent to canal/lake/open space.

2015 (Ord 15-006 and Ord 15-031) Code amendment to:

- Update standards for height measurement of hedges.
- Updated standards to increase the flexibility for type 1 waiver to remove an incompatibility buffer for recreation areas within multi-family development.

2016 (Ord 16-016) Code amendment to:

- Create new language that provides authority for the Zoning Director to preserve vegetation that is not covered under Art 14 (ERM) regulations,
- Update Incompatibility buffers to only require one buffer in-between pods of a PUD,
- Amend table, for when incompatible buffer is required, to be more detailed,
- Add text to further allow Type 1 Waiver to remove incompatibility buffer for recreation areas in a CLF or other similar uses.
- Create new language for height measurement of hedges in alternate situations or districts,
- Add text for fences/walls in a ROW or Incompatibility buffer to now require a minimum setback from buffer edge to allow growing area,
- Add language to allow maximum height increase for buffers within grade changes.

2016 (Ord 16-042) Code amendment to:

- Create new language that allowed additional Type 1 Waivers to;
 - Reduce the height of a percentage of canopy trees,
 - Not require trees on exterior of wall,
 - Remove buffers adjacent to open space,
 - Relocate vegetation in industrial developments parking islands to other locations in the development,
 - Increase the space between parking islands,
 - Allow alternative parking landscape design.
- Require canopy tree size to be a minimum of 12 feet,
- Allow a canopy tree substitute of Palms or Pines,
- Adjust the size of trees that could be counted toward credits,
- Update ground treatment requirements for landscaped areas,
- Provide new text to permit Artificial Turf in parking or vehicle bull pen areas,
- Further allow trees to be planted in dry detention areas or LME's,
- Create an exemption to not require ROW buffers for lots that abut the inter-coastal waterway or private street within a PDD and alleys.

2017 (Ord 17-007 and Ord 17-025) Code amendment to:

- Update Type 1 Waiver to allow relocation of foundation planting for unmanned retail structures.
- Add Institutional and Public use classification to table for required incompatibility buffer.
- Remove elements from the minimum tier requirements table.

2018 (Ord 18-002 and Ord 18-018) Code amendment to:

- Allow residential hedge height restrictions to be lifted through Type 1 Waiver,



- Provide more detailed purpose and Intent language for Landscaping and Buffering,
- Update Chapter B Applicability and Approval Process with more detailed language,
- Update and add new language for all buffer types for various design and application criteria,
- Update Interior Landscaping requirements and calculations,
- Provide language for Noise Mitigation Walls within landscape areas,
- Require a PAA for applicants to discuss with ERM any existing vegetation for preservation,
- Create new language to identify ERM and Landscaping review and permit procedures of sites with existing vegetation.
- Add new housing type, Cottage Home to the exemption for Compatibility buffer,
- Add Type 1 waiver to:
 - allow required trees to be relocated on site, and
 - allow existing easement to overlap landscape islands.

2019 (Ord 19-005) Code amendment to:

- Create an exemption for Community Vegetable Garden in WCRAO or CCRT areas,
- Create language to further protect trees on a site required by code or condition of approval,
- Create language to address planning of trees near or under overhead electrical utilities or around electrical utilities,
- Update language for credit and replacement of vegetation to be more detailed.

2020 (Ord 20-001) Code amendment to:

- Create an exception to not require SF residences to obtain a permit for vegetation removal,
- Replace the word tree with vegetation in multiple locations where the code needed to encompass other types of vegetation such as palms or pines,
- Create language to require approval from both ERM and Zoning for vegetation credits,
- Create language for determining extend of a violation of vegetation standards or requirements, which includes new text for reparable and irreparable harm to vegetation,
- Remove Type 1 Waiver allowance for relocating required planting on same site as a general waiver and added language that it is only applicable for plants within an easement.