



To: Deena Bell-Llewellyn, Assistant Director of Public Works for Greenspace Management Division

From: Stephanie M. Throckmorton, Assistant City Attorney

Approved by: Miriam Soler Ramos, City Attorney *MSR*

RE: Updated opinion regarding F.S. 163.045

Date: August 11, 2022

Deena, as you know this past legislative session City staff, the City Commission, and other municipalities worked diligently to get clarification on F.S. 163.045, also known as HB 1159. Following the Governor's approval of SB 518 the following changes to F.S. 163.045 became effective July 1, 2022. The statute now reads:

163.045 Tree pruning, trimming, or removal on residential property. —

(1) For purposes of this section, the term:

(a) "Documentation" means an onsite assessment performed in accordance with the tree risk assessment procedures outlined in Best Management Practices - Tree Risk Assessment, Second Edition (2017) by an arborist certified by the International Society of Arboriculture (ISA) or a Florida licensed landscape architect and signed by the certified arborist or licensed landscape architect.

(b) "Residential property" means a single-family, detached building located on a lot that is actively used for single-family residential purposes and that is either a conforming use or a legally recognized nonconforming use in accordance with the local jurisdiction's applicable land development regulations.

(2) A local government may not require a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on a residential property if the property owner possesses documentation from an arborist certified by the ISA or a Florida licensed landscape architect that the tree poses an unacceptable risk to persons or property. A tree poses an

unacceptable risk if removal is the only means of practically mitigating its risk below moderate, as determined by the tree risk assessment procedures outlined in Best Management Practices - Tree Risk Assessment, Second Edition (2017).

(3) A local government may not require a property owner to replant a tree that was pruned, trimmed, or removed in accordance with this section.

(4) This section does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to ss. 403.9321-403.9333.

As such, if a property owner is proceeding to remove a tree under the amended statute the property owner should possess documentation from an arborist certified by the ISA or a Florida licensed landscape architect that the tree poses an unacceptable risk to persons or property. Failure to possess the appropriate documentation, which is now an onsite assessment performed in accordance with the tree risk assessment procedures outlines in Best Management Practices- Tree Risk Assessment, second edition (2017), would subject the property owner to potential code violations and the relevant fines.

As a reminder to all property owners proceedings under this statute, based on the updated statute a tree poses an unacceptable risk if removal is the only means of practically mitigating its risk below moderate, as determined by the tree risk assessment procedures outlines in the Best Management Practices cited in the statute.

Given the update to the relevant Florida Statue, this opinion supersedes the City Attorney Opinion given in CAO 2019-025.

This opinion is issued in accordance with Section 2-252(e)(1) and (8) of the City Code authorizing the City Attorney's Office to issue opinions and interpretations on behalf of the City.