



To: Brook Dannemiller, Landscape Services Director  
Deena Bell-Llewellyn, Landscape Architect

From: Miriam Soler Ramos, City Attorney for the City of Coral Gables MSK

RE: Legal Opinion Regarding HB 1159/Florida Statutes 163.045

Date: September 13, 2019

Amended: November 22, 2019

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The Public Service Department has asked what, if any, documentation the City can request from a property owner who has trimmed, pruned, or removed a tree allegedly pursuant to F.S. 163.045. First, the City continues to stand by its position, reflected in Resolution 2019-133, that the bill passed by the legislature is an attack on local home rule, is impermissibly vague in its definitions of "documentation" and "danger to persons or property," and may in fact be unconstitutional. In the absence of further guidance from the legislature or courts, this office is providing you with the interpretation below.

For context, F.S. 163.045(1) states that "A local government may not require a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property if the property owner obtains documentation from an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect that the tree presents a danger to persons or property."

As is evident in the statute, the City may request "documentation" from a residential property owner asserting that the subject tree creates a danger to persons or property and detailing the likelihood of that risk. That documentation should not be onerous or run afoul of F.S. 163.045 but should be sufficiently detailed to allow City staff the opportunity to determine if the requirements of F.S. 163.045 have, in fact, been met. Sufficient documentation may include a written report from an arborist certified by the International Society of Arboriculture ("ISA") or a Florida licensed landscape architect documenting the following two tree risk components: (1) the likelihood of a tree failure striking a target, and (2) the consequences of failure. Documentation may also include photographs of the subject tree prior to any pruning, rimming, or removal, as well as photographs indicating the tree's location on the residential property.

While F.S. 163.045 prohibits the City from requiring notice or application prior to the pruning, trimming, or removal of a tree posing a danger to persons or property, the City should urge residents to voluntarily submit the required documentation prior to pruning, trimming, or removal of trees so as to avoid being improperly cited by the City for those actions. ISA certified arborists and Florida licensed landscape architects who provide documentation under this statute, should be mindful of the requirements, obligations, and standards of their state licenses or ISA certifications. It is recommended that the City Manager issue an Implementing Order setting forth the process for evaluating tree trimming, pruning and removal under F.S. 163.045 and delineating specific documentation requirements within the City.

The 1<sup>st</sup> Judicial Circuit in Escambia County recently issued an order denying a motion to dissolve a temporary injunction in a case addressing F.S. 163.045's applicability to the denial of a tree removal permit, *See City of Pensacola v. Larry Vickery, and Ellen Vickery*, Case No. 2019-CA-001175. In that case, the Court stated that when City staff receives information regarding a tree trimmed or removed pursuant to this statute, the City can challenge the documentation provided by the homeowner. As stated in the *Vickery* opinion, "The Legislature did not preempt local governments from challenging documentation provided under the statute.[...] Because the Legislature has identified experts to make the danger determination, then considering evidence from competing experts in the same field is a reasonable approach to resolving disputed questions on particular trees. Here, the City is not preempted from challenging, though submission of its own expert opinions, the conclusions reached by an arborist who generated questionable documentation that the Old Tree is dangerous".<sup>1</sup>

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.

September 2019

Amended November 2019

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<sup>1</sup> The Court also opined that any documentation or determination provided by an arborist or landscape architect should be "rendered utilizing only the methodologies and official documents applicable to the two respective industries."



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Deena Bell-Llewellyn, Landscape Architect

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of trees so as to avoid being improperly cited by the City for those actions. ISA certified arborists and Florida licensed landscape architects who provide documentation under this statute, should be mindful of the requirements, obligations, and standards of their state licenses or ISA certifications. It is recommend that the City Manager issue an Implementing Order setting forth the process for evaluating tree trimming, pruning and removal under F.S. 163.045 and delineating specific documentation requirements within the City.

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September 2019

CITY OF CORAL GABLES  
CITY ATTORNEY'S OFFICE

OPINION REGARDING HB 1159/FLORIDA STATUTES 163.045

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It is recommend that the City Manager issue an Implementing Order setting forth the process for evaluating tree trimming, pruning and removal under F.S. 163.045 and delineating specific documentation requirements within the City.

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.

September 2019



## Paulk, Enga

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**From:** Ramos, Miriam  
**Sent:** Friday, September 13, 2019 4:48 PM  
**To:** Paulk, Enga  
**Subject:** FW: Opinion regarding tree trimming  
**Attachments:** opinion - tree trimming and state statute.docx.pdf; opinion - tree trimming and state statute.docx

Enga, please publish.

*Miriam Soler Ramos, Esq., B.C.S.*

*City Attorney*

*Board Certified by the Florida Bar in  
City, County, and Local Government Law*

City of Coral Gables  
405 Biltmore Way, 2<sup>nd</sup> Floor  
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**From:** Ramos, Miriam  
**Sent:** Friday, September 13, 2019 4:48 PM  
**To:** Dannemiller, Brook <BDannemiller@coralgables.com>; Bell-Llewellyn, Deena <dbell@coralgables.com>  
**Cc:** Diaz, Hermes <hdiaz2@coralgables.com>; Santamaria, Eduardo <esantamaria@coralgables.com>; Suarez, Cristina <csuarez@coralgables.com>; Throckmorton, Stephanie <sthrockmorton@coralgables.com>; Ceballos, Gustavo <gceballos@coralgables.com>; Cejas, Devin <dcejas@coralgables.com>  
**Subject:** Opinion regarding tree trimming

Brook and Deena,

As requested, attached please find the opinion relating to tree trimming/removal in light of Florida Statute 163.045. Please make sure that your division is aware. We have informed ACM

Santamaria regarding our recommendation that an IO be issued to provide the department with further guidance on implementation.

Sincerely,

*Miriam Soler Ramos, Esq., B.C.S.*

*City Attorney*

*Board Certified by the Florida Bar in*

*City, County, and Local Government Law*

City of Coral Gables

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