

Subpart B - LAND DEVELOPMENT REGULATIONS

Chapter 110 RESOURCE PROTECTION

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Cross reference— Buildings and building regulations, ch. 14; environment, ch. 26; floods, ch. 34; planning and development, ch. 54; solid waste, ch. 58; streets and sidewalks, ch. 62; utilities, ch. 74; waterways, ch. 82; performance standards, ch. 106; planning and development, ch. 108; subdivisions, ch. 118; zoning, ch. 122. [\(Back\)](#)

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ARTICLE I. IN GENERAL

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ARTICLE II. ARCHAEOLOGICAL RESOURCES

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Sec. 110-26. Purpose and intent.

It is the finding of the city commission that the city contains many areas of historical and archaeological importance to the United States and to the citizens of the city, from all periods of its history, including pre-Columbian Indian villages, the Spanish visitors, traders, explorers and wreckers, as well as the Florida Territorial period and the pre-Civil War Period. Further, in the preservation and understanding of the historical importance of the city, there is a direct relationship with the economic well-being of the city and the present and future needs, public health, safety, morals and general welfare of the citizens of the city.

(Ord. No. 97-10, § 1(3-10.4(A)), 7-3-1997)

Sec. 110-27. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Archaeological area means that portion of the city which has or may reasonably be expected to yield information on local history or prehistory based upon broad prehistoric or historic settlement patterns, as designated in [section 110-28](#).

Archaeological salvage means the archaeological excavating of a site prior to its destruction by excavation, boring, uncovering, construction, erosion, vandalism, or any other form of disturbance. Archaeological salvage excavations shall be concentrated only within the areas to be disturbed, in order to save site data which would be lost due to the disturbance, and the extent of the excavations may vary, depending on the significance of the site, time constraints, and the degree of evidence of artifacts, at the direction of the city archaeologist.

Archaeological site means a location which has yielded or may yield information on history or prehistory. Archaeological sites may be found within archaeological zones, historic sites, historic districts

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and other areas of the city. Archaeological sites are evidenced by the presence of artifacts or features below the ground surface indicating the past use of a location by people.

Artifact means objects which are a product of human modification or objects which have been transported to a site by people. In the city, artifacts over 50 years old are protected by city Ordinance No. 91-34.

City archaeologist means the individual charged by the city manager with coordinating the assessment of archaeological resources of the city and coordinating the monitoring, testing and salvaging excavations of these resources. The individual may be a local volunteer or a state employee designated to perform such functions.

Cultural resource and historic resource mean any prehistoric or historic district, site, building, object, or other real or personal property of historical, architectural or archaeological value, including but not limited to monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, treasure troves, artifacts, or other objects with intrinsic historical or archaeological value or any part thereof relating to the history, government, and culture of the city, the state or the United States of America.

Disturbance means digging, drilling, excavating, or similar activities which may unearth artifacts.

Disturbance, major, means:

- (1) Disturbance by digging, excavating, or other such activities at locations 12 inches or more below the adjacent surrounding ground surface.
- (2) All disturbances caused by digging or compaction machinery.
- (3) Any disturbance not defined under the term "minor disturbance."

Disturbance, minor, means disturbance by digging, excavating, or other such activities at locations less than 12 inches from the surface where only hand tools, such as shovels and post hole diggers, as well as jack hammers, front loaders and back hoes are used, and where less than one cubic yard of soil is removed.

Map means the archaeological base map of the city.

Monitoring means observation of construction disturbances to determine if archaeological resources exist in an area or, when such resources are known to exist, the observation, recording and incidental recovery of site features and materials to preserve a record of the affected portion of the site. Monitoring occurs in locales in which sites or features may occur but are not expected to be of such importance, size or complexity as to require lengthy work stoppage to permit appropriate archaeological salvage excavation which may take place during a monitoring operation.

Project cost means the estimated costs of construction, improvements or other related expenses that are provided by the applicant and used as the basis for calculation of prescribed building permit fees.

Testing means subsurface excavation or remote sensing techniques, to determine the type and extent of the archaeological site. Testing may include auguring and the establishment of archaeological excavation units and requires the screening of excavated material for artifact recovery. When necessary archaeological salvage excavations may take place following, or in conjunction with, testing procedures. Most artifacts are uncovered or destroyed by modern excavation techniques including the use of ditch diggers, back hoes, and drilling apparatus used by developers and city personnel during the construction, removal or repair of sewers, stormwater drainage systems, aqueduct lines, electric lines, street and sidewalk removal/repairs, and home restoration.

Used and occupied include the phrase "intended, designed or arranged to be used or occupied."

(Ord. No. 97-10, § 1(3-10.4(B)), 7-3-1997)

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Cross reference— Definitions generally, § 1-2.

Sec. 110-28. General requirements within archaeological areas.

- (a) *Designation of archaeological area.* In order to regulate and restrict subsurface disturbance as provided in this article and to determine the extent of archaeological investigation and excavations that may be required, all land within the corporate boundaries of the city, including submerged lands, is designated an archaeological area.
- (b) *Application required for major disturbance.* All major disturbances requiring a city building permit, a city utility permit or a city easement or right-of-way permit shall, before such disturbances take place, be reported to the city archaeologist on an archaeological permit application provided by the city manager. The application shall be a part of the city's permitting process. Any archaeological testing or excavation by the city archaeologist, involving property adjacent to or surrounding the site of the proposed disturbance, may be conducted only with written permission of the affected property owner.
- (c) *Delay of major disturbance authorized.* The city archaeologist is authorized to delay the proposed major disturbance for an initial two-week period. If more time is required, the city archaeologist may request from the city manager up to four additional two-week periods, such requests to be reviewed and ruled upon individually. The applicant shall be provided copies of these requests when they are submitted to the city manager and shall have the opportunity to provide comments to the city manager. After 12 weeks the city archaeologist may request that the city manager grant additional two-week periods, provided that written permission is granted by the property owner. During any delay periods, the city archaeologist may excavate, monitor and test the disturbance site with written permission from the property owner, in order to determine whether artifacts are present.

(Ord. No. 97-10, § 1(3-10.4(C)), 7-3-1997)

Sec. 110-29. Excavations on city property.

A person using a probe, metal detector, other devices or who discovers an artifact on city property shall register the artifact with the city historic district office within one business day. No person shall conduct disturbances or construction activities in or upon properties belonging to the city, including public rights-of-way, without monitoring and such additional archaeological testing or salvage excavation as may be determined by the city archaeologist. The city archaeologist is authorized to define the extent of the archaeological work and to delay the proposed disturbance or construction activity for an initial four-week period. The city archaeologist may request that the city manager grant additional two-week periods, as required.

(Ord. No. 97-10, § 1(3-10.4(D)), 7-3-1997)

Sec. 110-30. Fees.

There shall be added to the fees collected for each applicable building or other permit issued a minimum fee of one percent of the estimated project cost for which the permit is issued. If archaeological salvage, excavation or archaeological monitoring is performed by the city archaeologist, and total costs related thereto are in excess of the fee prescribed in this section, the city archaeologist shall, in conjunction with the city manager, determine the estimated costs of such additional efforts and shall request the applicant to deposit with the city a sum equal to the additional cost. Any sums not used in the conduct of such testing, excavating or monitoring efforts or the analysis, conservation, cataloging, storage

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and reports shall be returned to the applicant at the time of final disposition of the work by the city archaeologist.

(Ord. No. 97-10, § 1(3-10.4(E)), 7-3-1997)

Sec. 110-31. Management of artifacts.

- (a) *Ownership; recording.* All artifacts recovered or discovered during the course of any archaeological testing, excavating or monitoring, as provided in this article, shall belong to the owner of the property upon which such artifacts are found. Artifacts uncovered or discovered during testing, excavation, or monitoring of property belonging to the city shall be recorded by the city and negotiated for payment or donated as a gift to a museum with credit given to the finder. The city planner may request that the property owner allow temporary possession of artifacts by the city to ensure their proper cataloging, recording, analysis, and conservation. All artifacts are to be returned to the property owner as soon as such cataloging, recording, analysis, and conservation is completed. Individuals are strongly urged to donate artifacts from archaeological excavations to the proper agency. The removal of human skeletal remains recovered in archaeological context in all instances shall be coordinated with the local medical examiner and the city archaeologist. These remains are not subject to private ownership. Such material shall be sensitively treated and, following their analysis by a physical anthropologist, where possible, shall be appropriately reburied. If at all possible, human burials should not be removed but left undisturbed in their original position.
- (b) *Curation of artifacts.* Provided that written permission is granted by the property owner, all artifacts from archaeological salvage excavations and monitoring operations will be washed, catalogued, analyzed, conserved, and stored in compliance with current curation standards. To maintain consistency in curating procedures and to keep materials from the city in a central location, the Historic Florida Keys Preservation Board may receive materials from the city archaeologist.

(Ord. No. 97-10, § 1(3-10.4(F)), 7-3-1997)

Sec. 110-32. City archaeologist.

- (a) The city manager shall appoint a city archaeologist, as defined in [section 110-27](#), who shall meet the city's requirements and the standards for membership by the Society of Professional Archaeologists and who shall have a demonstrated background in historic and prehistoric archaeology.
- (b) The city archaeologist shall:
- (1) Review all applicable building, utility and right-of-way permit applications in the archaeological area;
 - (2) Conduct such testing, excavations, or monitoring as shall be required by city Ordinance No. 91-34;
 - (3) Prepare or oversee preparation of periodic reports on all projects, which reports shall meet the guidelines established for archaeological reports by the department of state, division of historical resources and records management;
 - (4) Record archaeological sites and development strategies of preservation of the archaeological resources of the city;
 - (5) Work with property owners at the planning stage of applicable projects, to minimize the potential impact on archaeological sites by any activities proposed for such sites; and
 - (6) Advise the city manager concerning archaeological issues.

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(Ord. No. 97-10, § 1(3-10.4(G)), 7-3-1997)

Cross reference— Officers and employees, § 2-116 et seq.

Sec. 110-33. Grievance procedure.

An appeal of any application of this article shall first be brought before the city manager, and then may be brought before the city commission.

(Ord. No. 97-10, § 1(3-10.4(H)), 7-3-1997)

Sec. 110-34. Commencement of archaeological work.

The work period for archaeological work shall be considered to begin 48 hours after payment of fees and issuance of the permit or after the resolution of any appeal, whichever is later.

(Ord. No. 97-10, § 1(3-10.4(I)), 7-3-1997)

Sec. 110-35. Penalties.

Any violation of this article shall be punished as provided in [section 1-15](#).

(Ord. No. 97-10, § 1(3-10.4(J)), 7-3-1997)

Secs. 110-36—110-60. Reserved.

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ARTICLE III. ENVIRONMENTAL RESOURCES

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FOOTNOTE(S):

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Cross reference— Environment, ch. 26. [\(Back\)](#)

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DIVISION 2. WETLANDS

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[Sec. 110-86. Applicability.](#)

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[Sec. 110-92. Hazardous waste storage and disposal.](#)

[Secs. 110-93—110-120. Reserved.](#)

Sec. 110-86. Applicability.

In order to promote and preserve natural hydrological conditions and to preserve water quality, natural habitats, and environmentally sensitive areas, sections [110-87](#) through [110-91](#) shall be applied to wetlands and transitional wetlands, regardless of their zoning, and to all areas designated conservation on the future land use map.

(Ord. No. 97-10, § 1(3-11.1), 7-3-1997)

Sec. 110-87. Definitions.

Wetlands shall be defined based on hydrology as well as hydric soil and wetland vegetation. Wetlands shall include transitional wetlands and shall include those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support and that under normal circumstances do or would support a prevalence of vegetation typically adapted for life in saturated soil conditions. The following vegetative species are wetland species commonly found in the city, although the applicable state and federal list of jurisdictional wetland vegetation shall apply:

Common Name of Wetland Species	Specific Name
Black mangrove	Avicennia germinas
White mangrove	Laguncularia racemosa
Red mangrove	Rhizophora mangle
Buttonwood	Conocarpus erectus

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Saltwort	Batis maritima
Glasswort	Salicornia spp.
Sea purslane	Sesuvium protul acastrum
Sea blite	Suada linearis
Sea oxeye daisy	Borrchia spp.
Salt grass	Distichlis spicata
Dropseed	Sporobilus virginicus
Key grass	Monanthochloe
Fringe-rushes	Fimbristylis spp.
Cordgrass	Spartina spartinae
Sawgrass	Cladium jamaicewsis
Spike rush	Eleocharis celluosa
Cattail	Typha spp.

Wetland determinations shall be consistent with the most stringent of those of the state department of environmental protection, the South Florida Water Management District, and the U.S. Army Corps of Engineers.

(Ord. No. 97-10, § 1(3-11.1(A)), 7-3-1997)

Cross reference— Definitions generally, § 1-2.

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Sec. 110-88. Wetland delineation; establishing wetland line.

A delineation of the upland wetland boundary shall be established based upon an on-site (field) survey by a professional biologist or registered engineer provided by the applicant and coordinated with the South Florida Water Management District, the state department of environmental protection, and/or the U.S. Army Corp of Engineers. The field investigation which delineates a larger area shall be used as the upland/wetland boundary line.

(Ord. No. 97-10, § 1(3-11.1(B)), 7-3-1997)

Sec. 110-89. Development restrictions and interpretations.

No development shall be permitted in wetlands, including transitional wetlands, until and unless the applicant has obtained all required permits or exemptions from state and/or federal agencies having jurisdiction and has met all requirements of the land development regulations.

(Ord. No. 97-10, § 1(3-11.1(C)), 7-3-1997)

Sec. 110-90. Density.

- (a) Site alteration on sites with environmentally sensitive lands, including but not limited to wetlands, shall not result in a density in excess of one dwelling unit per ten acres of environmentally sensitive land. Site alteration, including filling and/or plant removal, in these areas shall be limited to ten percent of the total site size. The determinations of site size shall be based on physical and biological data obtained from specific site investigations by professionals competent in: (i) identifying vegetation and soils; (ii) analyzing data; and (iii) making impact assessments, including findings regarding the impacts of potential development on the physical and biological value and function of environmentally sensitive lands.
- (b) The city shall coordinate with the jurisdictional agencies for purposes of rendering legal, equitable, and environmentally sensitive determinations of the development rights to be permitted on such wetlands and/or lands under the jurisdiction of the state or federal government. The developer of a parcel of environmentally sensitive land shall be responsible for obtaining permits or exemptions from the state department of environmental protection and from the army corp of engineers prior to obtaining a development order or development plan review approval from the city. Regardless of permitting by federal or state permitting agencies, the city shall reserve the right to determine the appropriate land use, density/intensity, and special mitigation measures, including but not limited to the construction of culverts or other means.
- (c) The applicant shall bear the burden of proof in determining that development shall not adversely impact wetlands, transitional wetlands, and other environmentally fragile natural systems. Such determinations shall be based on physical and biological data obtained from specific site investigations by a biologist, an engineer or by an other professional competent in producing data and analysis necessary to support impact assessments.

(Ord. No. 97-10, § 1(3-11.1(D)), 7-3-1997)

Sec. 110-91. Wetland buffer zones.

- (a) *Buffer areas.* Wetlands and transitional wetlands shall be protected from impacts generated by adjacent land uses through natural upland buffer zones. The upland buffer shall be an area landward

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of the upland edge of a wetland (i.e., the upland/wetland jurisdictional line if applicable). The buffer area provides an undeveloped area which separates developed upland from a wetland area. The purpose of the buffer area is to ensure the continuing function of respective wetland communities, to prevent pollutants from surface water runoff from entering the wetlands, and to enhance water quality. The city shall retain the right to prohibit development within the buffer area. The boundary of an upland buffer area shall be established by field investigation and shall be consistent with South Florida Water Management District permitting standards for upland buffers adjacent to wetlands to sufficiently protect adjacent wetlands.

- (b) *Vegetative buffers.* Any development adjacent to environmentally sensitive areas including wetlands and class III waters shall provide buffers of 50 feet. Buffers shall be 25 feet on lots less than five acres created prior to February 17, 1992. New and redeveloped areas and arterial roadways shall provide buffers of 50 feet. Should it be necessary to establish or replenish shoreline vegetation or littoral zones, the developer should consult [section 108-518](#). An applicant for development may propose alternative methodology, but such methodology shall be subject to verification and must address the following:
- (1) Erodibility of soils upland of the wetland line;
 - (2) Depth of the water table below the soil surface in the zone immediately upland of the wetland line; and
 - (3) Habitat requirements of aquatic and wetland dependent wildlife based on the following:
 - a. Habitat suitability;
 - b. Spatial requirements;
 - c. Access to upland habitat; and
 - d. Noise impacts.

No hazardous waste shall be stored or disposed of in upland buffers.

- (c) *Required dedication of conservation easements.* The city may require applicants for development plan review approval or for subdivision development approval to include the dedication of conservation easements or reservations where the city finds that the dedication is reasonable in order to protect the value and function of a wetland and upland buffers.

(Ord. No. 97-10, § 1(3-11.1(E)), 7-3-1997)

Sec. 110-92. Hazardous waste storage and disposal.

No hazardous wastes shall be stored or disposed of on wetlands or transitional wetlands. Similarly, no hazardous wastes shall be stored or disposed of on upland buffers pursuant to this article and articles IV, V, VII and VIII of this chapter.

(Ord. No. 97-10, § 1(3-11.8), 7-3-1997)

Secs. 110-93—110-120. Reserved.

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ARTICLE III. - ENVIRONMENTAL RESOURCES

DIVISION 3. SOIL EROSION AND SEDIMENTATION CONTROL

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[Sec. 110-121. Applicability.](#)

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[Sec. 110-123. Erosion control measures.](#)

[Sec. 110-124. Erosion control materials.](#)

[Secs. 110-125—110-150. Reserved.](#)

Sec. 110-121. Applicability.

In order to prevent both soil erosion and sedimentation, a soil erosion and sedimentation control plan shall be required as a part of an application for development plan review whenever a development will involve any clearing, removal of native or protected vegetation, grading, or other form of disturbing land by the movement of earth.

(Ord. No. 97-10, § 1(3-11.2(A)), 7-3-1997)

Sec. 110-122. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Erodible slope means all slopes with inclines in excess of four percent unless modified by the city engineer based on consideration of specific soil conditions.

Large flat surface area (unpaved) means an area which is flat or whose slope is less than four percent and which consists of more than 1,000 square feet of exposed soil.

Sedimentation means the settling out of the soil particles which are transported by water or wind. Sedimentation occurs when the velocity of water or wind in which soil particles are suspended is slowed to a sufficient degree and for a sufficient period of time to allow the particles to settle out of suspension or when the degree of slope is lessened to achieve the same result.

Soil erosion means any removal and/or loss of soil by the action of water, gravity, or wind. Erosion includes both the detachment and transport of soil particles.

(Ord. No. 97-10, § 1(3-11.2(B)), 7-3-1997)

Cross reference— Definitions generally, § 1-2.

Sec. 110-123. Erosion control measures.

All measures necessary to minimize soil erosion and to control sedimentation in the disturbed land area shall be implemented. The following protection shall be provided for all disturbed areas:

- (1) Minimize velocities of water runoff;
- (2) Maximize protection of disturbed areas from stormwater runoff; and

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- (3) Prevent or retain sedimentation within the development site as early as possible following disturbances.

(Ord. No. 97-10, § 1(3-11.2(C)), 7-3-1997)

Sec. 110-124. Erosion control materials.

- (a) Appropriate measures shall be taken during land clearing and building operations to ensure that exposed, destabilized or otherwise altered soil is expeditiously covered with an acceptable erosion control material. The provision shall be applicable to the act of subdividing and installation of related improvements as well as during the development review process including the period during which improvements may occur as well as the length of time soil may be exposed to the environment.
- (b) The tree and native vegetation protection ordinance shall be applicable to all clearing and grading activities and shall include specifications for management principles guiding the removal or placement of vegetation and landscaping design. Regulations shall also require developers to take precautionary measures, where necessary, to avert destruction or damage to native vegetation.

(Ord. No. 97-10, § 1(3-11.2(D)), 7-3-1997)

Secs. 110-125—110-150. Reserved.

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DIVISION 4. FRESHWATER LENS PROTECTION

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[Sec. 110-151. Scope; compliance; contents of development plan.](#)

[Secs. 110-152—110-180. Reserved.](#)

Sec. 110-151. Scope; compliance; contents of development plan.

- (a) The city shall regulate development for purposes of protecting the freshwater lens. The applicant or owner or developer of any proposed development shall be required to comply with the open space requirements established in division 3 of article V of [chapter 122](#) pertaining to size and dimension criteria.
- (b) In addition to subsection (a) of this section, development plans shall contain improvements designed to preserve the quality and quantity of water resources within the freshwater lens. This shall be accomplished by ensuring against pollutants entering the freshwater lens. Typical pollutants contributing to the degradation of the freshwater lens include saltwater intrusion, septic tanks, mosquito spraying, oils from lobster traps, and leakage from sewer lines. In order to accomplish this objective, the city shall coordinate with the Florida Keys Aqueduct Authority for purposes of discouraging or preventing, to the extent lawful, withdrawal of water from the freshwater lens for domestic purposes. The city shall coordinate related site plan review activities with the South Florida Water Management District.

(Ord. No. 97-10, § 1(3-11.3), 7-3-1997)

Secs. 110-152—110-180. Reserved.

ARTICLE IV. COASTAL RESOURCES

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[Sec. 110-181. Coastal shoreline impact.](#)

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[Sec. 110-190. Multiagency review of coastal management issues.](#)

[Sec. 110-191. Impacts of development on coastal waters.](#)

[Sec. 110-192. Exemptions.](#)

[Secs. 110-193—110-220. Reserved.](#)

Sec. 110-181. Coastal shoreline impact.

- (a) Applicants for development along the Salt Ponds, Riviera Canal, Atlantic Ocean, Gulf of Mexico, or other coastal shorelines shall be required to submit, as part of the permitting process, plans which demonstrate how the development shall incorporate features designed to protect against potential adverse impacts to the following:
- (1) Shoreline vegetation and stabilization;
 - (2) Water quality;
 - (3) Native habitat, including reef systems, seagrass beds, and coastal nontidal wetland habitats;
 - (4) Living marine resources; and
 - (5) Shoreline access.
- (b) No shoreline development shall be approved until the applicant has demonstrated that potentially adverse impacts shall be prevented or that compensatory mitigation shall occur. The criteria in this article shall be enforced at plan review.

(Ord. No. 97-10, § 1(3-11.4(A)), 7-3-1997)

Sec. 110-182. Shoreline vegetation and stability.

- (a) No vegetation shall be removed from a shoreline without a duly authorized permit. No mangroves shall be removed except to the extent necessary to allow for ten-percent disturbance of a conservation designated site. The applicant shall be required to revegetate, stabilize, and enhance damaged shorelines by planting native vegetation, including mangrove and/or appropriate native plant species which:

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- (1) Contribute to marine productivity and water quality;
 - (2) Offer protection from erosion and flooding; and
 - (3) Contribute to the natural soil building process.
- (b) Whenever vegetation is removed, the applicant/developer must provide mitigation plan ensuring that revegetation shall occur at a ratio three to ten times the affected habitat. The mitigation plan shall be subject to review by the planning board and by the appropriate federal and/or state agencies having jurisdiction.
- (c) Hardening of the shoreline with riprap, bulkheads or other similar devices shall not be allowed unless erosion constitutes a critical peril to upland property and the use of vegetation has failed to stabilize the shoreline. In such case, riprap shall be the first alternative. Such shoreline hardening structures shall generally not be vertical seawalls or bulkheads. The specific location and design of such structures shall:
- (1) Comply with the best management principles and practices and be accomplished by use of the least environmentally damaging methods and designs possible;
 - (2) Avoid a vertical slope which generates erosive tendencies, especially to adjacent unprotected shoreline properties. Pervious interlocking tile systems, filter mats, and similar stabilization methods shall be used in lieu of vertical walls whenever feasible;
 - (3) Not be located waterward of the mean high water line except when it is shown to be in the public interest;
 - (4) First be approved by other public agencies having jurisdiction; and
 - (5) Incorporate a program of shoreline vegetation or revegetation in order to build, enhance, and stabilize a natural shoreline.

(Ord. No. 97-10, § 1(3-11.4(B)), 7-3-1997)

Sec. 110-183. Living marine resources.

- (a) Development along the coastal shoreline or within an area extending 600 feet into the tidal water adjacent to the corporate city limits shall avoid adverse impacts of development on benthic communities within tidal waters, including seagrass beds, algal beds, and other live bottom communities, reef systems as well as adverse impacts on the coastal nontidal wetland habitats. Since these areas are sensitive to increased turbidity and other forms of pollution, water runoff and introduction of nutrients, these forms of pollution shall be regulated through effective water quality management criteria. Plans for development impacting marine resources shall be coordinated with state agencies having jurisdiction prior to the city granting development plan approval and/or prior to release of any permit for construction. Compensatory mitigation may be permitted in cases of overriding public benefit where both the city and the state and federal agencies having jurisdiction approve the mitigation measures proposed by the developer. Any such development shall ensure continuance and maintenance of essentially natural conditions in order to further propagation of fish and wildlife as well as public recreation opportunities.
- (b) All applicants proposing development activities along the coastal shoreline or within submerged areas shall be required to submit a development plan pursuant to development plan review regulations. Such development plan shall provide information describing marine life potentially impacted by proposed land uses as well as related construction activity. The plan shall stipulate assurances that the proposed project shall not adversely impact marine life or water quality. For instance, water quality control techniques such as the use of weirs for purposes of managing turbidity may be required by the city. In addition, the city shall require surveys of existing conditions,

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specifications of planned site improvements, and techniques to be used during construction as well as in operating and maintaining the land use in order to prevent damage to living marine organisms.

- (c) Any proposed development which may impact known sea turtle nesting areas, such as along the sandy beach at Fort Zachary Taylor, shall include a mitigation plan which avoids the disturbance of nests. Site and building plans for construction of single-family or multifamily dwellings, parking lots, dune walkovers or any other lighted structures within the direct line of sight of such beaches shall incorporate the following:
 - (1) Low-profile and low-density lighting will be used in parking lots, and such lighting shall be positioned so that the source of light is not visible from the beach.
 - (2) All lights on balconies will be shielded from the beach.
 - (3) Floodlights on buildings or adjacent to the beach shall be positioned so that the source of light is not visible from the beach or, if required for safety, positioned in such a manner as to minimize impacts on turtles.
 - (4) Where lights are used, low-profile and low-intensity shielded lights will be used on dune walkovers.
- (d) Any planned beach renourishment project shall protect sea turtle nesting areas by ceasing development activity during the nesting season (May 1 through October 31), or by collecting eggs from the nests, incubating them, and relocating the hatchlings.
- (e) Coral reefs shall not be destroyed by development activities. The city shall assist reef relief in distributing educational material concerning the coral reef, including information on boating practices which are harmful to the coral reef. Wastewater system improvements identified in the comprehensive plan capital improvement schedule shall also be carried out to reduce potential adverse impacts on the coral reef.

(Ord. No. 97-10, § 1(3-11.4(C)), 7-3-1997)

Sec. 110-184. Water-related and water-dependent uses.

- (a) All water-related uses shall be built on uplands landward of the high velocity hurricane storm surge zone (V zone) and the coastal construction control zone established by the state department of environmental protection and enacted as the Florida Keys Coastal Management Act of 1974, excepting structures approved by the state department of environmental protection. Within the coastal building zone all construction activities shall be predicated on plans compliant with applicable state and local building codes. Dredging and filling of wetlands or open water in order to accommodate water-related uses shall not be permitted.
- (b) Along the coastal, nearshore or estuarine shoreline seaward of the high velocity storm surge zone, no development shall be permitted other than water-dependent structures, native shoreline vegetation, elevated accessways of wood or other material which allow light to pass through and air and/or water to circulate underneath and to support plant life, subject to the approval of the state or federal agencies having jurisdiction. Hardening of the shoreline shall not be permitted unless the upland property is critically imperiled and the use of vegetation has failed to stabilize the shoreline. The design specifications of any shoreline hardening structure shall:
 - (1) Comply with best management principles and practices consistent with state and federal standards and be accomplished by use of the least environmentally damaging methods and designs possible;
 - (2) Avoid a vertical slope which generates erosive tendencies, especially to adjacent unprotected shoreline properties. Use natural rock boulders, pervious interlocking tile systems with filter

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fabric on the landward side, or similar stabilization methods, all of which must be approved by public agencies having jurisdiction;

- (3) Not be located waterward of the mean high water line except when it is shown to be in the overriding public interest;
 - (4) First be approved by other public agencies having jurisdiction; and
 - (5) Incorporate a program of shoreline vegetation or revegetation in order to build, enhance, and stabilize a restored shoreline.
- (c) No non-water-dependent uses shall be permitted on submerged lands or wetlands. Development on uplands adjacent to wetlands shall preserve a buffer measured from the nearest upland/wetland boundary. The buffer area shall be coordinated with South Florida Water Management District permitting guidelines. Within the buffer area all exotic vegetation shall be removed, and native plants shall be planted. The purpose of the buffer area is to protect ambient water quality and to prevent degradation of water quality from pollutants from surface water runoff within coastal waters. Similarly, no structures which constrict water circulation shall be permitted.

(Ord. No. 97-10, § 1(3-11.4(D)), 7-3-1997)

Sec. 110-185. Impacts of coastal development on tidal flushing and circulation patterns.

Tidal flushing and circulation patterns generally shall not be altered by development activities. No development shall produce changes in the tidal flushing and circulation patterns unless the applicant for development clearly demonstrates that no adverse environmental impacts shall be occasioned by the proposed changes in tidal flushing and circulation patterns. Additionally, no alteration in tidal flow shall be permitted which causes stagnation or siltation.

(Ord. No. 97-10, § 1(3-11.4(E)), 7-3-1997)

Sec. 110-186. Marinas and dock facilities.

Docks or marina improvements shall not be approved by the city until the applicant demonstrates compliance with all applicable federal and state laws and administrative rules as well as applicable policies of regional agencies. Development plans shall include an environmental impact component for all docks and marinas which adequately address marina siting criteria cited in this section. These plans must demonstrate to the city's satisfaction that the facilities shall not adversely impact living marine resources, including but not limited to seagrasses, hardbottom communities, nearshore waters, manatees and other living marine organisms. The plans shall comply with the following criteria:

- (1) The plan shall indicate location of the site relative to all potentially impacted natural marine resources, including specific location and characteristics. New marinas shall not be allowed in or immediately adjacent to the following sensitive areas:
 - a. Aquatic preserves;
 - b. Class II waters approved by the state department of environmental protection for shellfish harvesting;
 - c. Outstanding Florida waters;
 - d. Marine sanctuaries;
 - e. Estuarine sanctuaries; and

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- f. Areas of essential manatee habitat, as determined by the state department of environmental protection.
- (2) Marinas must have sufficient upland area for all non-water-dependent uses. Dredging and filling of wetlands or open water in order to accommodate uses which are not water dependent shall not be allowed. Exceptions may be granted in accordance with state law.
 - (3) Cumulative effects of several marinas and/or boatramps in one area shall be considered in the review of proposed marina projects.
 - (4) All new and expanded marinas shall provide a demonstration of compliance with state water quality standards by maintaining a water quality monitoring program approved by the state department of environmental protection.
 - (5) Grassbeds and other submerged habitat deemed valuable by the state department of environmental protection will be subject to protection regardless of their size. The state department of environmental protection frequently determines its jurisdiction based on size and connection to other wetlands, so this may be contradictory.
 - (6) In reviewing applications for new or expanded docking facilities, ways to improve, mitigate, or restore adverse environmental impacts caused by previous activities shall be explored. This may include shallowing dredged areas, restoring wetland or submerged vegetation, or marking navigational channels. Such mitigation or restoration may be a condition of approval of new, renewed, or expanded facilities.
 - (7) Immediate access (ingress and egress) points shall be delineated by channel markers, indicating speed limits, manatee area warnings, and any other applicable regulations.
 - (8) All new or expanded marinas must provide treatment of stormwater runoff from upland areas to the extent necessary to ensure that state water quality standards are met at the point of discharge to waters of the state. In addition, all requirements of the water management district and the state department of environmental protection shall be met.
 - (9) Boat maintenance activities in new or expanded marina facilities shall be located as far as possible from open waterbodies in order to reduce contamination of waterbodies by toxic substances common to boat maintenance. Runoff from boat maintenance must be collected and treated prior to discharge.
 - (10) Open wet slips will be preferred to covered wet slips in marina design to reduce shading of waterbodies which result in lowered biological productivity.
 - (11) Marina design shall incorporate natural wetland vegetative buffers whenever possible near docking areas and in access areas for erosion and sedimentation control, runoff purification and habitat purposes.
 - (12) The West Indian manatee shall be afforded protection from boating activities which may have an adverse impact upon the species. The following criteria apply in the implementation of this policy:
 - a. Marina operators shall undertake the following manatee protection measures in areas where manatees are known to occur:
 1. Implement and maintain a manatee public awareness program which will include posting signs to advise boat users that manatees are an endangered specie which frequents the waters of the region's estuaries and lagoon;
 2. Declare the waters in and around marinas as "idle speed" zones; and
 3. Post phone numbers to report an injured manatee.

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- b. Local manatee protection plans shall be included as part of the coastal management and conservation elements of the comprehensive plan. The plan should:
 1. Assess the occurrence of manatee activity within the jurisdiction;
 2. Document the number of manatee accidents and deaths;
 3. Identify manatee habitats;
 4. Determine the potential for adverse impacts to the manatee population from various activities and identify the level of protection necessary to ensure least possible interference; and
 5. Recommend local mitigative actions to be undertaken in support of the regional policy.

(Ord. No. 97-10, § 1(3-11.4(F)), 7-3-1997; Ord. No. 98-14, § 6, 5-5-1998)

Sec. 110-187. Ocean, gulf and nearshore water quality.

In order to protect the water quality of the Atlantic Ocean, the Florida Bay, and the Gulf of Mexico, no new point-source pollution shall be permitted to discharge into these waters or into ditches or canals flowing into these waters. In addition, in order to reduce non-point-source pollutants the city shall require the following:

- (1) Surface water management systems shall be consistent with the city's adopted drainage level of service (reference comprehensive plan policy 4-1.1.1) and applicable federal, state, and regional standards.
- (2) A vegetated pond with sloping wetland buffers shall be established and maintained as part of the surface water management requirements. Prior to construction of the surface water management system for any phase of a project, the developer shall prepare a design and management plan for the wetland/littoral zone that will be developed as part of these systems. The plan should:
 - a. Include typical cross sections of the surface water management system showing the average groundwater elevation and the minus three-foot contour (i.e., below average elevation) or a 75-foot distance from the wetland buffer, whichever is greater;
 - b. Specify how vegetation is to be established within this zone, including the extent, method, type and timing of any planting to be provided;
 - c. Include the removal of all exotic vegetation; and
 - d. Provide a description of any management procedures to be followed in order to ensure the continued viability and health of the stormwater management system. The wetlands as established shall consist entirely of native aquatic vegetation and shall be maintained permanently as part of the water management system. As a minimum, ten square feet of vegetated littoral zone per linear foot of wetland shoreline should be established as part of the water management plan. The developer's vegetated/littoral zone management plan shall include a plan acceptable to the city for the longterm management and maintenance of stormwater, aquatic vegetation, and shoreline stabilization. The burden for perpetual maintenance rests with the property owner. If the city establishes a citywide utility district, the city may implement a city management strategy to be funded through an equitable assessment of property owners.

(Ord. No. 97-10, § 1(3-11.4(G)), 7-3-1997)

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Sec. 110-188. Restrictions in coastal high hazard area.

- (a) The city shall enforce the land use controls within the coastal high hazard area, within the LDR-C and MDR-C districts, including but not limited to enforcing:
- (1) Density requirements for development within the Federal Emergency Management Agency (FEMA) floodprone map V zone.
 - (2) Regulations which mandate that all development and redevelopment within the Federal Emergency Management Agency floodprone area V zone areas comply with the following regulatory techniques for hazard mitigation:
 - a. State and local regulations establish coastal construction control lines, as well as applicable state and local construction codes regulating construction activity in coastal areas.
 - b. Surface water management improvements which mitigate against loss of floodplain and comply with adopted surface water management level of service standards for drainage cited in [chapter 94](#) pertaining to concurrency management.
 - c. No development or redevelopment within the Federal Emergency Management Agency floodprone map V zone shall occur on septic tanks.
 - d. Publicly funded infrastructure shall not be built within the Federal Emergency Management Agency floodprone map V zone unless the facility is for the protection of public health and safety.
 - e. Development plans shall comply with wetland and transitional wetland preservation regulations in sections [110-86](#) through [110-91](#)
- (b) A multiagency development plan review process shall be initiated by the city for all proposed development or redevelopment having potential adverse impacts on water quality, wetlands, shoreline stabilization, natural habitats, fish or wildlife, hurricane evacuation, or other adverse impacts on coastal resources. The development plan review for such developments shall be coordinated with state, county, federal, or regional agencies having jurisdiction. A primary function of this review process shall be to effectively reconcile hazard mitigation issues prior to issuance of any development orders.

(Ord. No. 97-10, § 1(3-11.4(H)), 7-3-1997)

Sec. 110-189. Shoreline access and protection of natural shoreline and limited beach/dune system.

- (a) Shoreline access to the Atlantic Ocean and Gulf of Mexico shall be required in order to maintain accessways at approximately one-half mile intervals along the shoreline of the natural and renourished beach in order to enforce the 1985 Coastal Zone Protection Act for beach and shoreline access.
- (b) The city shall not allow any construction of manmade structures on the city's beach, excepting beach access structures compliant with construction standards of the state division of beaches and shores. In addition, water-dependent structures such as lifeguard stands or beach renourishment approved by the division may be constructed if such structures meet the construction standards of federal and state agencies having jurisdiction. Any such construction activity must include measures to restore the beach and vegetation pursuant to a plan approved by the federal and/or state agencies having appropriate jurisdiction.

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- (c) No native vegetation shall be removed unless the revegetation shall occur at a ratio three to ten times the affected vegetated areas. Exotic vegetation shall be replaced by native vegetation. The revegetation ratio plan including the threshold for revegetation shall be subject to review and approval by the city as well as being subject to the federal and/or state agencies having jurisdiction. The city shall require beach and dune system restoration where development is proposed on the adjacent upland and breaches in the adjacent dune system are apparent.
- (d) The coastal construction control line (CCCL) established in [section 122-1148](#) shall not be distributed and shall be maintained in its natural state as open space. The city shall coordinate the development review process for projects impacting the coastal construction control line by forwarding all applications for construction seaward of the coastal construction control line to the state department of environmental protection for jurisdictional action. The applicant shall be responsible for receiving permits from all other public agencies having jurisdiction. In addition, such activities shall comply with applicable provisions of the comprehensive plan and land development regulations.
- (e) To protect natural rock outcrops which form most of the city's shoreline as well as the limited beach, shoreline development and access shall continue to be restricted in order to preserve the shoreline and the limited beach. Rigid shore protection structures are not permitted, except when used as part of a comprehensive plan for beach restoration and when nonstructural alternatives are not acceptable. When beach renourishment projects are needed, the dune system should be restored, as necessary, utilizing natural, indigenous vegetation.
- (f) Motorized vehicles are prohibited upon or over the city's incorporated portion of the beach adjacent to the Atlantic Ocean, excepting mechanical beach cleaning equipment, public safety and emergency vehicles, and vehicles permitted by the state department of environmental protection. Beach cleaners shall be required to obtain a coastal construction control line (CCCL) permit for operations beyond the control line. The method of operations and equipment shall be approved by the state department of environmental protection and/or the U.S. Army Corps of Engineers as may be applicable as part of the special conditions of the coastal construction control line permit.

(Ord. No. 97-10, § 1(3-11.4(l)), 7-3-1997)

Sec. 110-190. Multiagency review of coastal management issues.

As part of the staff analysis and evaluation of development plans, the city planner shall coordinate with members of a multiagency technical review committee comprised of the following agencies: the U.S. Coast Guard; the U.S. Fish and Wildlife Service; the U.S. Army Corps of Engineers; the state department of environmental protection; the South Florida Water Management District; the South Florida Regional Planning Council; the county; and other federal, state, and regional agencies as may be appropriate in managing the following activities:

- (1) The city shall coordinate all development and resource conservation measures impacting the waters of the Atlantic Ocean and Florida Bay with such agencies as well as other applicable public agencies. These activities shall include but not be limited to review of proposed development potentially impacting natural resources, including development petitions for docks, shoreline stabilization, dredging, or other alteration of natural resources under federal or state jurisdiction.
- (2) All applications for development activity impacting waters of the state as well as tidally influenced salt ponds or other lands under the jurisdiction of the state shall be coordinated with agencies having appropriate jurisdiction.
- (3) The city shall coordinate with technical staff within the state department of environmental protection and the South Florida Water Management District in order to ensure implementation of sound principles and practices of coastal resource management during the development

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review process as well as in the formulation of policies impacting coastal resource management.

- (4) The city shall coordinate with the South Florida Water Management District, the state department of environmental protection, as well as other appropriate state agencies in matters surrounding stormwater management, drainage, water quality and quantity, and consumptive use permitting.
- (5) The city shall ensure that all issues surrounding development impacts on wetlands or other resources under federal and/or state jurisdiction are managed based on timely coordination, exchange of information, and appropriate followup by the city and all agencies having jurisdiction over the issue. The city shall request jurisdictional determinations from all appropriate agencies prior to the issuance of development orders or building permits for all sites within the city.
- (6) The city shall coordinate with the county on issues surrounding hurricane evacuation, stormwater management on county roadways, public access, and other coastal issues of mutual concern.

(Ord. No. 97-10, § 1(3-11.4(J)), 7-3-1997)

Sec. 110-191. Impacts of development on coastal waters.

Development plans shall comply with the following performance criteria:

- (1) Surface water management systems shall be consistent with the city's adopted drainage level of service (reference comprehensive plan policy 4-1.1.1) and applicable federal, state, and regional standards.
- (2) A vegetated pond with sloping wetland buffers shall be established and maintained as part of the surface water management requirements. Prior to construction of the surface water management system for any phase of a project, the developer shall prepare a design and management plan for the vegetated/littoral zone that will be developed as part of these systems. The plan should:
 - a. Include typical cross sections of the surface water management system showing the average groundwater elevation and the minus three-foot contour (i.e., below average elevation) or a 75-foot distance from the wetland buffer, whichever is greater;
 - b. Specify how vegetation is to be established within this zone, including the extent, method, type and timing of any planting to be provided;
 - c. Include the removal of all exotic vegetation; and
 - d. Provide a description of any management procedures to be followed in order to ensure the continued viability and health of the stormwater management system. The wetland zone as established shall consist entirely of native aquatic vegetation and should be maintained permanently as part of the water management system. As a minimum, ten square feet of vegetated wetland zone per linear foot of wetland shoreline shall be established as part of the water management plan. The developer's vegetated/littoral zone management plan shall include a plan acceptable to the city for the longterm management and maintenance of stormwater, lake and lakefront shoreline. The burden for perpetual maintenance rests with the property owner. If the city establishes a citywide utility district, the city may implement a city management strategy to be funded through an equitable assessment of property owners. Should it be necessary to establish or replenish shoreline vegetation or littoral zones, the developer should use plants that are highly salt tolerant as part of the aquascape. Aquatic planting that is necessary shall be illustrated on the required

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landscape plan submittal for development plan review as provided in [section 108-243\(c\)](#) and (d).

- (3) Outstanding Florida waters and class III waters shall be protected by incorporating the following into the city's land development regulations:
- a. Dredging and filling activities shall be limited to the state department of environmental protection, the U.S. Army Corps of Engineers, and the South Florida Water Management District and any other applicable agency approved dredging.
 - b. Ensure good water quality by coordinating with the U.S. Fish and Wildlife Services, the state department of environmental protection, and the South Florida Water Management District in monitoring the quality of stormwater runoff and all discharge processes where these agencies have jurisdiction. The city shall notify the appropriate agency with jurisdiction as potential issues or problems are identified by the city. The city's amended land development regulations shall provide performance criteria designed to ensure that new development provides effective and adequate stormwater management improvements concurrent with the impacts of new development. All new development shall comply with drainage level of service criteria.
 - c. Prohibit the use of these waters for water-dependent activities that are contrary to the public interest and do not satisfy a community need. Upon adoption of the comprehensive plan, all marinas within the city shall be retrofitted with pumpout stations. Use of pumpout facilities shall be mandatory for all vessels and liveaboard units. An implementing regulatory program shall require participation by the state and county since the vessels and liveaboards are located on waters of the state.
 - d. Prohibit modification of marine grassbeds unless required by an overriding public interest, and the activity is approved by federal, state, and/or regional agencies having jurisdiction.
 - e. Where modification of grassbeds is permitted by agencies having jurisdiction, the city shall ensure that:
 1. A determination of overriding public interest has been demonstrated prior to modification of grassbeds.
 2. Project runoff and nutrient introduction shall be controlled to prevent an increase in water turbidity.
 3. Projects damaging grassbeds during construction shall incorporate mitigative techniques which reestablish benthic conditions favorable to natural regeneration. Mitigation should only be allowed at a 3:1 or 4:1 ratio as recommended by the marine resources division of the state department of environmental protection.
 4. Special attention shall be given to stipulations cited in subsections (3)e.1 through (3)e.3 of this section during the development review process. The city shall coordinate closely with state and federal agencies during the permitting processes to ensure that the intent of these policies is carried out.
 - f. Protect aquatic and wetland wildlife and vegetative species.

(Ord. No. 97-10, § 1(3-11.4(K)), 7-3-1997)

Sec. 110-192. Exemptions.

- (a) The following activities shall be exempt from the coastal resource protection regulations in this article:

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- (1) Minor maintenance or emergency repair to existing structures or improved areas.
 - (2) Clearing of shoreline vegetation to create walking trails having no structural components, not to exceed four feet in width. The city reserves the power to restrict the number and design of walking trails.
 - (3) Timber catwalks, docks, and trail bridges that are less than four feet wide, provided that no filling, flooding, dredging, draining, ditching, tiling or excavation is done, except limited filling and excavating necessary for the installation of pilings.
 - (4) Recreational fishing and temporary blinds.
 - (5) Constructing fences where no fill activity is required and where navigational access will not be impaired by construction of the fence.
- (b) Notwithstanding, any permitted development shall provide a plan acceptable to the city which ensures maintenance of water quality and coastal resource integrity in perpetuity.

(Ord. No. 97-10, § 1(3-11.4(L)), 7-3-1997)

Secs. 110-193—110-220. Reserved.

FOOTNOTE(S):

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Cross reference— Waterways, ch. 82. [\(Back\)](#)

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ARTICLE V. WILDLIFE HABITAT PRESERVATION AND PROTECTION OF FLORA AND FAUNA

ARTICLE V. WILDLIFE HABITAT PRESERVATION AND PROTECTION OF FLORA AND FAUNA

[Sec. 110-221. Scope.](#)

[Sec. 110-222. Critical habitat management plan required.](#)

[Sec. 110-223. Criteria for reviewing critical habitat plan.](#)

[Sec. 110-224. Incentives for reservation of conservation easements.](#)

[Secs. 110-225—110-250. Reserved.](#)

Sec. 110-221. Scope.

- (a) Vegetative communities and wildlife habitats, particularly those identified as primary habitat for endangered or threatened species or species of special concern, which are deemed environmentally significant shall be protected from adverse impacts associated with development. Table VI-7 entitled "Endangered and Potentially Endangered Flora Species Indigenous to Habitats Identified in the City of Key West" and table VI-8 entitled "Endangered and Potentially Endangered Fauna Species Indigenous to Habitats Identified in the City of Key West," are contained within the comprehensive plan conservation element data inventory and analysis. These tables identify essential breeding, feeding or habitat sites for endangered or potentially endangered flora or fauna which shall be protected pursuant to this article.
- (b) Applicants for development within any areas identified as refuge, breeding, feeding, or habitat areas of endangered or threatened species or species of special concern shall prepare a habitat management plan which shall as a minimum comply with sections [110-222](#) through [110-224](#)

(Ord. No. 97-10, § 1(3-11.5), 7-3-1997)

Sec. 110-222. Critical habitat management plan required.

Development plans and preliminary plats shall include a critical habitat management plan prepared by a professional biologist, ecologist, or other related professional. The plan shall ensure the protection of endangered and threatened flora and fauna as determined by the state or federal government. As a minimum standard this plan shall analyze the following issues:

- (1) Identify the occurrences of designated species by a qualified ecologist.
- (2) Land needs to support continued on-site presence of the species.
- (3) Impacts of proposed development which will disturb the species.
- (4) Management plans and measures necessary to protect the subject species.
- (5) Cost to developer to implement the recommended management plan as approved.

(Ord. No. 97-10, § 1(3-11.5(A)), 7-3-1997)

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ARTICLE V. WILDLIFE HABITAT PRESERVATION AND PROTECTION OF FLORA AND FAUNA

Sec. 110-223. Criteria for reviewing critical habitat plan.

- (a) Development activities which have an adverse effect upon a designated species shall require mitigation acceptable to the city or shall not be permitted. Viable (i.e., capable of living) habitat for endangered or threatened species or species of special concern occurring on a site shall be identified on the management plans as preservation areas. All development activities shall be prohibited within these preservation areas with the exception of recreational and educational uses where such uses shall not adversely affect such species.
- (b) The city staff shall review the critical habitat management plan as well as the federal and/or state agencies having jurisdiction. The final development plan shall comply with directives of the federal and/or state or local agencies having jurisdiction, and the most restrictive shall apply. If a hardwood hammock is found not to warrant classification of a critical habitat, notwithstanding, at least 90 percent of the subject hardwood hammock must be preserved.

(Ord. No. 97-10, § 1(3-11.5(B)), 7-3-1997)

Sec. 110-224. Incentives for reservation of conservation easements.

- (a) The applicant and the city may negotiate a development agreement which ensures the preservation of habitats. Where the applicant agrees to dedicate a conservation easement embracing the identified habitats, the city reserves the right to provide for a transfer of density or intensity to adjacent lands under common ownership which are unencumbered by environmentally sensitive ecosystems.
- (b) The city may require payment of a fee in lieu of the mandatory habitat preservation. However, any payment allowed in lieu of preservation must be in sufficient amounts to purchase equally sensitive habitat of equal or greater size. Such cash payment may be in the form of an impact fee in lieu of habitat preservation to be accumulated from development for the purchase of upland habitat preservation off site rather than on site. Where mitigation is applied, the program should require a minimum 2:1 ratio to enhance survivability.

(Ord. No. 97-10, § 1(3-11.5(C)), 7-3-1997)

Secs. 110-225—110-250. Reserved.

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ARTICLE VI. TREE PROTECTION

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[DIVISION 1. - GENERALLY](#)

[DIVISION 2. - ADMINISTRATION AND ENFORCEMENT](#)

[DIVISION 3. - PERMIT](#)

[DIVISION 4. - PROTECTION STANDARDS](#)

[DIVISION 5. - PRUNING STANDARDS](#)

[DIVISION 6. - REPLACEMENT](#)

FOOTNOTE(S):

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Cross reference— Landscaping, § 108-381 et seq. [\(Back\)](#)

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ARTICLE VI. - TREE PROTECTION

DIVISION 1. GENERALLY

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[Sec. 110-251. Purpose and intent.](#)

[Sec. 110-252. Definitions.](#)

[Sec. 110-253. Specially protected trees.](#)

[Sec. 110-254. Unprotected trees.](#)

[Sec. 110-255. Removal of portions of coconut palm trees; permit required for sale.](#)

[Sec. 110-256. Tree abuse.](#)

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[Sec. 110-260. Champion trees.](#)

[Secs. 110-261—110-285. Reserved.](#)

Sec. 110-251. Purpose and intent.

The city commission finds that trees on privately and publicly owned property within the city are economic and aesthetic assets to the citizens of the city, because of their important and meaningful contribution to a healthy, beautiful, and safer community, attributable to their carbon dioxide absorption, oxygen production, dust filtration, wind and noise reduction, soil erosion prevention and surface drainage improvement. Therefore, the health and economic welfare of the citizens can be served through protection of the health and growth of the trees and through encouragement of additional plantings. The city commission further finds that this public purpose can best be achieved through a city agency having authority and responsibility to accomplish these goals.

(Ord. No. 97-10, § 1(3-14.1), 7-3-1997)

Sec. 110-252. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

ANSI means the American National Standards Institute which has published standards for tree, shrub and woody plant care and maintenance.

Champion tree means a tree determined by the tree commission to be of unique and intrinsic value to the general public due to its size, age, historic association or ecological value; or any tree designated as a Florida State Champion, United States Champion or World Champion by the American Forestry Association.

Coconut palm means an individual plant, of whatever size or dimensions, of the species *Cocos nucifera*.

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Diameter at breast height and *dbh* mean the diameter of a tree's main trunk measured 4½ feet above the ground surface.

Dicot means a dicotyledonous angiospermous plant, having two cotyledon or seed leaves and usually net veination, as in many long-lived trees and higher plants.

Florida #1 means a certain standard for structurally sound trees and shrubs, developed by the International Society of Arboriculture, Florida Chapter.

Harm means actions which reduce the overall health of a tree, but not including minor maintenance.

Hatracking means pollarding or flat-cutting a tree such that the leaders are severed, or such that the canopy spread is reduced by one-third or more during any 365-day period.

Major maintenance means actions reducing the length of a tree or the breadth of its crown spread by one-third or more during any 365-day period and conforming to the American National Safety Standards A-300 (1995).

Minor maintenance means pruning or diminishing a tree without reducing its length or crown spread by one-third or more during any 365-day period, and without reducing its overall health.

Monocot means a monocotyledonous angiospermous plant, having a single cotyledon or seed leaf, and usually having parallel veination as in grasses and palms.

Removal means a change in location of a tree, including transplanting; or a temporary change of location and return to the same location; or damage to a tree above or below ground, to the extent sufficient to kill the tree or cause a potential hazardous condition.

Shade tree means a self-supporting woody plant or species normally growing to a natural height of at least 15 feet and a mature spread of at least 15 feet. Clusters of more than one tree may be used as a shade tree, when it is demonstrated to the tree commission that the cluster will, at maturity, pass the 15-foot-spread requirement.

Terminal bud means the primary bud on the principal leader of a tree.

Tree means a woody or fibrous perennial plant, which normally grows to a minimum overall height of 15 feet and an average mature crown spread greater than 15 feet.

(Ord. No. 97-10, § 1(3-14.2), 7-3-1997; Ord. No. 99-08, § 1, 5-18-1999; Ord. No. 04-20, § 5, 11-3-2004)

Cross reference— Definitions generally, § 1-2.

Sec. 110-253. Specially protected trees.

The following species of trees are afforded special protection by this article:

Common Name	Scientific Name
Autograph tree	Calusia rosea
Avocado tree	Persea americana

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Bay cedar	Suriana maritima
Blackbead	Pithecellobium guadalupense
Black calabash	Amphitecna latifolia
Black ironwood	Krugiodendron ferreum
Black mangrove	Avicennia germinans
Blolly	Guapira longitolia
Brittle thatch palm	Thrinax morrisii
Buttonwood	Conocarpus erectus
Cabbage palm	Sabal palmetto
Calabash tree	Crescentia cujete
Cats claw	Pithecellobium unguiscati
Cherry/buccaneer palm	Pseudophoenix sargentii
Cinnamon bark	Canella winterana
Cinnecord	Acacia choriophylla
Coconut palm	Cocos nucitera
Coral bean	Erythrina herbacea
Crabwood	Aferamnus lucidus
Cupania	Cupania glabra

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Darling plum	Reynosa septentrionalis
Dahoon holly	Ilex cassine
False boxwood	Gyminda latifoli
Fiddlewood	Citharexylum fruticosum
Florida boxwood	Schaefferia frutescens
Florida privet	Forestiera segregata
Florida royal palm	Roystonea elata
Geiger tree	Cordia sebestena
Golden dew drop	Duranta repens
Guava	Psidium guajava
Gumbo limbo	Bursea simaruba
Guiana plum	Drypetes lateriflora
Inkwood	Exothea paniculata
Jamaica caper	Capporis cynophallophora
Jamaica dogwood	Piscidia piscipula
Joewood	Jacquinia keyensis
Lancewood	Nectandra coriacea
Lignum vitae	Guaiacum sanctum

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Limber caper	Capparis flexuosa
Live oak	Quercus virginiana
Locustberry	Byrsonima lucida
Long spine acacia	Acacia macracantha
Mahogany	Swietenia mahagoni
Mango tree	Mangifera indica
Marlberry	Ardisia escallonioides
Mastic	Mastichodendron foetidissimum
Milkbark	Drypetes diversifolia
Myrsine	Myrsine floridana
Myrtle-of-the-river	Calypttransthes zuzygium
Paradise tree	Schaefferia frutescens
Paurotis palm	Acoelorrhaphe wrightii
Pigeon plum	Coccoloba diversifolia
Pine acacia	Acacia pinetorum
Pisonia	Pisonia rotundata
Poisonwood	Metopium toxiferum
Pond apple	Annona glabra

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Princewood	Exostema caribaeum
Randia	Randia aculeata
Redberry stopper	Eugenia confusa
Red mangrove	Rhizophora mangle
Red stopper	Eugenia rhombea
Rhacoma	Crossopetalum rhacoma
Rough strongbark	Bourreria radula
Rough velvetseed	Guettarada scabra
Royal poinciana	Delonix regia
Saffon plum	Bumelia celastrina
Sapodilla	Manilkara zapota
Satinleaf	Chrysophyllum oliviforme
Sea-grape	Coccoloba uvitera
Seven-year apple	Casasia clusiifolia
Shortleaf fig	Ficus citrifolia
Silver palm	Cocothrinax argentata
Slash pine	Pinus elliottii var. densa
Smooth strongbark	Bourreria succulenta

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Soapberry	Sapindus saponaria
Spanish lime	Melicoccus bijugatus
Spanish stopper	Eugenia foetidaia
Spicewood	Calyptanthes pallens
Soldierwood	Colubrina elliptica
Strangler fig	Ficus aurea
Strongbark	Bourreria ovata
Sweet acacia	Acacia farnesiana
Thatchpalm	Thrinax radiata
Torchwood	Amyris elemifera
Velvetseed	Guettarada elliptica
Wax myrtle	Myrica cenifera
White ironwood	Hypedlate trifoliata
White mangrove	Languncularia racemosa
White stopper	Eugenia axillaris
Wild coffee	Colubrina arborescens
Wild dilly	Manilkara bahamensis
Wild tamarind	Lysiloma bahamensis

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Willow bastic	Dipholis salicifolia
Yellowheart/satinwood	Zanthoxylum flavum

(Ord. No. 97-10, § 1(3-14.3), 7-3-1997; Ord. No. 99-08, § 2, 5-18-1999; Ord. No. 04-20, § 6, 11-3-2004)

Sec. 110-254. Unprotected trees.

This article shall not be applicable to trees determined by the city manager to have died of natural causes. The following species of trees may be acted upon without permit from the tree commission (see also [section 110-322](#), regarding Ficus species):

Australian pine	Casuarina equisetifolia
Beefwood/Brazilian oak	Casuarina glauca
Black olive*	Bucidia beceras*
Brazilian pepper/Florida holly	Schinustere binthifolia
Cork tree*	
Ficus species**	
Mahoe*	
Melaleuca/cajeput/punk tree	Melaleuca quinquenervia
Norfolk Island pine	Araucaria excelfa /heterophylla
Pink tabebuia*	Tabebuia heterophylla*
Queensland umbrella	Schefflera actinophylla

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Tropical almond*	Terminalia catappa*
Woman's tongue*	Albizia lebeck*

*	If tree is more than two feet in diameter at breast height then permit is required.
**	See also section 110-322

(Ord. No. 97-10, § 1(3-14.4), 7-3-1997; Ord. No. 99-08, § 3, 5-18-1999; Ord. No. 04-20, § 7, 11-3-2004)

Sec. 110-255. Removal of portions of coconut palm trees; permit required for sale.

- (a) *Prohibited acts.* No person shall cause the removal of one or more fronds, nuts, or fruit of or any portion of the trunk or root system of or otherwise deface or damage any coconut palm located upon city-owned property, city streets, or city rights-of-way. No person shall cause the removal of any frond that is located within 45 degrees of the center of the tree trunk located on private property.
- (b) *Sale or distribution.* Any person who intends to sell or distribute coconut palm tree fronds or coconuts in any form on city streets, sidewalks or other public areas shall apply to the licensing division for a permit in accordance with the rules and regulations contained in sections [6-1](#) through [6-9](#) of the Key West Code of Ordinances. The permit holder shall display the permit at all times while doing business on city property. The permit holder shall also maintain on a daily basis, on a form provided by the city, a statement of the source of the palm fronds and/or coconuts, and a name and phone number of the private property owner who provided that source. There shall be a limit of five permits given per permit period as defined in [section] [6-2](#), and the city manager shall develop a lottery system for applicants. No permit shall be given to an applicant who intends to use or has been found in violation of removing fronds or coconuts from city-owned trees or trees located on city property. The city manager may revoke a permit upon evidence provided at a hearing of a permit holder's violation of this section or any provision of sections [6-1](#) through [6-9](#)
- (c) *Exceptions.* This section shall not apply to work conducted for a city purpose by contractors or by city employees or to state agencies performing planting, maintenance, or removal functions with proper authorization.
- (d) *Enforcement; penalty.* A person charged with violating any provision of this section shall be subject to prosecution and fine under the civil citation procedures of sections [2-676](#) through [2-680](#), or [section 1-15](#) of the Key West Code of Ordinances or brought before the special magistrate under F.S. ch. 162.

(Ord. No. 97-10, § 1(3-14.5(A)), 7-3-1997; Ord. No. 99-08, § 4, 5-18-1999; Ord. No. 04-20, § 8, 11-3-2004; Ord. No. 10-20, § 1, 10-5-2010)

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Sec. 110-256. Tree abuse.

- (a) *Generally.* Tree abuse is prohibited, and abused trees shall not be counted toward fulfilling landscape requirements. The city may require the abused trees to be replaced.
- (b) *Prohibited acts.* A tree shall be considered abused if a person takes an action so that one of the following occurs:
- (1) Significant damage has been inflicted upon any part of a tree, including the root system, by machinery, storage of materials, soil compaction, excavation, vehicle accidents, chemical application or change to the natural grade.
 - (2) Damage inflicted to or cutting upon a tree which permits infection or pest infestation.
 - (3) Cutting upon any tree which permanently reduces the function of the tree or causes it to go into shock.
 - (4) Cutting upon a tree which destroys its natural shape.
 - (5) Hatracking as defined in [section 110-252](#)
 - (6) Bark has been removed.
 - (7) Tears and splitting of limb ends or peeling and stripping of bark.
 - (8) Use of climbing spikes, or cutting into the tree for the purposes of climbing on any species of tree for any purpose other than total removal.
 - (9) Girdling a tree with the use of wires (e.g., use of weedeater, mower damage).
- (c) *Additional prohibitions.*
- (1) No private property owner or agent shall damage, cut, or carve any tree or tree root located on the owner's property; or allow any liquid, solid or biological substance that is harmful to trees to be placed within the dripline.
 - (2) No person shall cut or otherwise damage a root or roots of a tree located on public property without first obtaining a permit from the tree commission.
 - (3) If a root or roots of a tree on private property migrates into another property, the owner of the tree must consult with the Landscape Division before commencing any work that will result in severing the root.
- (d) *Exceptions.* Exceptions to this section are as follows:
- (1) Australian pines, Florida holly, and Melaleuca trees are not protected by this section.
 - (2) Utility line clearing in conformance with ANSI A-300 standards and National Electrical Safety Code clearances does not constitute tree abuse.
 - (3) No action in removing a lightning damaged tree or trees severely damaged by hurricane, windstorm, flood or like event shall be considered tree abuse.

(Ord. No. 97-10, § 1(3-14.5(B)), 7-3-1997; Ord. No. 04-20, § 9, 11-3-2004)

Sec. 110-257. Ficus trees.

No species of Ficus tree, except for the shortleaf fig (*Ficus citrifolia*) shall be planted on city property. Owners of private property are hereby discouraged from the planting of any tree Ficus species.

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(Ord. No. 99-08, § 4, 5-18-1999)

Sec. 110-258. Emergencies.

In emergencies presenting imminent threat to person or property, any person may cause the removal of or major maintenance to a tree, provided that the city landscape coordinator or landscape inspector and the tree commission chairperson give their approval, and this action is reasonably calculated to dissipate the threat. Within two days of such action, such person shall file an application to the tree commission for an after-the-fact tree permit. The applicant shall comply with all reasonable remedial actions prescribed by the tree commission, which remedy shall be in the form described in [section 110-327](#)(4) through (6), unless the tree can be saved in its present location.

(Ord. No. 97-10, § 1(3-14.10), 7-3-1997)

Sec. 110-259. Duty of private property owner.

- (a) It shall be the duty of any person or entity owning or occupying private real property bordering on any street, upon which private property there is a tree or trees, to maintain such trees in a manner that such trees will not obstruct the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs or traffic lights, or obstruct views of any street or alley intersection.
- (b) It shall be the duty of any person or entity owning or occupying private real property bordering on any street, park or other public land, upon which private property there is a tree or trees that is diseased or infested, to treat or remove (with permit, as applicable) such tree or trees in a manner that they will not infect or damage nearby public vegetation or otherwise cause harm to the community or its citizens.
- (c) Notwithstanding [section 110-288](#), a code enforcement officer may take an alleged violation of subsection (a), hereof, directly through the code enforcement process described in [chapter 2](#), article VI of the Code of Ordinances.

(Ord. No. 04-20, § 10, 11-3-2004)

Sec. 110-260. Champion trees.

- (a) The tree commission shall designate and maintain a record of champion trees in Key West. The tree commission shall take a champion tree census during the five years after the effective date of this section, and from time to time thereafter update the census. After a tree is designated a champion tree, the landscape division shall notify the property owner within 60 days of the designation.
- (b) The tree commission's designation of champion status shall require a supermajority vote. In the event of an appeal to the city commission on the designation or lack of designation of a tree as a champion, the commission's decision shall be by supermajority vote.

(Ord. No. 04-20, § 11, 11-3-2004; Ord. No. 08-04, § 21, 5-20-2008)

Secs. 110-261—110-285. Reserved.

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DIVISION 2. ADMINISTRATION AND ENFORCEMENT

DIVISION 2. ADMINISTRATION AND ENFORCEMENT ⁶⁹

[Sec. 110-286. Personnel.](#)

[Sec. 110-287. Funds.](#)

[Sec. 110-288. Hearings on violations.](#)

[Sec. 110-289. Required notice of hearing.](#)

[Sec. 110-290. Hearing procedure.](#)

[Sec. 110-291. Compliance settlement agreements.](#)

[Sec. 110-292. Failure to achieve a compliance agreement.](#)

[Sec. 110-293. Fine recommended by tree commission.](#)

[Sec. 110-294. Notice of tree commission's final decision.](#)

[Sec. 110-295. Authority of special master.](#)

[Secs. 110-296—110-320. Reserved.](#)

Sec. 110-286. Personnel.

As provided by the annual city budget, the city manager shall provide appropriate staff to enable the tree commission to fulfill its duties and shall cause the minutes of all meetings to be recorded, transcribed in summary form and submitted to the tree commission for its approval. The city attorney shall serve as legal counsel to the tree commission in all matters.

(Ord. No. 97-10, § 1(3-14.11(A)), 7-3-1997)

Sec. 110-287. Funds.

The city manager shall establish within the city's operating budget a special account which shall include all funds donated to the work of the tree commission by any person, all funds donated to the city pursuant to [section 110-327](#)(7), all funds received from compliance settlement agreements as established in [section 110-291](#), all funds received by the city from fines imposed in enforcement of this article by the code enforcement special master, and any other compensation paid to the city for damage to trees belonging to the city. Funds in the special account shall be spent only as requested by the tree commission and approved by the city commission and shall be used to finance education about city tree programs and to finance protection, replacement, or additional plantings of trees in the city.

(Ord. No. 97-10, § 1(3-14.11(B)), 7-3-1997)

Sec. 110-288. Hearings on violations.

When the city landscape coordinator or a code enforcement officer determines that a tree has been damaged or destroyed in violation of this article, the city landscape coordinator may schedule a hearing before the tree commission. The hearing may occur at a regular or a special meeting.

(Ord. No. 97-10, § 1(3-14.11(C)), 7-3-1997)

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Sec. 110-289. Required notice of hearing.

Written notice of the hearing held pursuant to this division shall be provided to the alleged violator either by hand or by certified mail, return receipt requested. Notice shall be mailed or delivered by the city at least ten days before the hearing. The notice shall state the alleged violation. The tree commission may entertain a request for a continuance of the hearing to a later date. If the city landscape coordinator determines that the alleged violation presents an immediate and serious threat to the public health, safety, and welfare, the landscape coordinator may forward the case directly to the code enforcement special master as prescribed in article VI of [chapter 2](#).

(Ord. No. 97-10, § 1(3-14.11(C)(1)), 7-3-1997)

Sec. 110-290. Hearing procedure.

A hearing before the tree commission on a violation of this article shall be informal and need not be conducted according to the technical rules of evidence. All relevant evidence shall be admitted. All testimony shall be under oath and recorded. The alleged violator shall be afforded the opportunity to be heard at the hearing. If the alleged violator is absent and notice of the hearing has been provided sufficiently, the tree commission may conduct the hearing and render a decision. At the conclusion of the hearing, the tree commission shall issue findings to support its decision.

(Ord. No. 97-10, § 1(3-14.11(C)(2)), 7-3-1997)

Sec. 110-291. Compliance settlement agreements.

The tree commission may enter into a compliance settlement agreement with any person who admits to or is found to be in violation of this article, in lieu of being prosecuted for an alleged violation hereunder. Conditions contained in a compliance settlement agreement may include any one or a combination of the following:

- (1) A restitution payment to the city based on the value of the damaged or destroyed tree (value to be determined by appraisal of the city landscape division; provided, however, that the property owner may offer an alternate value to the tree commission for its consideration);
- (2) A donation of a Florida #1 tree or trees to the city (based on replacement value);
- (3) A replanting of a tree or trees on the subject property;
- (4) Time limits of performance by the person; and
- (5) A performance bond in an amount to secure compliance with a settlement agreement hereunder, and to be dissolved upon compliance with all terms of that settlement agreement.

If a property is sold prior to the completion of compliance with a settlement agreement, then the new owner shall be subject to the terms and conditions of the compliance settlement agreement. It shall be the duty of the selling property owner within ten days of the effective date of the sales contract to provide the buyer with a copy of the compliance settlement agreement. The landscape division shall issue a letter to the property owner when compliance is achieved.

(Ord. No. 97-10, § 1(3-14.11(C)(3)), 7-3-1997; Ord. No. 04-20, § 12, 11-3-2004)

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Sec. 110-292. Failure to achieve a compliance agreement.

If the alleged violator declines to enter into a compliance settlement agreement as provided in [section 110-291](#), the tree commission shall forward the case to the code enforcement special master for further hearing and penalty.

(Ord. No. 97-10, § 1(3-14.11(C)(4)), 7-3-1997; Ord. No. 04-20, § 13, 11-3-2004)

Sec. 110-293. Fine recommended by tree commission.

The tree commission shall issue a recommendation of a fine to the code enforcement special master based on its findings at the hearing on a violation of this article. If the tree commission finds that the damage to the tree is irreparable or irreversible, the tree commission may recommend that the special master impose a one-time fine of up to \$5,000.00 per violation.

(Ord. No. 97-10, § 1(3-14.11(C)(4)(a)), 7-3-1997; Ord. No. 04-20, § 14, 11-3-2004)

Sec. 110-294. Notice of tree commission's final decision.

When a person found to be in violation of this article by the tree commission opts not to enter into a compliance settlement agreement, the tree commission shall provide written notice of its final decision and its intention to forward the case to the code enforcement special master. Notice shall be provided either by hand or by mail, return receipt requested, within ten days of the hearing.

(Ord. No. 97-10, § 1(3-14.11(C)(4)(b)), 7-3-1997)

Sec. 110-295. Authority of special master.

The code enforcement special master shall have the authority to enforce compliance with the terms of this article.

(Ord. No. 97-10, § 1(3-14.11(C)(4)(c)), 7-3-1997)

Secs. 110-296—110-320. Reserved.

FOOTNOTE(S):

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Cross reference— Administration, ch. 2. [\(Back\)](#)

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DIVISION 3. PERMIT

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[Sec. 110-321. Required.](#)

[Sec. 110-322. Exceptions.](#)

[Sec. 110-323. Application.](#)

[Sec. 110-324. Determination by city landscape division.](#)

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[Sec. 110-327. Approval criteria.](#)

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[Sec. 110-330. Application of criteria.](#)

[Sec. 110-331. Issuance.](#)

[Sec. 110-332. Disapproval.](#)

[Sec. 110-333. Posting.](#)

[Sec. 110-334. Expiration.](#)

[Sec. 110-335. Exemptions.](#)

[Sec. 110-336. Pruning or heavy maintenance.](#)

[Sec. 110-337. Appeals.](#)

[Secs. 110-338—110-365. Reserved.](#)

Sec. 110-321. Required.

(a) Unless a tree removal permit approved by the tree commission and issued by the landscaping division has been obtained, no person, whether on publicly or privately owned land, shall cause tree abuse or other harm, or major maintenance to, hatracking, transplanting, topping or removal of the following:

- (1) Any tree listed as "specially protected" in [section 110-253](#)
- (2) Any monocot tree which is eight feet or more in height measured to the terminal bud;
- (3) Any dicot tree which is 3½ inches or more in diameter at breast height; or
- (4) Any plants located on public property.

(b) If there is an alleged violation of this section, the tree commission may conduct a hearing to determine a violation in accordance with procedures set forth in sections [110-288](#) through [110-295](#)

(Ord. No. 97-10, § 1(3-14.6(A)), 7-3-1997; Ord. No. 04-20, § 15, 11-3-2004)

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Sec. 110-322. Exceptions.

- (a) No permit shall be required for the removal of trees listed in [section 110-254](#). In addition, all species of Ficus that have a diameter at breast height of two feet or smaller may be removed without permit; provided, however, that permits for removal of a strangler fig (*Ficus aurea*) or a shortleaf fig (*Ficus citrifolia*) shall in all instances be required. A tree may be transplanted from one location to another location, either on the same site or to a different site, only with a permit; however, no permit is required when a tree is moved or transplanted from a holding area. For the purposes of this subsection, a holding area is deemed to be the area on the same site where a tree is held for not longer than 30 days and held with the property owner's intent to move or transplant it. The holding area shall be irrigated, and trees shall be staked properly for structural support.
- (b) No permit shall be required for the removal of a tree or trees located entirely within an interior courtyard, when that courtyard is enclosed on its four sides by a residence or commercial building; provided, however, that a permit is required if the tree has been designated as a champion.

(Ord. No. 97-10, § 1(3-14.6(B)), 7-3-1997; Ord. No. 99-08, § 5, 5-18-1999; Ord. No. 04-20, § 16, 11-3-2004)

Sec. 110-323. Application.

All applications for a tree removal permit shall be made to the city's landscape division. The application shall include an inventory of all existing trees in the area of proposed construction impact, including ingress to and egress from this area. The inventory shall state size, diameter and species of each tree. In order for the application to be acted upon, it must be signed by the property owner, or a letter from the property owner must be attached to the application designating an authorized agent. The applicant shall be responsible for clearly marking the subject trees on the site.

(Ord. No. 97-10, § 1(3-14.6(C)), 7-3-1997; Ord. No. 04-20, § 17, 11-3-2004)

Sec. 110-324. Determination by city landscape division.

After receiving an application for a tree removal permit, a representative of the city's landscape division within 45 days of receipt of the application shall conduct a site visit and prepare an application evaluation report ("AER"). The AER shall contain an evaluation of the tree, its species, size and condition. The AER shall determine a replacement value on an inch-by-inch basis; or an equivalent value on a monetary basis. An equivalency determination shall include, but not be limited to, an evaluation of species, age, condition, historical significance, dimensions and the tree's setting. The landscape division shall then forward the AER to the tree commission (copy to the applicant) for consideration during permit review. If the site visit is not concluded and the AER not issued within the prescribed 45 days, then the landscape division shall issue the permit forthwith.

(Ord. No. 97-10, § 1(3-14.6(D)), 7-3-1997; Ord. No. 99-08, § 5, 5-18-1999; Ord. No. 04-20, § 18, 11-3-2004)

Sec. 110-325. Review and action by tree commission.

Review and action by the tree commission on the application for a tree removal permit shall be as provided in sections [110-326](#) through [110-330](#).

(Ord. No. 97-10, § 1(3-14.6(E)), 7-3-1997)

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Sec. 110-326. Public meetings.

The tree commission, within 30 days of receiving the application evaluation report (AER) set forth in [section 110-324](#), shall hold a public meeting to review and act on all applications for tree removal, including development plans involving tree removal and landscaping. The planning board shall not review a development plan until the plan has been reviewed by the tree commission, unless the city landscape division renders a finding that the subject development plan is compliant with all criteria of article VI of [chapter 108](#) and this article. Notice of the date of the tree commission meeting shall be provided to the applicant. The applicant shall be given reasonable opportunity to be heard at the public meeting prior to the tree commission's action.

(Ord. No. 97-10, § 1(3-14.6(E)(1)), 7-3-1997; Ord. No. 04-20, § 19, 11-3-2004)

Sec. 110-327. Approval criteria.

The tree commission shall consider its finding of one or more of the following facts as grounds supporting approval of a tree removal permit application:

- (1) The tree is a hazard to traffic, public utilities, buildings or structures;
- (2) The tree is injured, diseased or insect infested such that it is a hazard to people, structures or other trees;
- (3) The tree prevents access to a lot or parcel;
- (4) The tree will be properly transplanted to another location in the city by the property owner with the consent of the owner of the new location. Transplanting shall take place following ANSI A-300 standards. The new owner shall maintain the tree. If it dies, then the new owner shall replace it with one or more trees of equal value, as approved by the tree commission;
- (5) The tree will be replaced with an equivalent tree planted in a location suitable for healthy growth on the same lot or parcel. Sufficient space shall be provided on site to allow replacement tree(s) to establish a mature canopy spread, based on typical growth characteristics;
- (6) The tree will be replaced with an equivalent tree that is:
 - (a) Donated to the public or to a non-profit organization recommended by the tree commission.
 - (b) Planted by the applicant on public property with the advice and consent of the tree commission and the engineering department; and
 - (c) Guaranteed by the applicant for a minimum of one year after planting; or
- (7) Funds equivalent to the value of the tree will be donated by the applicant to the city for use as provided by [section 110-287](#)

(Ord. No. 97-10, § 1(3-14.6(E)(2)), 7-3-1997; Ord. No. 04-20, § 20, 11-3-2004)

Sec. 110-328. Findings of disapproval.

The tree commission shall consider its finding of one or more of the following facts as grounds supporting disapproval of a tree removal permit application:

- (1) The species, size, champion tree status, historical importance and/or condition of the tree make it a unique or rare specimen; or

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(2) The size or location of the tree makes it substantial in and easily accessible to public view.

(Ord. No. 97-10, § 1(3-14.6(E)(3)), 7-3-1997; Ord. No. 04-20, § 21, 11-3-2004)

Sec. 110-329. Reserved.

Editor's note—

[Section 22](#) of Ord. No 04-20, adopted Nov. 3, 2004, repealed [§ 110-329](#), which pertained to additional requirements and derived from Ord. No 97-10, adopted July 3, 1997.

(Ord. No. 97-10, § 1(3-14.6(E)(4)), 7-3-1997)

Sec. 110-330. Application of criteria.

The tree commission shall determine whether to approve each tree removal permit application by weighing its findings made pursuant to sections [110-327](#) and [110-328](#). Except for trees meeting the criteria of either [section 110-327](#)(1) or (2), no permit for tree removal shall be issued unless the tree commission makes an affirmative finding under [section 110-327](#)(4), (5), (6) or (7) and weighs such finding as provided in this division.

(Ord. No. 97-10, § 1(3-14.6(E)(5)), 7-3-1997; Ord. No. 04-20, § 23, 11-3-2004)

Sec. 110-331. Issuance.

Each approval of a tree removal permit shall be signed by the chairperson of the tree commission. Notice of its approval shall be given by the tree commission to the landscape division which shall issue a permit.

(Ord. No. 97-10, § 1(3-14.6(F)), 7-3-1997; Ord. No. 04-20, § 24, 11-3-2004)

Sec. 110-332. Disapproval.

If the application for a tree removal permit is disapproved, the applicant may modify and resubmit the application only after six months from the date of denial and in accordance with tree commission regulations.

(Ord. No. 97-10, § 1(3-14.6(G)), 7-3-1997; Ord. No. 04-20, § 25, 11-3-2004)

Sec. 110-333. Posting.

The applicant for the tree removal permit shall keep the permit posted upon the tree during the work.

(Ord. No. 97-10, § 1(3-14.6(H)), 7-3-1997)

Sec. 110-334. Expiration.

All tree removal permits shall expire six months after the date of issuance. If work to be done pursuant to the permit is not complete, then the property owner must apply to the tree commission for

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renewal of the permit. The landscape division shall grant one six-month renewal as of right and may grant a summary administrative approval of future renewal applications.

(Ord. No. 97-10, § 1(3-14.6(I)), 7-3-1997; Ord. No. 04-20, § 26, 11-3-2004)

Sec. 110-335. Exemptions.

The tree commission shall have the option of granting an open-ended tree removal permit to Keys Energy Services. Such permit shall be subject to periodic reviews to ensure compliance with ANSI A-300 standards.

(Ord. No. 97-10, § 1(3-14.6(J)), 7-3-1997; Ord. No. 04-20, § 27, 11-3-2004)

Sec. 110-336. Pruning or heavy maintenance.

Pruning of trees shall be performed following pruning standards set by ANSI A-300 standards, as provided in division 5 of this article.

(Ord. No. 97-10, § 1(3-14.6(K)), 7-3-1997; Ord. No. 04-20, § 28, 11-3-2004)

Sec. 110-337. Appeals.

Appeals of the tree commission's permit decisions may be taken to the city commission as provided in [section 90-429](#).

(Ord. No. 97-10, § 1(3-14.9), 7-3-1997; Ord. No. 08-04, § 22, 5-20-2008)

Secs. 110-338—110-365. Reserved.

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[Sec. 110-366. Protective barricades; performance bond.](#)

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[Sec. 110-368. Failure to comply.](#)

[Sec. 110-369. Tree cutting standards.](#)

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Sec. 110-366. Protective barricades; performance bond.

All trees on a site shall be protectively barricaded before and during construction activities. The minimum barricading shall be subject to review by the city landscape division. Upon a vote of the tree commission, a performance bond in addition to a protective barricade may be required from the agent or owner for any tree protection, removal or transplanting to guarantee protection of a tree or to ensure restoration of an equivalency. The amount of such bond shall be based on the equivalent value of the tree specifically covered. Any bond required for a protected tree shall be four times the equivalent value for that tree, but in no event shall exceed \$5,000.00.

(Ord. No. 97-10, § 1(3-14.8(A)(1)), 7-3-1997; Ord. No. 04-20, § 29, 11-3-2004)

Sec. 110-367. Fences and walls.

The root systems of existing trees shall be taken into consideration when installing fences and walls. Post holes and trenches located close to trees shall be dug by hand and adjusted as necessary to avoid damage to major roots. Continuous footers for masonry walls shall be ended at the point larger roots are encountered and the roots bridged.

(Ord. No. 97-10, § 1(3-14.8(A)(2)), 7-3-1997)

Sec. 110-368. Failure to comply.

Any owner, tenant, contractor or agent thereof who fails to provide tree protection as stated in this division shall be guilty of tree abuse.

(Ord. No. 97-10, § 1(3-14.8(A)(3)), 7-3-1997)

Sec. 110-369. Tree cutting standards.

All trees shall be cut pursuant to division 5 of this article pertaining to pruning standards.

(Ord. No. 97-10, § 1(3-14.8(B)), 7-3-1997)

Secs. 110-370—110-395. Reserved.

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Sec. 110-396. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Arborist means a professional who possesses the technical competence through experience and related training to provide for or supervise the management of trees and other woody plants in the residential, commercial and public landscape.

Boundary reaction zone means a separating boundary between wood present at the time of wounding and wood that continues to form after wounding.

Branch and *limb* mean a secondary shoot or stem arising from one of the main axes (i.e., trunk or leader) of a tree.

Branch bark ridge means the raised area of bark in the branch crotch that marks where the branch wood and trunk wood meet.

Branch collar means trunk tissue that forms around the base of a branch between the main stem and the branch. As a branch decreases in vigor or begins to die, the branch collar becomes more pronounced.

Callus tissue means undifferentiated tissue formed by the cambium layer around a wound.

Cambium means the dividing layer of plant cells that forms sapwood (xylem) to the inside and bark (phloem) to the outside.

Canopy means the upper portion of the tree consisting of limbs, branches, and leaves.

Clean cuts means cuts made using a sharp tool, with no nicks or tears on the branch collar or the trunk.

Climbing spurs means sharp, pointed devices affixed to the climber's legs used to assist in climbing trees (a.k.a. gaffs, hooks, spurs, spikers and climbers).

Closure means the process of woundwood covering a cut or other tree injury.

Crotch means the angle formed at the attachment between a branch and another branch, leader or trunk of a woody plant.

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Crown, technically, means the juncture of the trunk above the roots, but in common usage it refers to the foliage comprising the uppermost branch structure.

Crown cleaning means the removal of dead, dying, diseased, crowded, weakly attached, or low-vigor branches and watersprouts from a tree's crown.

Crown raising means the removal of the lower branches of a tree in order to provide clearance.

Cut means the exposed wood area resulting from the removal of a branch or portion thereof.

Decay means the degradation of plant tissue, including wood, by pathogens such as fungus organisms. Wood decay can reduce the structural integrity of a tree or its individual limbs.

Dormant means a state of inactivity, or no growth. Deciduous trees are considered to be dormant from the time the leaves fall until new foliage begins to appear.

Drop crotch pruning means the specific cutting back of a branch or leader to a lateral branch at least one-third to one-half the diameter of the cut being made.

Espalier means pruning that is a combination of cutting and training branches which are oriented in one plane, formally or informally arranged and usually supported on a wall, fence or trellis. The patterns can be simple or complex but the cutting and training is precise. Ties should be replaced every few years to prevent girdling the branches at the attachment site.

Girdling roots means roots located above or below the ground level whose circular growth around the base of the trunk or over individual roots applies pressure to the bark area, ultimately restricting sap flow and trunk/root growth, frequently resulting in reduced vitality and/or stability of the plant.

Heading means cutting a currently growing or one-year-old shoot back to a bud, or cutting an older branch or stem back to a stub or lateral branch not sufficiently large enough to assume the terminal role. Heading should rarely be used on mature trees.

Heartwood means the inactive xylem (wood) toward the center of a stem or root that provides structural support.

Lateral means a branch or twig growing from a parent branch or stem.

Leader means a dominant upright stem, usually the main trunk. There can be several leaders in one tree.

Line clearance means pruning for the safe operation and maintenance of uninterrupted electric service.

Parent branch or stem means the tree trunk; or a large limb from which lateral branches grow.

Phloem means inner bark tissue through which primarily carbohydrates and other organic compounds move from regions of high concentration to low.

Photosynthesis means the process by which green plants manufacture food (carbohydrates) in cells containing chlorophyll, utilizing sunlight for energy.

Pollarding means a training system used on some large-growing deciduous trees that are severely headed annually or every few years to hold them to modest size or to give them and the landscape a formal appearance. Pollarding is not synonymous with topping, lopping, or stubbing. Pollarding is severely heading some and removing the other vigorous watersprouts back to a definite head or knob of latent buds at the branch ends.

Pre-cut and *precutting* mean the removal of the branch far enough beyond the finished cut so as to prevent splitting into the parent stem. The branch is first undercut, then cut from the top before the final cut.

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Pruning means the removal of plant parts, dead or alive, in a careful and systematic manner so as to not damage other parts of the plant.

Qualified line clearance tree trimmer means a tree worker who, through related training and on-the-job experience, is familiar with the techniques in line clearance and has demonstrated his ability in the performance of the special techniques involved. This qualified person may or may not be currently employed by a line clearance contractor.

Qualified line clearance tree trimmer trainee means any worker undergoing line clearance tree trimming training who, in the course of such training, is familiar with the techniques in line clearance and has demonstrated his ability in the performance of the special techniques involved. Such trainees shall be under the direct supervision of qualified personnel.

Qualified person or personnel means workers who, through related training and/or on-the-job experience, are familiar with the techniques and hazards of arboriculture work including training, trimming, maintaining, repairing or removing trees, and the equipment used in such operations.

Qualified tree worker, person or personnel means a person who, through related training and on-the-job experience, is familiar with the hazards of pruning, trimming, maintaining, repairing or removing trees and with the equipment used in such operations and has demonstrated ability in the performance of the special techniques involved.

Qualified tree worker trainee means any worker undergoing on-the-job training who, in the course of such training, is familiar with the hazards of pruning, trimming, maintaining, repairing or removing trees and with the equipment used in such operations and has demonstrated ability in the performance of the special techniques involved. Such trainees shall be under the direct supervision of qualified personnel.

Sap flow means the course assumed by sap in its movement through a tree.

Sapwood means the active xylem (wood) that stores water and carbohydrates and transports water and nutrients; a wood layer of variable thickness found immediately inside the cambium, comprised of water-conducting vessels or tracheids and living plant cells.

Scars and injuries mean natural or manmade lesions of the bark in which wood is exposed.

Shall denotes a mandatory requirement.

Should denotes an advisory requirement.

Stub means an undesirable short length or a branch remaining after a break or incorrect pruning cut is made.

Sucker means a vigorous shoot arising at or below the graft union. See *Watersprout*.

Sunburn means bark injury caused by extreme heat from the sun.

Sunscald means bark splitting or injury caused by temperature extremes or sudden temperature fluctuation.

Target means a person, structure or object which could sustain damage from the failure of a tree or portion of a tree.

Terminal role means a branch that assumes the dominant vertical position on the top of a tree.

Thinning means the removal of branches where they arise in order to let in light, reduce wind resistance, remove unwanted branches, or to retain a tree's natural shape.

Topiary means trees sheared or pruned carefully in a formal shape.

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Topping describes a generally undesirable pruning practice, but more often refers to the severe cutting back of branches with very little regard for the shape of the tree.

Tracing means careful removal of the loose or damaged bark along the edges of a wound to encourage closure.

Trimming means the same as the definition of Pruning.

Underclearance means the removal of lower tree limbs to allow clearance beneath the tree crown.

Watersprout means a vigorous shoot arising from the aboveground portion of the tree or above the graft union.

Wound means the opening that is created any time the tree's protective bark covering is penetrated, cut, or removed, injuring or destroying living tissue. Pruning a live branch creates a wound, even when the cut is properly made.

Xylem means wood tissue; active xylem is called sapwood, and inactive xylem is called heartwood.

(Ord. No. 97-10, § 1(3-14A.1), 7-3-1997)

Cross reference— Definitions generally, § 1-2.

Sec. 110-397. Class I pruning.

Fine pruning of trees is recommended for premium quality work with an emphasis on aesthetic considerations in addition to structural integrity. Fine pruning shall consist of the removal of dead, dying, diseased, decayed, interfering, objectionable, obstructing, and weak branches, as well as selective thinning to lessen wind resistance. The removal of such described branches is to include those on the main trunks, as well as those inside the leaf area. An occasional undesirable branch, up to one-half inch (1.25 cm) in diameter, as described in this section, may remain within the main leaf area to its full length when it is not practical to remove it. All of the following specifications apply to class I fine pruning:

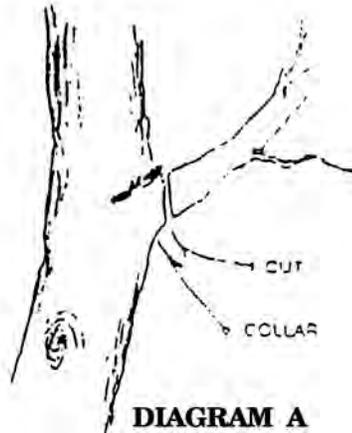
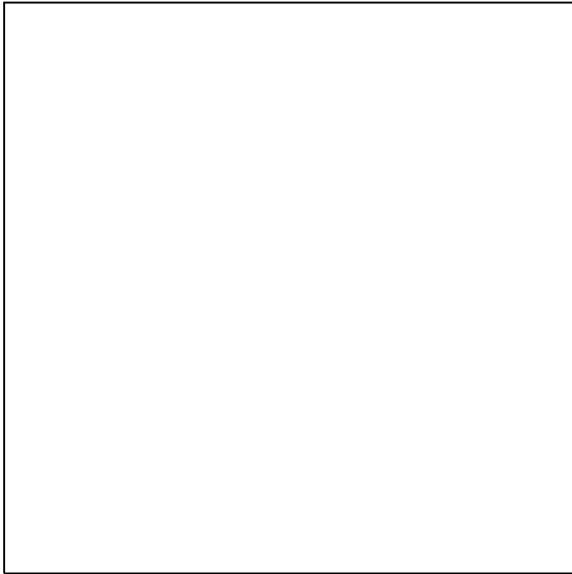
- (1) All cuts shall be made as close as possible to the trunk or parent limb, without cutting into the branch collar or leaving a protruding stub (see diagram A). Bark at the edge of all pruning cuts should remain firmly attached.

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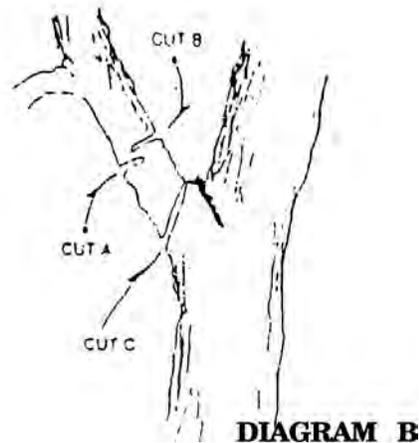
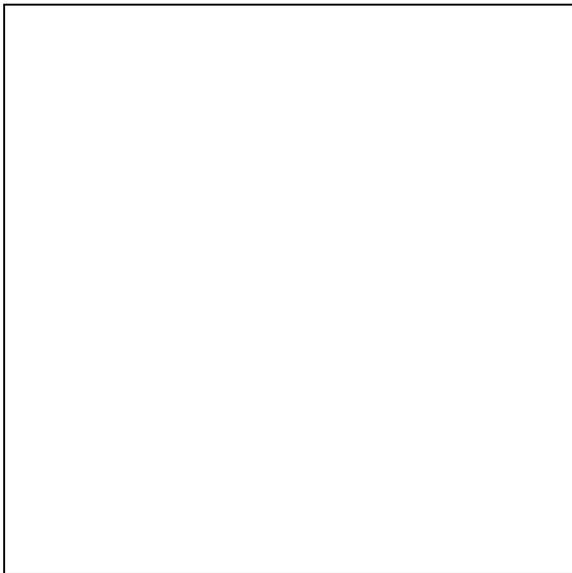
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Branches 1

- (2) All branches too large to support with one hand shall be precut to avoid splitting or tearing of the bark (see diagram B). Where necessary, ropes or other equipment should be used to lower large branches or stubs to the ground.



Branches 2

- (3) Treatment of cuts and wounds with wound dressing or paints has not been shown to be effective in preventing or reducing decay and is not generally recommended for that reason. Wound dressing over infected wood may stimulate the decay process. If wounds are painted for

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cosmetic or other reasons, materials nontoxic to the cambium layer of meristematic tissue must be used. Care must be taken to apply a thin coating of the material only to the exposed wood.

- (4) Old injuries are to be inspected. Those not closing properly and where the callus growth is not already completely established should be bark traced if the bark appears loose or damaged. Such tracing shall not penetrate the sapwood, and margins shall be kept rounded.
- (5) Equipment that will damage the bark and cambium layer should not be used on or in the tree. For example, the use of climbing spurs, hooks, or irons is not an acceptable work practice for pruning operations on live trees. Sharp tools shall be used so that clean cuts will be made at all times.
- (6) All cut limbs shall be removed from the crown upon completion of the pruning.
- (7) Trees susceptible to serious infectious diseases should not be pruned at the time of year during which the pathogens causing the diseases or the insect vectors are most active. Similarly, if pruning wounds may attract harmful insects, pruning should be timed so as to avoid insect infestation.
- (8) Remove the weaker or less desirable of crossed or rubbing branches. Such removal, if possible, should not leave large open spaces in the general outline of the tree.
- (9) Where practical, all visible girdling roots shall be treated as follows:
 - a. Either cut the root at one end or sever the root in the center with a chisel in order to allow the growing tree to push the root away; and
 - b. Remove the section of the root.
- (10) The presence of any disease condition, fungus fruit bodies, decayed trunk or branches, split crotches or branches, cracks, or other structural weakness shall be reported in writing to a supervisor and/or the owner and corrective measures recommended.

(Ord. No. 97-10, § 1(3-14A.2), 7-3-1997)

Sec. 110-398. Class II pruning.

Standard pruning of trees is recommended for where aesthetic considerations are secondary to structural integrity and tree health concerns. Standard pruning shall consist of the removal of dead, dying, diseased, decayed, interfering, objectionable, obstructing, and weak branches, as well as selective thinning to lessen wind resistance. The removal of such described branches is to include those on the main trunks, as well as those inside the leaf area. An occasional branch, up to one inch (2.5 cm) in diameter, may remain within the main leaf area where it is not practical to remove it. All of the following specifications apply to class II standard pruning:

- (1) All cuts shall be made as close as possible to the trunk or parent limb, without cutting into the branch collar or leaving a protruding stub (see diagram A). Bark at the edge of all pruning cuts should remain firmly attached.
- (2) All branches too large to support with one hand shall be precut to avoid splitting or tearing of the bark (see diagram B). Where necessary, ropes or other equipment should be used to lower large branches or stubs to the ground.
- (3) Treatment of cuts and wounds with wound dressing or paints has not been shown to be effective in preventing or reducing decay and is not generally recommended for that reason. Wound dressing over infected wood may stimulate the decay process. If wounds are painted for

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cosmetic or other reasons, materials nontoxic to the cambium layer of meristematic tissue must be used. Care must be taken to apply a thin coating of the material only to the exposed wood.

- (4) Old injuries are to be inspected. Those not closing properly and where the callus growth is not already completely established should be bark traced if the bark appears loose or damaged. Such tracing shall not penetrate the sapwood, and margins shall be kept rounded.
- (5) Equipment that will damage the bark and cambium layer should not be used on or in the tree. For example, the use of climbing spurs, hooks, or irons is not an acceptable work practice for pruning operations on live trees. Sharp tools shall be used so that clean cuts will be made at all times.
- (6) All cut limbs shall be removed from the crown upon completion of the pruning.
- (7) Trees susceptible to serious infectious diseases should not be pruned at the time of year during which the pathogens causing the diseases or the insect vectors are most active. Similarly, if pruning wounds may attract harmful insects, pruning should be timed so as to avoid insect infestation.
- (8) All visible girdling roots are to be reported to a supervisor and/or the owner.
- (9) The presence of any disease condition, fungus fruit bodies, decayed trunk or branches, split crotches or branches, cracks, or other structural weakness shall be reported in writing to a supervisor and/or the owner and corrective measures recommended.

(Ord. No. 97-10, § 1(3-14A.3), 7-3-1997)

Sec. 110-399. Class III pruning.

Hazard pruning of trees is recommended where safety considerations are paramount. Hazard pruning shall consist of the removal of dead, diseased, decayed, and obviously weak branches, two inches (five cm) in diameter or greater. All of the following specifications apply to class III hazard pruning:

- (1) All cuts shall be made as close as possible to the trunk or parent limb, without cutting into the branch collar or leaving a protruding stub (see diagram A). Bark at the edge of all pruning cuts should remain firmly attached.
- (2) All branches too large to support with one hand shall be precut to avoid splitting or tearing of the bark (see diagram B). Where necessary, ropes or other equipment should be used to lower large branches or stubs to the ground.
- (3) Treatment of cuts and wounds with wound dressing or paints has not been shown to be effective in preventing or reducing decay and is not generally recommended for that reason. Wound dressing over infected wood may stimulate the decay process. If wounds are painted for cosmetic or other reasons, materials nontoxic to the cambium layer of meristematic tissue must be used. Care must be taken to apply a thin coating of the material only to the exposed wood.
- (4) Old injuries are to be inspected. Those not closing properly and where the callus growth is not already completely established should be bark traced if the bark appears loose or damaged. Such tracing shall not penetrate the sapwood, and margins shall be kept rounded.
- (5) Equipment that will damage the bark and cambium layer should not be used on or in the tree. For example, the use of climbing spurs, hooks, or irons is not an acceptable work practice for pruning operations on live trees. Sharp tools shall be used so that clean cuts will be made at all times.
- (6) All cut limbs shall be removed from the crown upon completion of the pruning.

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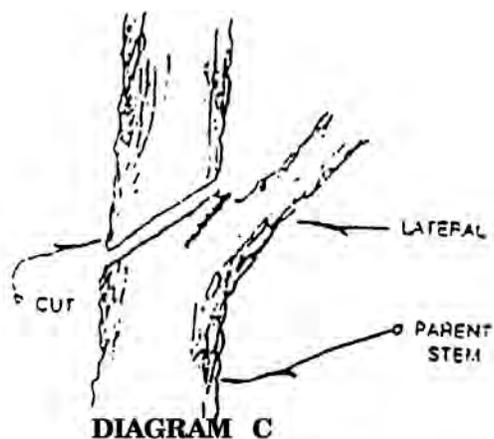
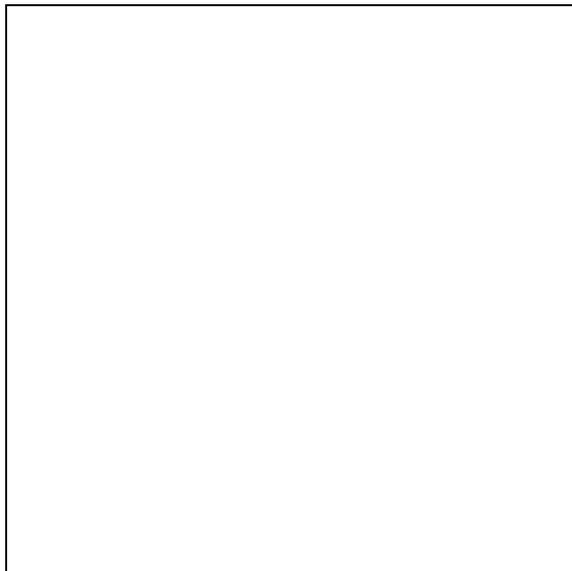
- (7) Trees susceptible to serious infectious diseases should not be pruned at the time of year during which the pathogens causing the diseases or the insect vectors are most active. Similarly, if pruning wounds may attract harmful insects, pruning should be timed so as to avoid insect infestation.
- (8) All visible girdling roots are to be reported to a supervisor and/or the owner.
- (9) The presence of any disease condition, fungus fruit bodies, decayed trunk or branches, split crotches or branches, cracks, or other structural weakness shall be reported in writing to a supervisor and/or the owner and corrective measures recommended.

(Ord. No. 97-10, § 1(3-14A.4), 7-3-1997)

Sec. 110-400. Class IV pruning generally.

Crown reduction pruning of trees shall consist of the reduction of tops, sides, or individual limbs. The terms "cutting back" and "drop crotch pruning" are sometimes used interchangeably with the term "crown reduction pruning." By contrast, the term "topping" is used to refer to a generally unacceptable arboricultural practice. The correct technique for crown reduction involves removal of a parent limb or dominant leader at the point of attachment of a lateral branch (see diagram C). This practice is to be undertaken only for the following reasons:

- (1) In situations where branches interfere with utility lines;
- (2) When there has been significant crown dieback;
- (3) When it is necessary to achieve specific topiary training or dwarfing; and
- (4) When, due to storm damage or prior incorrect pruning, it is appropriate to prune for safety and aesthetic reasons.



Pruning

(Ord. No. 97-10, § 1(3-14A.5), 7-3-1997)

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DIVISION 5. PRUNING STANDARDS

Sec. 110-401. Class IV crown reducing pruning.

The following the specifications are for class IV crown reducing pruning:

- (1) All branches too large to support with one hand shall be precut to avoid splitting or tearing of the bark (see diagram B). Where necessary, ropes or other equipment should be used to lower large branches or stubs to the ground.
- (2) Treatment of cuts and wounds with wound dressing or paints has not been shown to be effective in preventing or reducing decay and is not generally recommended for that reason. Wound dressing over infected wood may stimulate the decay process. If wounds are painted for cosmetic or other reasons, materials nontoxic to the cambium layer of meristematic tissue must be used. Care must be taken to apply a thin coating of the material only to the exposed wood.
- (3) Old injuries are to be inspected. Those not closing properly and where the callus growth is not already completely established should be bark traced if the bark appears loose or damaged. Such tracing shall not penetrate the sapwood, and margins shall be kept rounded.
- (4) Equipment that will damage the bark and cambium layer should not be used on or in the tree. For example, the use of climbing spurs, hooks, or irons is not an acceptable work practice for pruning operations on live trees. Sharp tools shall be used so that clean cuts will be made at all times.
- (5) All cut limbs shall be removed from the crown upon completion of the pruning.
- (6) Trees susceptible to serious infectious diseases should not be pruned at the time of year during which the pathogens causing the diseases or the insect vectors are most active. Similarly, if pruning wounds may attract harmful insects, pruning should be timed so as to avoid insect infestation.
- (7) When removing a parent leader or limb to a lateral branch, the final cut should be made as close to parallel as possible with the branch bark ridge and the lateral limb. The cut should be made as close to the bark ridge as possible without cutting into it. Care should be taken to avoid damaging the lateral limb when the final cut is made.
- (8) Remove the weaker or less desirable of crossed or rubbing branches. Such removal should not leave large open spaces in the general outline of the tree.
- (9) Generally, in crown reduction pruning, not more than one-third of the total area should be reduced at a single operation. Every effort should be made to cut back to a lateral at least one-third to one-half the diameter of the parent limb or leader that is being removed. Cuts not made to a suitable lateral, sometimes called topping cuts, shall not be permitted.
- (10) Before a branch is cut back, the ratio of live wood in the branch to leaf surface area in the branch should be considered carefully. The leaves must supply sufficient carbohydrates (food) to maintain the wood in the branch as well as send excess carbohydrates to the trunk and roots for storage and later use. Generally, not more than one-third the total leaf surface area should be removed at any one time.
- (11) Trees should be pruned to a shape typical of their species.
- (12) To prevent sunburn on thin-barked trees, just enough limbs shall be removed to get the desired effect without admitting too much sunlight to the trunk of the tree or the top of large branches. The damage may be minimized by doing work on susceptible species during the dormant season.

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- (13) When removing the lower branches of trees for crown elevation or underclearance, care should be taken to maintain a symmetrical appearance, and cuts should not be made so large or so numerous that they will prevent normal sap flow.
- (14) Periodic crown reduction for certain species such as silver maple, the true poplars, and other trees with brittle and soft wood is an established arboricultural practice. This procedure has proven beneficial in maintaining safety over long periods of time. In all cases, it is preferable to make cuts when branches are small so as to avoid developing stem decay and to begin training these trees when they are young and prune them regularly thereafter so as to avoid removing an excessive amount of leaf surface in one operation.

(Ord. No. 97-10, § 1(3-14A.5), 7-3-1997)

Sec. 110-402. Palms.

- (a) Palm pruning should be performed when fronds, fruit, or loose petioles may create a dangerous condition.
- (b) Live healthy fronds, initiating at an angle of 45 degrees or greater from the horizontal plane, should not be removed.
- (c) Fronds removed should be severed close to the petiole base without damaging living trunk tissues.
- (d) Palm peeling (shaving) should consist of the removal of the dead frond bases only, at the point they make contact with the trunk without damaging living trunk tissue.

(Ord. No. 97-10, § 1(3-14A.6), 7-3-1997)

Secs. 110-403—110-430. Reserved.

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[Sec. 110-431. Failure to obtain permit.](#)

[Sec. 110-432. Reserved.](#)

[Sec. 110-433. Moving of landscaping.](#)

[Sec. 110-434. City maintenance of landscaping.](#)

[Sec. 110-435. Landscaping on county-maintained or state-maintained roads to be relocated or value paid.](#)

[Secs. 110-436—110-460. Reserved.](#)

Sec. 110-431. Failure to obtain permit.

In the event a property owner removes a tree without a permit first having been approved by the tree commission and issued by the city, the property owner shall be subject to a hearing under this article and, upon a finding of violation without settlement, then code enforcement action.

(Ord. No. 97-10, § 1(3-14.7(A)), 7-3-1997; Ord. No. 04-20, § 30, 11-3-2004)

Sec. 110-432. Reserved.

Editor's note—

[Section 31](#) of Ord. No 04-20, adopted Nov. 3, 2004, repealed [§ 110-432](#), which pertained to failure to comply, and derived from Ord. No 97-10, adopted July 3, 1997.

Sec. 110-433. Moving of landscaping.

Whenever a median cut is permitted or an access apron (driveway) is permitted to any city-maintained road, the tree commission shall evaluate the value of any landscaping that would be lost as a result of such access. The tree commission may decide that the landscape that would be lost should be moved to another publicly owned location specified by the city landscape coordinator or landscape inspector. The applicant shall be responsible for the cost of moving the landscaping as well as the actual root pruning and removal of such landscape materials under the direction of the city landscape coordinator or landscape inspector. All landscaping so removed shall be deemed to be part of any landscape approval of the applicant's site plan and shall be fully guaranteed in its new location. If the landscape is not found to have survived the move to such a new location, it shall be replaced within one year or by the date of the final certificate of occupancy on the development then under construction, whichever date should occur first.

(Ord. No. 97-10, § 1(3-14.7(C)), 7-3-1997)

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Sec. 110-434. City maintenance of landscaping.

Any landscaping maintained by the city, either by formal agreement or by casual permit, on any road within the city which is functionally classified as either a county or state-maintained road which would be lost by virtue of the authorization of median cuts or access approach aprons (driveways) to the private property being developed shall be evaluated by the city landscape coordinator or landscape inspector as to the current value of such landscaping materials and cost involved in root pruning and removing the materials to another publicly owned site. The developer shall be advised of such cost and shall be given the opportunity of either paying such costs for the planting of comparable growth of similar quality and maturity where designated by the city landscape coordinator or landscape inspector or, alternatively, of root pruning and moving such landscaping. The moving of landscaping shall meet the requirements of [section 110-433](#). However, the city landscape coordinator or landscape inspector shall add a 25-percent increment to the cost estimate for any new landscape material to be planted at the developer's expense as a replacement allowance for landscape material which might not survive when planted.

(Ord. No. 97-10, § 1(3-14.7(D)), 7-3-1997)

Sec. 110-435. Landscaping on county-maintained or state-maintained roads to be relocated or value paid.

All landscaping on county-maintained or state-maintained roads which is to be relocated or the value thereof paid as provided in this division shall also be deemed part and parcel of the landscape plan for the developer's properties then under development permit, and no certificate of occupancy shall be issued thereon until the city is fully repaid for the lost landscaping plus the replacement allowance or, alternatively, the landscaping is root pruned, replanted and those found dead replaced prior to the issuance of the final certificate of occupancy.

(Ord. No. 97-10, § 1(3-14.7(D)), 7-3-1997)

Secs. 110-436—110-460. Reserved.

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[Sec. 110-461. Applicability.](#)

[Sec. 110-462. Functions of floodplains.](#)

[Sec. 110-463. Objectives.](#)

[Sec. 110-464. Development within uplands of the flood zone.](#)

[Sec. 110-465. Required techniques.](#)

[Sec. 110-466. Limitations and restrictions applicable to all development allowed within undisturbed flood zone areas.](#)

[Sec. 110-467. FEMA and wildlife service endangered species requirements.](#)

[Secs. 110-468—110-495. Reserved.](#)

Sec. 110-461. Applicability.

In addition to article II of [chapter 34](#) pertaining to flood damage prevention, this article, together with the provisions pertaining to surface water management in article VIII of [chapter 108](#) shall apply to all construction within the city.

(Ord. No. 97-10, § 1(3-11.7), 7-3-1997)

Sec. 110-462. Functions of floodplains.

Floodplains serve the following important functions in the hydrologic cycle:

- (1) Floodplains provide natural storage and conveyance of floodwaters;
- (2) The water on flooded lands may provide recharges to groundwater and is a basic source of flow to rivers, streams and estuaries;
- (3) Temporary storage of surface waters on floodplains regulates flood elevations and the timing, velocity and rate of flood discharges;
- (4) Floodplains maintain water quality by reducing erosion, removing nutrients and other pollutants and allowing sediment to settle; and
- (5) Natural floodplains export detritus and other food sources to open waterbodies and are vital habitat for fish, birds, wildlife and native plant communities.

(Ord. No. 97-10, § 1(3-11.7(A)), 7-3-1997)

Sec. 110-463. Objectives.

Regulation of development within floodplains is necessary in order to:

- (1) Minimize the potential for property damage and personal injury from flooding;
- (2) Restrict adverse interference with the normal movement of surface waters;
- (3) Maintain the optimum storage capacity of watersheds;

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- (4) Maintain desirable groundwater levels;
- (5) Maintain the natural hydrological and ecological functions of wetlands and other floodprone lands;
- (6) Prevent increased erosion and sedimentation; and
- (7) Maintain water quality.

(Ord. No. 97-10, § 1(3-11.7(A)), 7-3-1997)

Sec. 110-464. Development within uplands of the flood zone.

This article regulates the uplands within the 100-year flood zone. Wetlands, on the other hand, are regulated pursuant to sections [110-86](#) through [110-91](#) pertaining to preservation of wetlands and transitional wetlands. Land outside wetlands but situated within the 100-year flood zone, as delineated on the Federal Emergency Management Agency's federal insurance rate maps are referred to as "uplands of the flood zone."

(Ord. No. 97-10, § 1(3-11.7(B)), 7-3-1997)

Sec. 110-465. Required techniques.

Applicants for development and redevelopment shall be required to position structures and impervious surfaces to areas outside the floodplain zone to the extent lawful and pursuant to [section 110-466](#). Where development occurs within the flood zone to maintain reasonable use of land and to avoid a taking without just compensation, compensatory mitigation shall be required to maintain minimal loss of its natural flow regime as stipulated in this article. The 100-year flood zone is delineated within the comprehensive plan future land use map series, and its demarcations are determined by most recent flood insurance maps prepared by the Federal Emergency Management Agency.

(Ord. No. 97-10, § 1(3-11.7(C)), 7-3-1997)

Sec. 110-466. Limitations and restrictions applicable to all development allowed within undisturbed flood zone areas.

The following limitations and restrictions shall apply to all development allowed within undisturbed flood zone areas:

- (1) *Compensatory mitigation.* Where the applicant chooses to develop on uplands of the 100-year floodplain, compensatory storage shall be provided through excavation of a volume of uplands equivalent to the loss of storage within the 100-year flood zone caused by the placement of fill or the construction of impervious surface. Whenever possible adjacent uplands outside the flood zone are eligible to be excavated.
- (2) *Additional open space requirements.* Open space requirements shall be increased by five percent above stipulated requirements when alteration to uplands of the flood zone occurs through compensatory storage. Open space shall be located within flood zone areas to the maximum extent possible.
- (3) *Impervious surface principles.* If compensatory mitigation occurs, maximum impervious surface area principles shall be reduced by five percent.

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- (4) *Stormwater facilities.* Drainage facilities shall be in place and functional concurrent with deadlines established in the concurrency management system. Such drainage facilities shall be designed to:
- a. Comply with the city's established level of service standards and state stormwater facility standards cited in [chapter 94](#) pertaining to concurrency management.
 - b. Maintain the natural flow regime and function of the floodplain.
 - c. Support and further regional stormwater policies prepared by the South Florida Water Management District.

(Ord. No. 97-10, § 1(3-11.7(C)), 7-3-1997)

Sec. 110-467. FEMA and wildlife service endangered species requirements.

Inclusion of United States Federal Emergency Management Agency (FEMA) and United States Fish and Wildlife Service (FWS) Recommendations and Conditions in Final Development Permit Determinations and Implementation Certifications.

- (a) *Purpose and intent.* It is the purpose of [section 110-467](#) to implement regulations that will assure, consistent with the 10th Amendment to the U.S. Constitution, state and city regulations, proper record retention, coordination, and notification of FEMA and FWS regarding permit applications filed with or issued by the City of Key West, inclusive of FEMA/FWS requirements agreed to by the applicant.
- (b) *Lands to which this section apply.* FEMA and FWS have provided the Species Focus Area Maps (SFAMs) and a listing of real estate numbers of parcels (RE list) that are within the SFAMs identified by the Service in accordance with the Biological Opinion, mailed to the City of Key West and dated April 30, 2010, are hereby declared to be a part of these regulations. The SFAMs and RE list are on file at the City of Key West clerk's office and the City of Key West planning department.
- (c) *Rules for interpreting SFAMs.* The boundaries of the flood hazard areas shown on the FEMA SFAMs may be determined by scaling distances. Required interpretations of those maps for precise locations of such boundaries shall be made by the city planning director or his/her designee.
- (d) *Administration of development approval in species focus areas.*
 - (1) *SFA review required.* For parcels or lots shown within the SFAMs in which an application for development permit has been made, if the SFAM indicates the parcel or lot contains only unsuitable habitat for any of the following species: Key Tree-Cactus, Eastern Indigo Snake, and Stock Island Tree Snail, and the parcel or lot is not listed on the RE list, the planning director or his/her designee shall provide for a notation in the development application permit files that indicates:
 - i. The name of the official that made the determination;
 - ii. The date of the determination;
 - iii. The date of the SFAM and RE list used to make the determination.Once the determination has been made that a parcel or lot contains unsuitable habitat, action may be taken on the permit application by City of Key West staff.
 - (2) *Species assessment guides and FWS comment or recommendations or approval.* The Species Assessment Guides provided by the service, dated May 20, 2012, for the City of

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Key West are hereby declared to be a part of this ordinance. The assessment guides are on file with the city clerk and the city planning department. For parcels or lots shown within the SFAMs in which an application for development permit has been made, if the SFAM indicates the parcel or lot contains suitable habitat for any of the following species: Key Tree-Cactus, Eastern Indigo Snake, and Stock Island Tree Snail, and the parcel or lot is listed on the RE list and maps, the planning director or his/her designee shall provide the approved applications to the Service for review with a condition clearly stating that in accordance with F.S. § 166.033 that any applicable FWS permit, recommendations and/or conditions be obtained before a notice to proceed or commencement of development authorized by the city issued permit. Further, the city permit shall state that the issuance of the city permit does not in any way create any right on the part of the applicant to obtain a permit from FWS, and does not create any liability on the part of the City of Key West for issuance of the permit if the applicant fails to obtain the requisite FWS approval or fulfill the obligations imposed by FWS or undertakes actions that result in a violation of federal law and shall require the following:

- i. Once the property owner has received from the FWS a letter or other written communication stating the results of the FWS review, the letter shall be submitted to the city.
 - ii. Based on the requirements, recommendations or conditions contained in the FWS letter or communication, the city shall require the owner of the property to sign an acceptance agreement form to the FWS conditions, recommendations or requirements and the city shall maintain the acknowledgement form in the permit file. The acceptance form shall be signed by the permit applicant and the planning director or his/her designee.
 - iii. The city shall, based on the acknowledgement form from the property owner, incorporate the FWS letter conditions, recommendations or requirements into the notice of commencement, requirements of a City of Key West certificate of occupancy or final inspection certificate issuance to avoid and/or to minimize possible impacts on federally listed threatened or endangered species and their habitat.
 - iv. If the property owner does not agree to the FWS conditions, the city shall not provide a certificate of occupancy or certificate of final inspection.
- (3) *Enforcement.* Violation of this section, including any development constructed not in accordance with the owner acknowledged FWS conditions, are hereby deemed to be violations of the City Code and may be enforced as follows:
- i. The city may utilize the administrative enforcement procedures set forth in [Chapter 2, Article VI, Code Enforcement, City of Key West Code of Ordinances](#);
 - ii. The city may file an action in a court of competent jurisdiction seeking damages as well as injunctive and/or equitable relief; and/or
 - iii. Knowing violations of this section may be prosecuted in the same manner as misdemeanors are prosecuted in the name of the State in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and upon conviction shall be punished by a fine not to exceed \$500.00 and/or imprisonment in the county jail not to exceed 60 days. Each day a violation exists shall constitute a separate offense.

(Ord. No. 12-19, § 1, 7-17-2012)

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Secs. 110-468—110-495. Reserved.

FOOTNOTE(S):

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Cross reference— Floods, ch. 34. [\(Back\)](#)

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ARTICLE VIII. WELLFIELD PROTECTION

ARTICLE VIII. WELLFIELD PROTECTION

[Sec. 110-496. Purpose; enforcement; plan.](#)

[Sec. 110-497. Definitions.](#)

[Sec. 110-498. Criteria for compliance.](#)

Sec. 110-496. Purpose; enforcement; plan.

- (a) The city is committed to the protection of its resources and its permitted development.
- (b) The city shall enforce the permitting procedures in this article to mitigate potential adverse impacts on land use caused by the construction of irrigation wells.
- (c) Any proposed irrigation well shall require submission of a plan which demonstrates compliance with the regulatory criteria cited in this article and shall include information required pursuant to [section 108-515](#). No additional wells will be authorized by the city until the city completes a study as provided for in the comprehensive plan to determine freshwater impacts.

(Ord. No. 97-10, § 1(3-11.11), 7-3-1997; Ord. No. 98-14, § 7, 5-5-1998)

Sec. 110-497. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Irrigation wells means wells constructed for obtaining groundwater for the irrigation of lawns and landscaping, and whose size or capacity are below the thresholds for regulations by state agencies.

(Ord. No. 97-10, § 1(3-11.11), 7-3-1997)

Cross reference— Definitions generally, § 1-2.

Sec. 110-498. Criteria for compliance.

All irrigation wells shall comply with [section 74-337](#) and the following criteria:

- (1) A permit shall be required for the construction of irrigation wells within the city. Application shall be made to the building department.
- (2) All irrigation wells shall be constructed by a water well contractor licensed under F.A.C. ch. 17-531 to engage in the business of construction, repair, or abandonment of wells.
- (3) All irrigation wells shall be constructed in accordance with all applicable state regulations and good engineering practices. The provisions of F.A.C. 17-532.500 are incorporated in this subsection by reference.
- (4) The permittee shall demonstrate to the city that the issuance of a permit for an irrigation well will not cause adverse impacts on adjacent land use, as exemplified by but not limited to the following:
 - a. Significant reduction in water levels in an adjacent waterbody or wetland; or

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- b. Significant potential for land collapse or subsidence caused by a reduction in groundwater levels.
- (5) In this regard, all irrigation wells shall be constructed such that the water-bearing zone from which the well obtains its water is either connected to the freshwater lens or other water-bearing zones so connected. Proof of such shall be provided prior to approval.
- (6) Within 30 days after completion of the construction of any irrigation well as permitted in this article, a written report containing geophysical logs, geologic samples and logs, and well pumping tests shall be submitted to the city engineer for approval.
- (7) Use of an irrigation well shall not be permitted until approved, as evidence by a written release for the use of the irrigation well by the city engineer.

(Ord. No. 97-10, § 1(3-11.11), 7-3-1997)

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Chapters 111—113 RESERVED

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Chapter 114 SIGNS

Chapter 114 SIGNS [11](#)

[ARTICLE I. - IN GENERAL](#)

[ARTICLE II. - REGULATIONS](#)

FOOTNOTE(S):

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Cross reference— Buildings and building regulations, ch. 14; planning and development, ch. 54; planning and development, ch. 108; site plans for signs, § 108-285. [\(Back\)](#)