

ORDINANCE 84-12

AN ORDINANCE AMENDING IN ITS ENTIRETY, CHAPTER 98, TREES, OF THE CODE OF ORDINANCES OF THE TOWN OF LONGBOAT KEY BY PROVIDING FOR CERTAIN DEFINITIONS; PROVIDING THAT PERMITS ARE REQUIRED AND EXEMPTIONS FROM PERMITTING; PROVIDING REQUIREMENTS FOR REMOVAL AND APPLICATION PROCEDURES; PROVIDING FOR INVESTIGATION OF APPLICATIONS AND FEES; PROVIDING CONDITIONS FOR ISSUANCE OF PERMITS; PROVIDING FOR RELOCATION OR REPLACEMENT OF TREES; PROVIDING FOR PROTECTION OF TREES DURING CONSTRUCTION; PROVIDING THAT CERTAIN PLANTINGS ARE PROHIBITED; PROVIDING STANDARDS FOR TREE TRIMMING; PROVIDING FOR REMOVAL OF CASUARINA FOR HAZARD REDUCTION; PROVIDING FOR PETITIONS FOR REVIEW BY THE ZONING BOARD OF ADJUSTMENT; PROVIDING FOR PENALTIES AND FURTHER PROVIDING FOR SEVERABILITY OF PROVISIONS, REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, trees are an invaluable physical and psychological addition to the town, making life more comfortable by providing shade and cooling the air and land, reducing noise levels and glare, and breaking the monotony of man's developments on the land;

AND WHEREAS, the protection of trees within the Town of Longboat Key is not only desirable, but essential to the present and future health, safety and welfare of all the citizens, present and future, of the Town of Longboat Key;

AND WHEREAS, trees through their root systems stabilize the ground water table and play an important and effective part in soil conservation, erosion control and flood control;

AND WHEREAS, trees are producers of oxygen, a necessary element for the survival of man;

AND WHEREAS, trees appreciably reduce the ever in-

creasing and environmentally dangerous carbon dioxide content of the air and play a vital role in purifying the air that man breathes;

AND WHEREAS, trees precipitate dust and other particulate air-borne pollutants from the air;

AND WHEREAS, trees are a valuable property asset that can affect an area economically;

AND WHEREAS, removal of trees impairs benefits to existing property owners in the surrounding area and impairs economic stability and the value of improved and unimproved real property;

AND WHEREAS, the Town Commission has determined that a problem exists with respect to the evacuation of Town residents;

AND WHEREAS, there is only one primary route and two bridges providing access to the mainland;

AND WHEREAS, in the event of a hurricane or such other emergency that would necessitate evacuation, this route could be impaired by trees that are known to possess weak root systems and are therefore prone to windthrow;

AND WHEREAS, some trees are more beneficial than others as contributors to the Town's environment and it is therefore not necessary to protect each and every tree in order to attain the publicly beneficial result of a tree protection ordinance;

AND WHEREAS, trees are more susceptible to damage and destruction on undeveloped properties than on developed properties;

AND WHEREAS, mangrove trees are of ecological value in their capacity of stabilizing and protecting the shoreline, preserving water quality and reducing pollution, and providing for spawning and breeding grounds for marine and wildlife species.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY, FLORIDA:

Section 1. That Chapter 98: Trees, of the Code of Ordinances of the Town of Longboat Key is amended in its entirety to read as follows:

§ 98.01 Definitions

(A) Tree. A "tree" is any self-supporting woody plant having a diameter of four inches or more measured four and one-half feet above ground level in the environs of the town and which provides shade or is capable of providing shade at maturity. Trees having trunks that divide into two trunks or more at less than four and one-half feet above ground level shall be measured at the point of the "fork". For the purpose of this Ordinance, all species of Mangrove, including Red Mangrove (*Rhizophora mangle*), White Mangrove (*Laguncularia racemosa*), Black Mangrove (*Avicennia germinans*) and Buttonwood Mangrove (*Conocarpus erecta*), are hereby declared to be trees, and are hereby protected by the provisions of this Ordinance, regardless of size. In addition, all palms are declared to be trees and are protected by the provisions of this Ordinance.

(B) Remove a Tree. "Remove a tree" means to relocate, cut down, damage, or poison or in any other manner destroy or cause to be destroyed a tree as defined in this chapter.

(C) Drip line. The "drip line" of a tree is the peripheral limits of horizontal crown spread projected vertically to the ground.

(D) Improved Single Family Parcel. Parcel containing one dwelling.

§ 98.02 Permit Required and Exemptions

(A) No person, corporation or agent shall cut down, destroy, remove, relocate or destructively damage or cause to be cut down, destroyed, removed, relocated or destructively damaged any tree, as defined in 98.01(A), without first obtaining a permit from the town as herein provided, except that the following types of trees shall be exempt from the provisions of this ordinance unless otherwise stated herein:

- (a) *Schinus terebinthifolius* (Brazilian Pepper Tree)
- (b) *Melaleuca quinquenervia* (Punk Tree)
- (c) *Enterolobium cyclocarpum* (Ear Tree)
- (d) *Melia azedarach* (Chinaberry Tree)
- (e) *Ficus retusa* (Cuban Laurel)
- (f) *Grevillea robusta* (Silk Oak)
- (g) All *Eucalyptus*, except *E. cinera* (Silver Dollar Tree)

- (h) Ficus aurea (Strangler Fig)
- (i) Dalbergia sissoo (India Rosewood)

(B) Any tree, other than an oak tree (Quercus species) and other than mangroves as provided for in this ordinance, located on a parcel of improved single family residential land provided such tree is located on the premises of an individual resident owner, and further provided such property is not being prepared for the development of a subdivision or other non single-family residential use, is specifically exempt from the requirements of this ordinance.

(C) Florida Department of Transportation, municipal utilities, and franchised utilities may remove without permit, trees which endanger public safety and welfare and are located within utility easements and public rights of way or are interfering with utility service, provided such utilities cooperate with the Town to preserve such trees by relocation or replacement in the same vicinity or as determined by the Town for the best public benefit. Under emergency conditions such utilities and companies may effect removal without permit and without prior written notice as may be necessary to restore or prevent interrupted service.

(D) The removal or pruning, within a 30 day period, of five or fewer trees in the genus Casuarina (Australian Pine) by any person, corporation or agent is specifically exempt from the requirements of this Ordinance, except if such trees are located westerly of Gulf of Mexico Drive.

§ 98.03 Requirements for removal, Application Procedures

(A) It shall be unlawful for any person, corporation or agent to remove any tree as defined herein until a request has been submitted to the Town Manager of the Town of Longboat Key or his designee, in writing on a form provided by the Town, and accompanied with the following information and a permit is issued:

(1) An overall site plan including the approximate shape and dimensions of the lot or parcel of land, together with existing and proposed driveways, structures, and improvements. Plan to indicate location of trees, proposed removal, proposed relocation, proposed new trees, and proposed trees to be trimmed, also identify type, species and size.

(2) A statement as to why the trees are to be removed, relocated or trimmed.

(3) A statement explaining how any standing tree or trees to be relocated as part of a development project are to be protected during and after the construction of the development, and how the root system will be protected when raising the elevation of the area is necessary.

(4) Any other material or information deemed necessary by town officials in reviewing the criteria set out in § 98.04.

(B) It shall be unlawful for any person, corporation or agent to trim any mangroves as defined herein until a request has been submitted to the Town Manager of the Town of Longboat Key or his designee in writing on a form provided by the Town, accompanied by the following information and a permit is issued:

(1) Plan indicating location, height and species of mangroves to be trimmed.

(2) A statement as to the extent of the proposed trimming, the time of year of said trimming and the reasons as to why the mangroves are to be trimmed or relocated.

(3) Information as to the timing and extent of the last previous trimming of said mangroves.

(4) Any other material or information deemed necessary by Town officials in reviewing the criteria set out in § 98.04.

§ 98.04 Investigation of Application; Fee

(A) After an application for removal of trees or the trimming of mangroves has been filed, the application shall be checked by the Town Manager or his designee who will review and may consider the following criteria in addition to the conditions set forth in § 98.05 in determining whether or not a permit required by this chapter shall be issued and under what conditions such permit should be issued;

(1) The condition of the tree with respect to disease, insect attack, danger of falling, proximity to existing or proposed structures and interference with utility services;

(2) The necessity of removing a tree to construct proposed improvements in order to allow reasonable economic use of the property;

(3) The relief of the land where the tree is located and the effect removal of the same would have on erosion, soil moisture retention, diversion, or increased or decreased flow of surface waters;

(4) The number and density of trees existing in the neighborhood on improved or unimproved property; the town officials shall also be guided by the effect removal of a tree would have on property values in the neighborhood where the applicant's property is located and on other existing vegetation in the neighborhood;

(5) Impact upon the urban and natural environment, including:

- (a) Ground and surface water stabilization: Whether the removal of trees will substantially and adversely alter the water table regarding water assimilation by vegetation, transportation, and the interception of solar radiation as it affects the evaporation potential of associated soils and bodies of water.
- (b) Water quality and aquifer recharge: Whether the removal of trees will greatly lessen the ability for the natural assimilation of nutrients, chemical pollutants, heavy metals and other noxious substances from ground and surface waters during the infiltration, percolation and other movements of such waters toward an aquifer or natural stream.
- (c) Ecological impacts: Whether the removal of trees will have an adverse impact upon existing biological and ecological systems, micro-climatic conditions which directly affect these systems, or whether such removals will create conditions which may adversely affect the dynamic equilibrium of associated systems.
- (d) Noise pollution: Whether the removal of trees will significantly increase ambient or point source noise levels to the degree that a public nuisance is anticipated to occur.

- (e) Air movement: Whether the removal of trees will significantly reduce the ability of the existing vegetation to reduce wind velocities to the degree that a nuisance is anticipated to occur.
- (f) Air quality: Whether the removal of trees will significantly affect the natural cleansing of the atmosphere by vegetation through particulate matter interception, the ingestion of noxious and poisonous gases, or the net production of oxygen released to the atmosphere as a by product of photosynthesis.
- (g) Wildlife habitat: Whether the removal of trees will significantly reduce available habitat for wildlife existence and reproduction or result in the emigration of wildlife from adjacent or associated ecosystems.
- (h) Method of protection and nourishment: During construction, after construction, during relocation and after relocation.

(6) The ease with which the applicant can alter or revise the proposed development or improvement to accommodate existing trees, including the tree or trees proposed to be removed;

(B) Application for tree removal and trimming of mangroves as outlined in § 98.03 filed with the Town Manager or his designee shall be accompanied by a fee of five dollars (\$5.00), plus cost of inspector, plus cost of consultant, plus cost of materials.

§ 98.05 Issuance of Permits

After considering the criteria set out in § 98.04, the Town Manager or his designee shall approve or disapprove or approve with conditions, the application for issuance of the permit. No permit shall be issued for tree removal unless one of the following conditions, as determined by the Town, exists:

(1) A site plan submitted by the applicant shows that a proposed structure, permissible under all applicable laws and regulations, can be situated on the subject

parcel only if specific trees are removed or relocated, or

(2) The tree is located in such proximity to existing or proposed structures that the utility or structural integrity of such structures is materially impaired, or

(3) The tree materially interferes with the location, servicing or functioning of public utility lines or service, or

(4) The tree obstructs views of oncoming traffic or otherwise creates a substantial traffic hazard.

(5) The tree is an Australian Pine (all species, *Casuarina* spp.), a Brazilian Pepper Tree (*Schinus terebinthifolius*) and/or a Punk Tree (*Melaleuca quinquenervia*).

(6) The tree is dead or diseased to an extent that recovery is unlikely or so structurally unsound that it poses a substantial threat of damage to persons or property.

§ 98.06 Relocation or Replacement

(A) As a condition to granting a permit, the Town shall have the option to require the applicant to relocate or replace a tree being removed at the applicant's expense, either within the site, or with the concurrence of the Town, on public land within reasonable proximity of the site. The ratio of replacement to be determined by the Town based on condition of the site, size, and species of tree to be removed.

(B) A replacement tree shall be of a type and species having shade potential and other values, at least equal to that of the tree being removed, and shall be a minimum of six (6) feet in height when planted. The planted tree shall not be of the nuisance type listed in § 98.02(A). The following are specifically recommended as replacement trees:

- (1) Mahogany (*Swietenia mahogani*)
- (2) Sea Grape (*Coccoloba uvifera*)
- (3) Live Oak (*Quercus virginiana*)
- (4) Gumbo Limbo (*Bursera simaruba*)
- (5) Seaside Mahoe (*Thespesia populnea*)
- (6) Red Bay (*Persea borbonia*)
- (7) Silver Buttonwood (*Conocarpus erectus*)
- (8) Wax Myrtle (*Myrica cerifera*)
- (9) Southern Red Cedar (*Juniperus silicicola*)
- (10) Black Olive (*Bucida buceras*)



Other trees may also be acceptable as replacements and, therefore, the above list is not all inclusive.

§ 98.07 Protection of Trees

(A) During and/or prior to the land clearing stage of development, the owner, builder or developer shall clearly mark all trees for which a tree removal permit has not been issued and shall erect barriers for the protection of the trees to be preserved no closer than ten (10) feet of any tree (as defined herein). To protect the root systems of all trees to be saved, clearing of vegetation within the barriers will be accomplished by the use of hand tools. The owner or developer shall not cause or permit the movement of equipment or the storage of equipment, material, debris or fill to be placed within the required protective barrier.

(B) During the construction stage of development, the owner or developer shall not cause or permit the cleaning of equipment or material within the outside perimeter of the crown ("drip line") of any tree or group of trees which are to be preserved. Within the outside perimeter of the crown ("drip line") of any tree, the owner or developer shall not cause or permit storage or disposal of waste materials such as paints, oils, solvents, asphalt, concrete, mortar or any other material harmful to the life of a tree. No attachment, wires (other than supportive wires for a tree), signs or permits may be fastened to any tree protected by this chapter.

(C) Representatives of the Town shall conduct periodic inspections of the site during the land clearing and construction in order to insure compliance with this chapter. In addition, a performance bond may be required from the owner or developer to be used for the restoration of any trees on site which have been adversely affected, as determined by the Town.

(D) The standards and requirements of this section shall be applicable to all land development projects, even if a tree removal permit is not required.

§ 98.08 Prohibited Plantings

(A) It shall be unlawful for any person, corporation or their agent to plant, transplant, or grow from seed or cause to be planted, transplanted or grown from seed any of the following tree species; (Schinus terebinthifolius) Brazilian Pepper Tree, (Melaleuca quinquenervia) Punk Tree

and (Casuarina spp.) Australian Pine, all species; within the Town limits of the Town of Longboat Key.

(B) It shall be unlawful for any person, corporation or their agent to plant, transplant, or grow from seed or cause to be planted, transplanted or grown from seed, a tree from the following species; the (Ficus retusa) Cuban Laurel, except by permit obtained from the Town which will be granted if the following conditions exist: (1) The tree will not materially impair the utility or structural integrity of public utility lines or service, or road, sidewalks and bike paths or materially interfere with the location, servicing or functioning of same; (2) The Tree will not obstruct views of oncoming traffic or otherwise create a substantial traffic hazard; and (3) The tree will not create adverse biological or ecological impacts.

§ 98.09 Tree Trimming

(A) It shall be unlawful for any person, corporation or agent to trim mangroves of all species without first having obtained a permit from the Town.

(B) Subject to the provisions of § 96.12 relating to the clearing of overgrowth, it shall be unlawful for any person, corporation or agent in the trimming of any tree as normal maintenance or otherwise to so trim a tree as to cause mutilation of the tree to the extent that its health or function are significantly impaired or to remove more than 50% (25% of the total leaf area (canopy) in any one year or more than 35% over a five year period in the case of red and black mangroves) of the leaves, limbs, and foliage of the trees in any 3 year period.

(C) Subject to the provisions of § 96.12 insofar as it pertains to keeping canals or other navigable waterways or man-made drainage ditches clear of overgrowth, it shall be unlawful for any person, corporation, or agent in the absence of a seawall at or adjacent to the mean high waterline of any wetland in the town to remove or mutilate mangroves of all species or other plant life important to shoreline ecology, except for trimming as permitted in (B) above, without first applying for and obtaining a permit to do so from the Town Manager or his designee as provided for herein.

§ 98.10 Removal of Casuarina for Hazard Reduction

The Town Commission of the Town of Longboat Key shall encourage the removal or pruning of all trees in the genus

Casuarina (Australian Pine) from all real property within the Town limits or property subsequently annexed to the Town of Longboat Key adjacent to Gulf of Mexico Drive for a distance sufficient that should a tree fall, it does not reach any paved portion of the roadway. Compliance with § 339.25, Florida Statutes (1981) shall be required prior to any pruning or removal as set out in this section.

§ 98.11 Petition for Review

Any person who feels aggrieved by the strict enforcement of this chapter by any administrative official may file, within five (5) days after the said aggrievement, a petition to have his case reviewed and acted upon by the Zoning Board of Adjustment, whose decisions on all matters shall be final.

§ 98.12 Penalty

Any person found guilty of violating any provisions of this chapter or any order issued pursuant thereto shall upon conviction thereof be punished by a fine not exceeding \$500.00 or by imprisonment for a term not exceeding sixty (60) days. In a prosecution under this ordinance, each tree removed, damaged or destroyed will constitute a separate offense.

Section 2. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of the Ordinance shall not be affected.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This Ordinance shall take effect in accordance with law and the Charter of the Town of Longboat Key.

Passed on first reading this 25th day of June 1984.

Passed and adopted on second reading this 23rd day of July, 1984.

ACTING MAYOR

*Andrew A. Orlos*

ATTEST:

*T. Jane Pool*  
TOWN CLERK