

ORDINANCE NO. 2023-11

AN ORDINANCE OF THE CITY OF INDIAN HARBOUR BEACH, BREVARD COUNTY, FLORIDA AMENDING CHAPTER 107 RELATING TO ESTABLISHMENT OF A TREE PRESERVATION CODE, ESTABLISHMENT OF A TREE PRESERVATION BOARD; PROVIDING FOR SEVERABILITY, REPEAL, CODIFICATION AND AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Indian Harbour Beach, Florida, acknowledges the environmental, societal, and aesthetic benefits of trees on private and public properties; and

WHEREAS, the City Council of the City of Indian Harbour Beach, Florida, desires to maintain and expand the existing tree canopy within the City; and

WHEREAS, the City Council of the City of Indian Harbour Beach, Florida, desires to become a Tree City USA member which requires the City to adopt a Tree Preservation Ordinance and have a Tree Preservation Board; and

WHEREAS, the City Council of the City of Indian Harbour Beach, Florida, previously established an Ad Hoc Tree Ordinance Committee to develop a proposed Tree Preservation Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Indian Harbour Beach, Brevard County, Florida, that:

Section 1. A new section 107-35 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-35. Declaration of legislative intent and public policy

- (1) These researched-based regulations shall be known and may be referred to as the City of Indian Harbour Beach Regulations for Tree Maintenance and Preservation.
- (2) The purpose of this section is to perpetuate the protection, preservation, and conservation of existing native trees as an effective means of conserving energy and to preserve such trees to improve the aesthetic quality of the City thereby promoting the health and general welfare of the citizenry. Using research-based practices and studies that are readily accessible and publicly available, it is the intent of this Chapter to
 - (a) Enhance the community's appearance and promote civic pride.
 - (b) Enhance and protect property values.
 - (c) Increase the economic and aesthetic value of developed and undeveloped properties.

- (d) Promote landscaping methods that provide for the preservation of existing plant communities, re-establishment of native plant communities, and Florida-Friendly concepts to promote water conservation.
- (e) Preserve existing natural trees and vegetation and incorporate native plants, plant communities, and ecosystems into landscapes where possible.
- (f) Encourage residents to select desirable tree species for Indian Harbour Beach.
- (g) Provide citizens with psychological relief from the increasing complexities of a manmade suburban environment.
- (h) Assist in public information, the education of its citizens, and the effective implementation of this Chapter.
- (i) Educate residents about the following beneficial properties of trees:
 - 1) Improve air and water quality through such natural processes as photosynthesis and mineral uptake.
 - 2) Produce oxygen and reduce carbon dioxide concentrations in the air.
 - 3) Trap and filter out ash, dust, and pollen in the air.
 - 4) Reduce air, noise, heat, and chemical pollution.
 - 5) Provide shade and energy conservation.
 - 6) Reduce the urban heat island effect of concrete and pavement.
 - 7) Reduce the temperature of the microclimate through the process of evapotranspiration.
 - 8) Reduce the use of water and fertilizers needed to maintain non-native trees and plants.
 - 9) Prevent erosion by stabilizing the soil through its root system and by breaking the force of raindrops pounding upon soil surfaces.
 - 10) Reduce the quantity of surface runoff and reduce the percentages of impervious surfaces through canopy interception.
 - 11) Purify water by removing the nutrients from waters passing through the ground from the surface to the Indian River Lagoon.
 - 12) Provides essential habitat for wildlife.
 - 13) Can provide a windbreak to nearby structures.

Section 2. A new section 107-36 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-36 Definitions

canopy interception - The rainfall that is intercepted by the canopy of a tree and successively evaporates from the leaves.

canopy tree - A tree having a high canopy with a mature width greater than 4 meters.

certified arborist - An arborist certified by the International Society of Arboriculture (ISA).

champion trees - Individual trees that are exceptional examples of their species because of their enormous size, great age, rarity, or historical significance.

cold tolerant - The ability of a plant to tolerate cold conditions.

common name - A name based on the normal language of everyday life.

diameter at breast height (DBH) – Diameter, measured in inches at breast height (4.5 feet above the ground).

drought tolerant - Plant species that will survive on natural rainfall without supplemental irrigation after a period of establishment.

easement - A right granted to an entity to use a piece of property belonging to a separate individual or entity for a specific purpose.

espalier - Trained to grow flat against a support such as a wall or a trellis.

evapotranspiration - The process by which water is transferred from the land to the atmosphere by evaporation from the soil and other surfaces and by transpiration from plants.

flood tolerant - Plants able to withstand excessively wet and flooded conditions for several days to a few weeks.

Florida-friendly plants - The plant will thrive in our local climate and soil, requiring little care. Florida Friendly plants however do not necessarily need to be native plants and are susceptible to becoming invasive.

Florida native plants - A species occurring within the state boundaries prior to European contact, according to the best available scientific and historical documentation.

full sun - More than six hours of direct sun per day.

impervious surfaces - Those surface areas which either prevent or retard saturation of water into the land surface and cause water to run off the land surface in greater quantities or at an increased rate of flow from that present under natural conditions preexistent to development.

invasive species - Introduced organisms that cause harm to the environment, the economy, and/or human health. Often displacing native species, these invaders skew the delicate balance between animals, plants, and important processes such as water flow and fire.

keystone species - A species on which other species in an ecosystem largely depend, such that if it were removed the ecosystem would change drastically. The 5% of native plants that provide 75% of the food that supports the terrestrial food web.

microclimate - The climate of a very small or restricted area, especially when this differs from the climate of the surrounding area.

native tree – A naturally occurring tree that has evolved overtime with the biological and physical factors specific to their region such as soil, climate, and rainfall.

non-native plants - Also referred to as exotic or alien, are plants that have been introduced to an area from their native range, either purposefully or accidentally.

palm tree - An unbranched woody perennial plant lacking the capability of producing secondary growth and bark typically having a single stem with a crown of long feathered or fan-shaped leaves and having old leaf scars forming a regular pattern on the trunk.

perennial - A plant that can live for three or more growing seasons.

plant community - The combination of trees and plants in a specific location which interact with each other and with the animal populations and the physical environment.

pleached - Denoting or consisting of branches that are entwined or interlaced to form a hedge or provide cover for an outdoor walkway.

problem trees - Trees that are not a good long-term fit for a location for a multitude of reasons including, but limited to: "wrong tree, wrong place"; insect damage; disease; lightning damage; wind damage; vandalism; incompatible soil composition; etc.

protected trees - Mature trees, excluding palm trees, with a diameter at breast height (DBH) of 4 inches or more, any replacement tree, and any tree that is represented in a landscape plan, street tree planting plan, or other planning documents for the purposes of securing an approved building permit, clearing permit, or certificate of occupancy.

replacement trees - A tree that is planted after a protected tree is removed. Refer to Sec. 107-39.

salt-tolerant - A plant that can withstand, without significant adverse effects, moderate or high concentrations of salt water on its leaves or in the soil within reach of its roots.

scientific name - The genus and species.

stormwater management area - An area designed and used for the temporary or permanent storage of stormwater runoff primarily from impervious surfaces like parking lots, driveways, and rooftops.

structural pruning - Pruning that focuses on improving the architecture of the branches within the crown of a tree by maintaining one main trunk and reducing stems that compete with it.

sun tolerant - Able to grow in full sun conditions.

topiary - The training of living trees and shrubs into artificial, decorative shapes.

tree - A woody perennial plant capable of secondary growth and produces bark, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.

tree topping - The practice of removing whole tops of trees or large branches and/or trunks from the tops of trees.

wind resistant - Plants that are less likely to become damaged during storms.

Section 3. A new section 107-37 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-37 Tree Preservation Board

(1) **Purpose:** The City of Indian Harbour Beach, Florida hereby creates a City Tree Preservation Board.

(2) **Membership:** The City Tree Preservation Board shall consist of five voting members and two alternates to be appointed by the City Council. The members of said board shall be residents of the city and shall serve at the pleasure of the City Council.

(3) **Term of Office:** The initial appointments to the City Tree Preservation Board shall be as follows:

- Two members appointed for a term of three years.

- Two members appointed for a term of two years.
- One member appointed for a term of one year.

Thereafter all appointments shall be made for a term of three years and any member may be reappointed from term to term upon approval of the City Council. Appointments to fill any vacancy shall be for the remainder of the unexpired term of office. Any member who fails to attend two of three successive meetings without cause and without prior approval of the Chairperson shall automatically forfeit her or his appointment and the City Council shall promptly fill such vacancy.

- (4) Compensation: Members of the Tree Preservation Board shall serve without compensation.
- (5) Meetings: The Tree Preservation Board shall establish a regular meeting schedule no less than once a quarter.
- (6) Operation: Members of the Tree Preservation Board shall annually elect a chairperson and vice-chairperson by majority vote to preside over the board's meetings. The chairperson and vice-chairperson may take part in all deliberations and vote on all issues. A majority of the members shall be a quorum for the transaction of business.
- (7) Duties and Responsibilities: The Tree Preservation Board shall have the following duties and responsibilities:
 - (a) Plan and host Indian Harbour Beach's annual Arbor Day Ceremony.
 - (b) Promote best practices in tree selection, planting, care, and trimming.
 - (c) Promote the identification, preservation, and protection of champion trees.
 - (d) Develop tree related programs, incentives, partnerships, and rewards promoting positive Tree City USA citizenship.
 - (e) Consult with City staff, upon request, regarding the selection, care, and maintenance of trees on City property.
 - (f) Develop and present annually a written community tree management program and supporting work plan with which, upon acceptance by the City Council, shall constitute the official Comprehensive Tree Plan for the City of Indian Harbour Beach, Florida.
 - (g) Make recommendations to the City Council upon any matter coming within the scope of its work, as deemed necessary.
 - (h) Other duties as assigned by the City Council.

Section 4. A new section 107-38 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-38. Applicability and exemptions

- (1) Applicability.
This article applies to trees on public and private property.
- (2) Exemptions

- (a) Trees with a diameter less than 4 inches DBH are exempt from the provisions of this Chapter.
- (b) Non-native fruit trees cultivated or grown for the specific purpose of producing edible fruit, including, but not limited to mangos, avocados, or species of citrus.
- (c) Utility companies authorized to provide utility service may remove the protected tree(s) that endanger public safety and welfare by interfering with utility service in an existing utility easement or public right-of-way, provided work is done by or under the control of the operating utility company and said company has received all necessary licenses or permits to provide utility service within the easement.
- (d) During the period of locally declared emergencies, such as a hurricane, flood, or any other natural disaster, the requirements of this Section may be temporarily waived by the City Manager, so that private or public work to restore order in the City will in no way be hampered.
- (e) Single-family home properties

Section 5. A new section 107-39 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-39 Recommended Criteria For Problem Tree Removal

- 1) The tree is invasive, prohibited, and/or not recommended (See Sec. 107-44)
- 2) The tree is located within an existing or proposed right-of-way.
- 3) The tree is located within an existing or proposed easement or stormwater area provided that the area is reasonably accessible for the service or use.
- 4) The tree creates or will create a safety or health hazard or a nuisance with respect to existing or proposed structures or vehicles or pedestrian routes and there is no reasonable alternative to relocate or reconfigure the improvements.
- 5) The tree interferes with the installation, delivery, or maintenance of proposed or existing utility services to the site.
- 6) The tree is confirmed by the Building Official, her/his designee, or by a certified arborist to be diseased, severely injured, non-viable (i.e. dead), or in danger of falling.
- 7) The tree unreasonably prevents the development of a lot or parcel of the physical use thereof.

Section 6. A new section 107-40 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-40 Replacement Tree Recommendations

- 1) Replanting Location Recommendations
 - (a) Property owners should not plant replacement trees in an easement or right-of-way if said replacement trees will interfere with the use of the easement (any present or planned overhead or utility).

- (b) Replacement trees should not interfere with any present or planned overhead or underground utility.
- (c) Replacement trees should not be planted within any City rights-of-way or without the approval of the Building Official or her/his designee.
- (d) Where possible, replacement trees should be installed in the same or similar location as the problem tree was formerly located, provided that the replacement tree follows the "right tree, right place" principle so it does not become a future problem tree.

2) Replacement trees should be size-appropriate for the parcel and provide adequate space for root and crown development.

3) Replanting Tree Species Selection

- (a) Replacement trees should be of a species appropriate for the placement area and comply with the principle of "right tree, right place." Additional resources, such as Costello, L.R. & Jones, K.S. Reducing Infrastructure Damage by Tree Roots: A Compendium of Strategies, 2003, should be consulted.
- (b) The City recommends using tree species listed in Sec. 107-42 and 107-43 of this Chapter when replacing problem trees.
- (c) Tree species listed in Sec. 107-44 are non-recommended species.
- (d) Tree species listed in Sec. 107-10 are prohibited.

Section 7. A new section 107-41 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-41 Tree pruning

- (1) The City recommends all trees be allowed to develop into their natural habit of growth and should not be topped, pleached, or pruned into topiary, espalier, or other unnatural shapes. Trees may be structurally pruned to maintain health and vigor by removal of dead, weak, damaged, or crowded limbs, diseased and insect-infested limbs, and branches that rub other branches.
- (2) The City highly discourages the over-pruning of palm trees because the removal of green fronds starves the tree of vital nutrients.
- (3) ANSI A300 Pruning Standards should be followed by professionals performing work in the city.
 - (a) Copies of ANSI A300 are available for review at City Hall.

Section 8. A new section 107-42 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-42 Recommended trees

KEY: K=Known keystone tree, W=Wind resistant, S=Salt tolerant, F=Flood tolerant, D=Prefers dry soil, E=Edible fruits

Scientific Name	Common Name	K	W	S	F	D	E
IHB Small Tree List (up to 25 feet)							
<i>Quercus chapmanii</i>	Chapman oak	K		S			
<i>Carya floridana</i>	Scrub hickory	K	W			D	E
<i>Viburnum obovatum</i>	Walter's viburnum	K	W		F		
<i>Eugenia foetida</i>	Spanish stopper		W	S			
<i>Bourreria succulents</i>	Bahama strongbark			S			
<i>Canella winterana</i>	Cinnamon bark			S			
<i>Ilex vomitoria</i>	Yaupon holly		W	S	F		
<i>Myrcianthes fragrans</i>	Simpson's stopper			S			E
<i>Sideroxylon tenax</i>	Tough bumelia			S		D	
<i>Dodonaea viscosa</i>	Varnish leaf		W	S			
<i>Citharexylum spinosum</i>	Fiddlewood		W	S			
IHB Medium Tree List (25' – 50' feet)							
<i>Quercus geminata</i>	Sand live oak	K	W	S			
<i>Quercus myrtifolia</i>	Myrtle oak	K	W				
<i>Conocarpus erectus</i>	Buttonwood		W	S			
<i>Coccoloba uvifera</i>	Seagrape			S		E	
<i>Coccoloba diversifolia</i>	Pigeon plum			S		E	
<i>Guapira discolor</i>	Blolly			S			
<i>Krugiodendron ferreum</i>	Black ironwood		W	S			
<i>Sapindus saponaria</i>	Wingleaf soapberry			S			
<i>Ilex cassine</i>	Dahoon holly		W		F		
<i>Laguncularia racemosa</i>	White mangrove	K	W	S	F		
<i>Rhizophora mangle</i>	Red mangrove	K	W	S	F		
<i>Avicennia germinans</i>	Black mangrove	K	W	S	F		
IHB Large Tree List (50+ feet)							
<i>Quercus virginiana</i>	Live oak	K	W	S			
<i>Carya floridana</i>	Scrub hickory	K	W		F	D	
<i>Pinus palustris</i>	Longleaf pine	K	W		F		
<i>Bursera simaruba</i>	Gumbo limbo		W	S			
<i>Sideroxylon foetidissimum</i>	False mastic		W	S		E	
<i>Simarouba glauca</i>	Paradise tree		W	S			
<i>Piscidia piscipula</i>	Jamaican dogwood			S		D	
<i>Lysiloma latisiliquum</i>	False tamarind			S			
<i>Morus rubra</i>	Red mulberry						E

<u><i>Pinus elliottii</i> var. <i>densa</i></u>	<u>Florida slash pine</u>	K					
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Section 9. A new section 107-43 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-43 Recommended palms

Common Name	Scientific Name	Brevard Native	Size	Salt Tolerance	Cold Tolerance	Sun Tolerance	Comments
Scrub Palmetto	<i>Sabal etonia</i>	Yes	Small – up to 4'	Medium	High	Moderate to High	Thrives in sandy soils & has aromatic flowers
Dwarf Palmetto	<i>Sabal minor</i>	No	Small – up to 6'	Low to medium	Very High	Moderate – light to heavy shade	Wide ranging palm species & only some varieties suitable for IHB
Florida Silver Palm	<i>Coccothrinax argentata</i>	No	Small – up to 8'	High	Moderate	High	Dark green leaves that are silver underneath
Saw Palmetto	<i>Serenoa repens</i>	Yes	Small – up to 10'	High	High	High	Native to IHB & provides habitat to several native animals
Keys Thatch Palm	<i>Leucothrinax morrisii</i>	No	Medium – up to 10'	High	Moderate	High	Light green leaves that are silver underneath
Florida Thatch Palm	<i>Thrinax radiata</i>	No	Medium – up to 15'	High	Moderate	High	Bright green leaves
Buccaneer Palm	<i>Pseudophoenix sargentii</i>	No	Medium – up to 15'	High	Moderate	High	Nearly extinct in the wild (native to the FL Keys)
Everglades Palm	<i>Acoelorrhaphes wrightii</i>	No	Medium – up to 15'	Medium	High	High	Clustering palm with thatch covered stems
Cabbage Palm	<i>Sabal palmetto</i>	Yes	Medium – up to 30'	High	High	High	FL state tree & provides habitat to several native animals
Royal Palm	<i>Roystonea regia</i>	No	Large – up to 60'	Medium	Moderate	High	Large heavy leaves that can cause damage when they drop

Section 10. A new section 107-44 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-44 Non-recommended trees

(1) The following trees are classified as invasive species by the University of Florida Institute of Food and Agricultural Sciences. The City recommends property owners avoid planting and maintaining these trees to promote and honor the native environment.

<u><i>Albizia julibrissin</i></u>	Mimosa tree
<u><i>Albizia lebbeck</i></u>	Woman's tongue
<u><i>Bauhinia variegata</i></u>	Orchid tree
<u><i>Bischofia javanica</i></u>	Bishopwood
<u><i>Calophyllum antillanum</i></u>	Santa Maria
<u><i>Cinnamomum camphora</i></u>	Camphor tree
<u><i>Cupaniopsis anacardiooides</i></u>	Carrotwood
<u><i>Eugenia uniflora</i></u>	Surinam cherry
<u><i>Ficus microcarpa</i></u>	Laurel fig
<u><i>Ligustrum lucidum</i></u>	Glossy privet
<u><i>Lumnitzera racemosa</i></u>	Kripa, black mangrove
<u><i>Manilkara zapota</i></u>	Sapodilla
<u><i>Phyllostachys aurea</i></u>	Golden bamboo
<u><i>Psidium cattleianum</i></u>	Strawberry guava
<u><i>Psidium guajava</i></u>	Common guava
<u><i>Scaevola taccada</i></u>	Half flower, beach naupaka
<u><i>Senna pendula var. glabrata</i></u>	Climbing cassia
<u><i>Terminalia catappa</i></u>	Tropical almond
<u><i>Triadica sebifera</i></u>	Chinese tallow
<u><i>Vernicia fordii</i></u>	Tung oil tree

(2) Prohibited trees are listed in Sec. 107-10 of this Chapter.

SECTION 11. In the event that any term, provision, clause or section of this ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable or invalid for any reason whatsoever, any such invalidity, or illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this ordinance, and this ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

SECTION 12. All ordinances or resolutions or parts thereof that may be determined to be in conflict herewith are hereby repealed.

SECTION 13. The City Clerk is hereby directed to incorporate Section 1 into the Code of the City.

SECTION 14. This ordinance shall become effective immediately upon adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Indian Harbour Beach, Brevard County, Florida, this 9th day of January 2024.



ATTEST:



Scott Nickle
Mayor



X

Sue Frank, MMC
City Clerk

First Reading: December 12, 2023
Second Reading & Public Hearing: January 9, 2024