

**ORDINANCE NO. 2023-\_\_\_\_\_**

**AN ORDINANCE OF THE VILLAGE OF PINECREST, FLORIDA, AMENDING DIVISION 6.2, "TREE PRESERVATION AND PROTECTION," OF CHAPTER 30 OF THE VILLAGE CODE OF ORDINANCES BY COMPREHENSIVELY REVISING REGULATIONS AND PENALTIES RELATING TO UNPERMITTED TREE REMOVAL, TREE ABUSE AND HATRACKING, AND LANDSCAPER REGISTRATION REQUIREMENTS; AMENDING DIVISION 9.2, "RULES OF CONSTRUCTION AND DEFINITIONS," OF CHAPTER 30 OF THE VILLAGE CODE OF ORDINANCES TO AMEND DEFINITIONS UTILIZED IN DIVISION 6.2 OF THE VILLAGE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** the Village of Pinecrest (the "Village") has been named a "Tree City USA" community by the Arbor Day Foundation for its commitment to protecting its forestry; and

**WHEREAS,** the Village Council finds that preserving and protecting trees and canopy coverage in the Village is necessary to protect the public health, safety, and welfare because it produces clean air, mitigates stormwater flooding, protects the character and aesthetic of the community, and provides other positive benefits to the community; and

**WHEREAS,** the Village currently preserves and protects the trees and canopy coverage in the Village by imposing permitting requirements for tree removal, penalizing tree abuse and hatracking, and requiring landscapers to register with the Village (the "Tree Protection Regulations"); and

**WHEREAS,** the Village Council finds it necessary to periodically review and revise the Village Code of Ordinances (“Code”); and

**WHEREAS,** the Village Council desires to amend Division 6.2, “Tree Preservation and Protection,” of Chapter 30 of the Village Code to comprehensively revise the Village’s Tree Protection Regulations and related penalties; and

**WHEREAS,** the Village Council finds it to be in the best interest of the public, health, safety, and welfare of the citizens to adopt this Ordinance amending the Village’s Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF PINECREST, FLORIDA, AS FOLLOWS<sup>1</sup>:**

**Section 1. Recitals.** That the above stated recitals are hereby adopted and confirmed.

**Section 2. Village Code Amended.** The Village Council of the Village of Pinecrest hereby amends Division 6.2, “Tree Preservation and Protection,” of Chapter 30 of the Code of Ordinances as follows:

**CHAPTER 30 – LAND DEVELOPMENT REGULATIONS**

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**ARTICLE VI. – ENVIRONMENTAL REGULATIONS**

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<sup>1</sup> Coding: ~~Strikethrough~~ words are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with **yellow highlight** and ~~double-strikethrough~~ or double underline.

**Division 6.2. Tree preservation and protection.**

(a) *Generally.* These tree preservation and protection regulations ("tree regulations") shall be a minimum standard for the protection, removal and relocation of trees and shall be enforced by the village.

(b) *Tree cutting standards.*

1. No person shall commit tree abuse, hatrack or effectively destroy any tree located on his or her property in the village, unless otherwise permitted by the terms of these tree regulations. Each separate action shall constitute a violation of this section regardless of whether the tree was previously abused, hatracked or effectively destroyed.

2. Any tree that is cut in violation of this section shall be replaced as set forth in this section.

3. Penalties: Any person that commits tree abuse, hatracking, or effectively destroys any tree in the Village shall be subject to the following penalties:

a. First violation: \$250.00 per tree; and

b. Second violation and subsequent violations: \$500.00 per tree.

If a person engages in tree cutting that effectively destroys a tree, the person shall be required to obtain an after-the-fact tree removal permit in accordance with the provisions of Section 6.2(c) of the Village Code of Ordinances.

(c) *Tree removal and relocation permits.*

1. *Permits required.*

a. *Tree removal.* A tree removal permit is required for the removal or relocation of any tree in the village located on private property or on the public right-of-way fronting private property, unless not specifically exempted below.

\* \* \*

d. *Exemptions.* The following activities are exempt from tree removal permits, but may only be undertaken following an inspection by the administrative official.

1. Removal of any dead tree on private property, excluding the public rights-of-way.

\* \* \*

6. Removal of any tree on private property that is supported by documentation from an arborist certified by the ISA or a Florida landscape architect to pose an unacceptable risk to persons or property pursuant to Section 163.045, Florida Statutes. Tree removals performed pursuant to Section 163.045, Florida Statutes shall not require an inspection by the administrative official.

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e. Trees on rights-of-way. The village shall waive permit fees for removal or relocation of trees located in the public right-of-way and, if tree replacement is deemed necessary, shall replace the trees in accordance with the replacement requirements of this division. Notwithstanding the foregoing, the village may require a property owner to pay permit fees and/or replace a right-of-way tree if the property owner is required to obtain an after-the-fact tree removal or relocation permit due to a violation of the provisions of this division.

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14. Penalties for violation of tree removal and relocation regulations. Failure to obtain a tree removal or relocation permit prior to removing or relocating any tree in accordance with the terms of this division shall be subject to the following penalties:

- i. First violation: \$250.00 per tree, per day until a complete after-the-fact tree removal or relocation permit application is obtained submitted for each tree removed or relocated.
- ii. Second and subsequent violations: \$500.00 per tree, per day until a complete after-the-fact tree removal or relocation permit application is obtained submitted for each tree removed or relocated.

If the submitted application for a tree removal or relocation permit is denied, fines shall continue to accrue from the date of denial until a revised or corrected tree removal or relocation permit application is submitted.

The Village Manager or the Village Manager's designee may bring any tree removal violation before the special magistrate for a determination as to whether the tree removal violation constitutes an uncorrectable violation, as defined under section 2-132 of the Village Code. Upon a finding by the special magistrate that a tree removal violation is an uncorrectable violation that is irreparable or irreversible in nature, the special magistrate shall impose a fine of up to \$5,000 per tree and require the violator to obtain an after-the-fact permit and to replace any damaged trees.

~~The following penalties shall be assessed where these tree regulations would not have permitted trees to be removed and they have been effectively destroyed or removed in violation of these regulations. The contractor committing the violation will also be cited via a uniform civil violation notice if observed by staff or if the property owner/violator has~~

~~records that identify the contractor and can provide sufficient evidence to identify the person or company who committed the violation.~~

~~a. First offense with no prior knowledge.~~

~~Per tree and double the amount of canopy replacement required by code:~~

~~Less than 12-inch diameter at four-foot height \$500.00~~

~~12 inches to 18 inches \$1,000.00~~

~~18 inches to 36 inches \$2,000.00~~

~~Greater than 36 inches \$3,000.00~~

~~b. Second offense or prior knowledge. Double the fines required for the first offense, or the fine that would have been required for the first offense in the case of prior knowledge. Double the amount of canopy replacement required by code if a permit had been issued.~~

~~c. Subsequent offenses. Triple the fine required for the first offense, or the fine that would have been required for the first offense in the case of prior knowledge. Double the amount of canopy replacement required by code if a permit had been issued.~~

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(d) *Landscaper registration.*

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## 2. *Registration requirements.*

a. Any landscaper ~~or tree service~~ performing work within the village shall be required to register with the village manager or the village manager's designee on registration forms provided by the village. Each registration shall include the following supplemental documents:

i. A copy of the applicant's valid driver's license or other form of photo identification.

ii. A copy of the applicant's current local business tax receipt.

iii. Signed acknowledgment that the applicant has been provided a copy of the village's tree pruning and removal regulations and that the applicant has read and agreed to the requirements.

iv. A certificate of insurance, reflecting a minimum of \$300,000.00 of commercial general liability insurance to include bodily injury and property damage. The applicant shall certify compliance with F.S. ch. 440, Workers' Compensation Insurance, as amended. The Workers' Compensation Insurance shall be for landscapers and tree trimmers. The policy(ies) of insurance shall be issued in the name of the applicant or the business organization. The Village of Pinecrest shall be named as additional insured. The policy shall not limit the availability of the insurance to the village by means of

language that would negate coverage where the registrant is not in direct privity of contract with the village. A copy of the required policy(ies) or a copy of a certificate of insurance shall be available for inspection at each site where landscaping or tree trimming activities are in progress.

- b. A landscaper's ~~or tree service's~~ registration shall be pro-rated and issued for the remainder of the calendar year in which it is requested and shall be renewed annually on or before January 1 each year thereafter..
  - c. Registered landscapers ~~and tree services~~ shall maintain a copy of such registration on site and available for inspection at all times when performing work within the village.
  - d. The village may revoke or deny renewal of a landscaper ~~or tree service~~ registration if such landscaper fails to conform to the tree cutting standards prescribed in section (b) above or if found to have committed tree abuse, hatracking, or to have effectively destroyed a tree. In addition to revocation or non-renewal of registration, a landscaper who violates the provisions of this chapter, shall be subject to the penalties set forth in section (e)<sup>3</sup> below.
  - e. Landscapers ~~or tree services~~ who have been found to have committed tree abuse shall be required to take remedial measures to correct said abuse, as determined by the village's arborist, including, but not limited to, payment to the tree trust fund for the replacement value of said tree, as set forth in this chapter.
  - f. Landscapers ~~or tree services~~ performing work within the village shall have the name as shown on their landscaper ~~or tree service~~ registration clearly marked on each of their vehicles located on site; and shall affix the annual registration sticker issued by the Village of Pinecrest to the front windshield, side window, or rear window of each such vehicle.
  - g. To the extent not prohibited by federal, state, or local law, no owner, tenant, or occupant of any property shall allow any unregistered landscaper to perform any landscaping work on any property or public right-of-way.
3. Penalties: Any unregistered landscaper that performs landscaping work and/or any property owner that allows an unregistered landscaper to perform landscaping work in the Village shall be subject to the following penalties:
- a. First violation: Written warning;
  - b. Second violation: \$250.00; and
  - c. Third and subsequent violations: \$500.00.

Notwithstanding the foregoing, the Village Manager or the Village Manager's designee may issue a courtesy warning to a property owner once before issuing a written warning.

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**Section 3. Village Code Amended.** The Village Council of the Village of Pinecrest hereby amends Division 9.2, "Definition of terms," of Chapter 30 of the Code of Ordinances as follows:

**CHAPTER 30 – LAND DEVELOPMENT REGULATIONS**

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**ARTICLE IX. – RULES OF CONSTRUCTION AND DEFINITION**

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**Division 9.2. Definition of terms.**

\* \* \*

~~Effectively destroy. The girdling, or damaging of a tree's trunk, branch or root system or cutting, pruning or trimming not done in accordance with the most recent American National Standards (ANSI) A 300, Standard Practices for Tree Care Operations. Effectively Destroy means to cause, suffer, allow, or permit any act that will cause a tree to die or go into a period of unnatural decline within one year from the date of the act. Acts that may effectively destroy a tree include, but are not limited to, excessive pruning, changing the natural grade above the root system or around the trunk, applying herbicides or other chemical agents to a tree, intentionally setting a tree on fire, permitting a tree to remain infected, allowing a tree to remain infested with pests, inflicting tree trunk wound(s) that cumulatively equal or exceed 20 percent or greater of the circumference of the trunk, or removing sufficient tree canopy to cause the unnatural decline of the tree.~~

\* \* \*

**Section 4. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5. Conflict.** All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 6. Codification.** It is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Code of the Village of Pinecrest; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 7. Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 14th day of March, 2023.

PASSED AND ADOPTED on second reading this 11th day April, 2023.

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Joseph M. Corradino, Mayor

Attest:

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Priscilla Torres, CMC  
Village Clerk

Approved as to Form and Legal Sufficiency:

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Mitchell Bierman  
Village Attorney

Motion on Second Reading by:  
Second on Second Reading by:

Vote:

## MEMORANDUM

To: Village of Pinecrest Village Council

From: Mitchell Bierman, Village Attorney

Date: April 11, 2023

RE: Ordinance Amending Division 6.2, "Tree Preservation and Protection" (the "Tree Protection Regulations") of Chapter 30 of the Village of Pinecrest (the "Village") Code of Ordinances ("Code")

### **Modifications to Ordinance Amending**

#### **Village Tree Protection Regulations on Second Reading**

The Ordinance Amending the Village's Tree Protection Regulations on Second Reading includes the following changes from the Ordinance presented at First Reading:

1. Penalties for tree abuse, hatracking, or effectively destroying a tree within the Village now specify that penalties for such violations are on a per tree basis.
2. Penalties imposed for unlawfully removing or relocating a tree without a permit are tolled while Village Staff processes a completed after-the-fact permit application. In the event an applicant's after-the-fact permit is denied, penalties will continue to accrue from the date of denial until a revised or corrected tree removal or relocation permit is submitted.
3. The Ordinance now clarifies that tree removal violations determined to be uncorrectable violations by a special magistrate require the violator to obtain an after-the-fact permit and replace any damaged trees. Furthermore, penalties imposed for tree removal violations that are determined to be uncorrectable violations are imposed on a per tree basis.
4. Revises the Village's landscaper registration requirements to clarify that insurance policy coverage requirements must cover the Village even if the landscaper is not in direct privity of contract with the Village.

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### **Summary of Ordinance Amending**

#### **Village Tree Protection Regulations on First Reading**

The Village currently protects and preserves trees in the Village pursuant to the Village's Tree Protection Regulations. Specifically, the Village's Tree Protection Regulations:

- (1) Prohibit tree abuse, hatracking, or destruction;
  - (2) Require property owners to obtain a permit prior to removing or relocating a tree; and
  - (3) Impose landscaper registration requirements.
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Note that under the Village's existing Tree Protection Regulations, Village Staff may require property owners to replace a tree as a condition of issuing a tree removal permit.<sup>1</sup> See Division 6.2(c) of Chapter 30 of the Village Code.

This proposed Ordinance amends the Village's Tree Protection Regulations by strengthening the Village's Tree Protection Regulations and revising violation penalties. Specifically, this Ordinance strengthens the Village's Tree Protection Regulations by:

- (1) Clarifying that acts of tree abuse, hatracking, or destruction that require the removal of a tree will require violators to obtain an after-the-fact tree removal permit;
- (2) Distinguishing between tree removal and relocation violations occurring on private property versus public rights-of-ways; and
- (3) Providing that the Village may issue a citation to property owners that allow an unregistered landscaper to perform work on property within the Village.

Finally, this Ordinance also amends the Tree Protection Regulations by revising enforcement penalties as outlined below.

1. Each act of tree abuse, hatracking, or destruction:
  - a. First Violation – \$250, and
  - b. Second and subsequent violations – \$500.
2. Failure to obtain a permit prior to removing or relocating a tree:
  - a. First violation – \$250 per day until an after-the-fact permit is obtained; and
  - b. Second and subsequent violations – \$500 per day until an after-the-fact permit is obtained.

In addition to the aforementioned daily running fines, this Ordinance empowers the Village Manager or the Village Manager's designee to bring unpermitted tree removal or relocation violations to the Village Special Magistrate for a determination as to whether the tree removal or relocation constitutes an irreparable or irreversible harm pursuant to Section 162.09(2)(a), Florida Statutes, and Section 2-132 of the Village Code. If the Special Magistrate makes a determination that irreparable or irreversible harm has resulted from a tree removal or relocation, the Special Magistrate may impose a fine of up to \$5,000 on the violator.

3. Performing or allowing unregistered landscapers to perform landscaping work within the Village:
  - a. First Violation – Written warning,
  - b. Second Violation – \$250, and
  - c. Third and subsequent violations – \$500.

Additionally, the Village Manager or the Village Manager's designee may issue a courtesy warning to a property owner once before issuing a written warning.

If you have any questions or comments regarding this Ordinance, please feel free to reach out to my office.

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<sup>1</sup> Tree replacement requirements vary based on the size and type of tree. For example, removal of a specimen tree with a diameter at breast height of 18 inches or more requires replacement at a rate of one and one-half or two times the caliper removed, as further detailed in Division 6.2(c)(4) of the Village Code.