



City of Tampa
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MEMORANDUM

TO: Natural Resources Department

FROM: Gina Grimes, City Attorney
Kristin Mora, Assistant City Attorney
Jerrold Simpson, Assistant City Attorney

DATE: August 13, 2019

SUBJECT: House Bill 1159 / City's Interpretation of the Tree Removal Statutory Exemption

This Memorandum is intended to clarify and supersede the "General Notice" dated July 1, 2019, regarding the City of Tampa's interpretation with respect to 2019 CS/HB 1159 regarding Private Property Rights.

During the 2019 Session, the Florida Legislature passed House Bill 1159, effective July 1, 2019, which created Fla. Stat. §163.045, Tree pruning, trimming, or removal on residential property. §163.045 provides as follows:

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

In order for a property owner to utilize this exemption ("statutory exemption") to the City of Tampa's tree removal and other permitting requirements, the property owner must verify and establish that:

- the tree is located on *residential* property; and
- the tree *presents a danger to persons or property*; and

- the *documentation* that the tree presents a danger to persons or property is *obtained from either an arborist certified by the International Society of Arboriculture (ISA) or Florida licensed landscape architect.*

The statutory exemption does not provide a definition for “residential property.” As such, the City will determine the threshold question of whether a parcel is “residential property” based on the zoning of the property and/or the actual and current use of the property, considering the totality of the circumstances.

§163.045 prohibits the City from requiring notice or an application to prune, trim, or remove a tree utilizing the statutory exemption. However, the only manner by which the City can determine whether a tree was removed illegally, or whether the tree was legally removed under the statutory exemption, is for the property owner to provide the City with the documentation required by the statute. Therefore, in order to avoid issuance of a notice of violation, the property owner *should provide* the documentation required under the statute to the City, and the City can then determine whether the tree removal qualifies under the statutory exemption.

In making the determination of whether the tree removal qualifies under the statutory exemption, the City will accept the determination by an arborist certified by the ISA or licensed landscape architect that the tree presents a danger to persons or property. The City will not apply its definition of a “dangerous tree” in determining whether a tree qualifies for removal under the statutory exemption. However, as required by the language of §163.045(1), the documentation from the certified arborist or licensed landscape architect must specifically and expressly state, based on their professional opinion, that “the tree presents a danger to persons or property.” Further, the City will require such documentation for each and every tree removed. If the documentation obtained from a certified arborist or licensed landscape architect does not contain that statement, then the City cannot properly verify that the tree qualifies for removal under the statutory exemption and a notice of violation may be issued.

If a certified arborist or licensed landscape architect concludes that a tree does not present a danger to persons or property, removal can still be requested through the City’s tree removal permit processes.

The City will report to ISA or the Department of Professional Regulation, as appropriate, when the City finds that documentation is issued by a certified arborist or licensed landscape architect and tree(s) removed in violation of the statutory exemption.

This memorandum may be revised to address new facts or circumstances as they are discovered.

If you have any further questions, please contact Kristin Mora or Jerrod Simpson at (813) 274-8996 or at Kristin.Mora@tampagov.net and Jerrod.Simpson@tampagov.net.