MEMORANDUM

Agenda Item No. 7(D)

(Second Reading 3-15-13)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: December 18, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Ordinance amending Section 24-49 of the Code relating to exemptions from tree removal permits, amending Section 24-49.4 relating to tree canopy replacement requirements and amending Section 24-49.9 relating to prohibited plant species and variances

The accompanying ordinance was prepared by the Regulatory and Economic Resources Department and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan and Co-Sponsor Vice Chair Lynda Bell.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

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Memorandum

MIAMI-DADE COUNTY

Date: March 5, 2013

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Ordinance Amending Section 24-49 of the Code of Miami-Dade County, Florida, Relating to Exemptions From Tree Removal Permits, Amending Section 24-49.4 Relating to Tree Canopy Replacement Requirements and Amending Section 24-49.9 Relating to Prohibited Plant Species and Variances Thereto

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Recommendation

It is recommended that the Board of County Commissioners approve the attached ordinance amending Section 24-49 of the Code of Miami-Dade County, Florida (Code) relating to exemptions from tree removal permits, amending Section 24-49.4 relating to tree canopy replacement requirements and amending Section 24-49.9 relating to prohibited plant species and variances thereto.

Scope

The proposed ordinance involves environmental permitting and regulation countywide.

Fiscal Impact/Funding Source

There will be minimal fiscal impact to Miami-Dade County from this ordinance, which increases the number of exotic pest tree species that can be removed without a Miami-Dade County tree removal permit.

Track Record/Monitor

Craig Grossenbacher, Manager of the Natural Resources Planning Section in the Department of Regulatory and Economic Resources, will be responsible for implementing the provisions of this ordinance.

Background

The proposed ordinance makes several changes to the Tree Preservation and Protection Section of Chapter 24 of the Code. This ordinance expands the list of exotic pest trees that can be removed without a Miami-Dade County tree removal permit, provides for a uniform application of standards regulating exotic pest plant species in the County, expands the land categories where a no-fee permit can be issued to remove exotic species and allows greater flexibility in granting variances related to prohibited plant species.

Chapter 24-49 of the Code includes a list of pest tree species that do not require permits for removal. However, the current list does not include all known pest species and therefore requires updating. This ordinance updates and adds 19 tree species to the list of tree species set forth in Section 24-49(4)(f) of the Code that may be removed without a Miami-Dade County permit. This revised list incorporates the existing exotic pest plant species that are exempt from tree permitting with the invasive tree species listed in the Comprehensive Development Master Plan (CDMP) and the Miami-Dade County Landscape Manual. For ease of reference, this revised list has also been alphabetized in the ordinance. The 19 additional tree species are listed in Attachment A.

Furthermore, Chapter 24-49 of the Code currently identifies exotic pest plant species that may not be sold, propagated, or planted in Miami-Dade County by reference to Policy 8I of the Conservation Element of the CDMP, which includes a list of exotic pest plant species. On May 6, 2009, the Board updated the CDMP's exotic pest plant species list under Application No. 19 of the April 2008 Cycle of Applications to Amend the CDMP. The proposed ordinance incorporates the updated CDMP list of exotic pest plant species, including controlled species as defined by the Miami-Dade County Landscape Manual, into Chapter 24.

The ordinance also provides greater flexibility in the approval of variances relating to prohibited plant species by allowing historic designations and mitigation to be considered as part of the variance process as set forth in Section 24-49.9 of the Code. The ordinance also corrects an error in the narrative portion of the Code to match the table listing tree canopy replacement requirements.

Finally, the ordinance expands the land categories where a no-fee permit can be issued for removing exotic species beyond Natural Forest Communities to include lands protected by a covenant running with the land, provided the covenant was proffered in favor of Miami-Dade County. This will allow staff to provide technical assistance to property owners managing such areas in accordance with the vegetation protection and maintenance provisions of Objective CON-8 of the CDMP.

This ordinance includes a specific provision to insure that municipalities are not limited from requiring tree removal permits for species exempt from tree removal permits under county law if they so choose. This ordinance is also not intended to be pre-emptive of more restrictive municipal tree protection codes or to affect municipalities' authority to issue tree removal permits.

Jack Osterholt, Deputy Mayor

ATTACHMENT A

List of 19 Trees Proposed to be Added to Exempt List in Ch. 24-49(4)(f)

1. *Ardisia elliptica* (Coral ardisia)
2. *Bauhinia purpurea* (Orchid tree)
3. *Bauhinia variegata* (Orchid tree)
4. *Calophyllum antillanum* (Mast wood)
5. *Cinnamomum camphora* (Camphor tree)
6. *Eugenia uniflora* (Surinam cherry)
7. *Ficus altissima* (Lofty fig)
8. *Ficus benghalensis* (Banyan fig)
9. *Melia azedarch* (Chinaberry)
10. *Murraya paniculata* (Orange jasmine)
11. *Pittosporum petandrum* (Taiwanese cheesewood)
12. *Pongamia pinnata* (Tallow tree)
13. *Pouteria campechiana* (Eggfruit)
14. *Psidium cattleianum* (Cattley guava)
15. *Sapium sebiferum* (Chinese tallow)
16. *Syzygium cumini* (Java plum)
17. *Syzygium jambos* (Rose apple)
18. *Terminalia catappa* (Tropical almond)
19. *Washingtonia spp.* (Washington palm)

MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: March 5, 2013

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 7(D)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

✓ **6 weeks required between first reading and public hearing**

✓ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(D)
3-5-13

ORDINANCE NO. _____

ORDINANCE AMENDING SECTION 24-49 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, RELATING TO EXEMPTIONS FROM TREE REMOVAL PERMITS; AMENDING SECTION 24-49.4 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, RELATING TO REPLACEMENT REQUIREMENTS FOR TREE REMOVAL; AMENDING SECTION 24-49.9 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, RELATING TO PROHIBITED PLANT SPECIES AND VARIANCES THERETO; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 24-49 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

DIVISION 2. TREE PRESERVATION AND PROTECTION

Sec. 24-49. Permits for tree removal and relocation, improperly issued permits, violation of permit conditions, exemptions from tree removal permits; mortgagee exemption from liability.

(1) It shall be unlawful for any person, unless otherwise permitted by the terms of this >>section<< [[~~article~~]], to do tree removal work or to effectively destroy any tree, or to effectively destroy any understory in a natural forest community, without first obtaining a permit from the Department.

(2) No municipal or County official shall issue a tree removal permit that does not comply with the provisions of this

[1] Words stricken through and/or [[double bracketed]] shall be deleted, words underscored and/or >>double arrowed<< shall be added. Remaining provisions are now in effect and remain unchanged.

>>section<< [[~~article~~]]. Any such permit shall be void. >>A municipality shall not be limited from requiring tree removal permits for species exempt from tree removal permits required by this section, provided the tree is not within a natural forest community.<<

(3) It shall be unlawful for any person to violate or not comply with any of the conditions of a Miami-Dade County tree removal permit.

(4) The following activities are exempt from tree removal permits:

(a) Removal of trees within the yard area of an existing single-family residence, provided the trees are not within a natural forest community, and are not specimen trees. This exemption does not apply to trees which are growing on County rights-of-way adjoining existing single-family residences.

(b) Removal of trees for the construction of a new single-family residence, provided that:

(i) The lot is one (1) acre or less in size (43,560 square feet), if an AU zoned lot, or one-half (1/2) acre or less in size (21,780) square feet, for any other zoned lot; and

(ii) The lot is being developed as the principal residence of the owner-builder; and

(iii) The lot is not within an area designated as a natural forest community; and

(iv) The trees are not specimen trees.

(c) Removal of any dead tree, >>provided the tree is not within a natural forest community.<<

(d) Removal of trees within State-approved plant nurseries and botanical gardens, provided said trees were planted and are growing for the display, breeding, propagation, sale or intended sale to the general public in the ordinary course of business.

(e) Removal of trees for the establishment, maintenance and operation of a bona fide grove or bona fide tree nursery, except when the proposed tree removal is to occur in a natural forest community designated under Resolution No. 1764-84 or under subsequent revisions of the natural forest community maps or when the proposed tree removal will affect specimen trees

as defined herein. Any person desiring to remove trees pursuant to this provision shall obtain written approval from the Department prior to the commencement of any such activities under this exemption.

(f) Removal of any of the following tree species >>with scientific nomenclature as set forth in Wunderlin, Richard P. and Hansen, Bruce F. , Guide to the Vascular Plants of Florida, 2nd Ed. University of Florida Press, Gainesville, FL. (2003), a copy of which shall be maintained by the Director or Director's designee and available for review by the public.<< [[~~(provided~~]] >>If<< the activity is [[~~not~~]] within a natural forest community[[~~, in which case~~]] >>or lands protected by a covenant running with the land in favor of Miami-Dade County including, but not limited to, Environmentally Endangered Lands (EEL), Environmentally Sensitive Lands, or Tree Preservation Areas,<< a permit shall be required, but all application and permit fees shall be waived by the Department[[~~)~~]]:

[[~~(i) Melaleuca quinquenervia (cajeput or paperbark tree)~~

~~(ii) Casuarina spp. (Australian pine, beefwood).~~

~~(iii) Schinus terebinthifolius (Brazilian pepper).~~

~~(iv) Bischofia javanica (bishopwood).~~

~~(v) Ricinus communis (castorbean).~~

~~(vi) Psidium guajava (guava).~~

~~(vii) Albizia lebbek (woman's tongue).~~

~~(viii) Acacia auriculaeformis (earleaf acacia).~~

~~(ix) Schefflera actinophylla (Queensland Umbrella Tree).~~

~~(x) Araucaria heterophylla (Norfolk Island Pine).~~

~~(xi) Metopium toxiferum (poison wood).~~

~~(xii) Adenanthera pavonina (red sandalwood).~~

~~(xiii) Cupaniopsis anacardioides (carrotwood).~~

~~(xiv) Dalbergia sissoo (Indian dalbergia, sissoo).~~

~~(xv) Ficus microcarpa (=R. nitida; =F. retusa varnitida) (laurel fig).~~

~~(xvi) Flacourtia indica (governor's plum).~~

~~(xvii) Hibiscus tiliaceus (mahoe).~~

~~(xviii) Leucaena leucocephala (lead tree).~~

~~(xix) Mimosa pigra (catclaw mimosa).~~

~~(xx) Thespesia populnea (seaside mahoe).~~]]

>>(i) All trees listed in Section 24-49.9

(ii) Any of the following species:<<

[[~~(ii)~~]] >>*Araucaria heterophylla* (Norfolk Island pine)<<

[[~~(iii)~~]] >>*Bauhinia purpurea* (Orchid tree)<<

[[~~(iv)~~]] >>*Bauhinia variegata* (Orchid tree)<<

[[~~(v)~~]] >>*Calophyllum antillanum* (Mast wood) <<

[[~~(vi)~~]] >>*Eugenia uniflora* (Surinam cherry) <<

>>*Hibiscus tiliaceus* (Mahoe) <<

[[~~(vii)~~]] >>*Metopium toxiferum* (Poisonwood) <<

[[~~(viii)~~]] >>*Murraya paniculata* (Orange jasmine)<<

[[~~(x)~~]]>>*Pittosporum petandrum* (Taiwanese cheesewood)<<

[[~~(xi)~~]]>>*Pongamia pinnata* (Tallow tree) <<

[[~~(xii)~~]]>>*Pouteria campechiana* (Eggfruit) <<

[[~~(xiv)~~]]>>*Psidium cattleianum* (Cattley guava) <<

[[~~(xv)~~]] >>*Psidium guajava* (Guava) <<

>>*Syzygium cumini* (Java plum)<<

[[~~(xvi)~~]] >>*Syzygium jambos* (Rose apple) <<

[[~~(xvii)~~]] >>*Terminalia catappa* (Tropical almond) <<

[[~~(xviii)~~]] >>*Washingtonia spp.* (Washington palm)<<

* * *

Section 2. Section 24-49.4 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 24-49.4. Replacement requirements for tree removal.

(1) *Tree replacement requirements.* As a condition of the issuance of a tree removal permit, the permittee shall be required to replace trees that are authorized to be removed under the provisions of this >>section<< [[~~article~~]]. The number of trees and number of species of trees required for replacement shall be determined according to the procedures contained herein. When the replacement canopy area exceeds ten thousand (10,000) square feet, replacement shall be described in a landscape replacement plan which shall meet the minimum requirements of Section 24-49.4(3), and no tree removal permit shall be issued until said plan has been approved by the Department, except as provided in Section 24-49.4(4).

* * *

(2) *Procedures for determining tree replacement requirements.* The Department shall determine the total number of replacement trees required for the issuance of a tree removal permit according to the following procedural steps:

(a) *Step 1: Determining existing tree canopy coverage on-site.* The area of existing tree canopy coverage of a site shall be determined by the Department, using one (1) or any combination of the following methods: Review of aerial photography; on-site inspection; and review of a tree survey. The Department may require the applicant to submit a tree survey for the purpose of this determination.

* * *

(f) *Step 6: Minimum standards for replacement trees.*

(i) All replacement trees shall have a minimum quality of a Florida No. 1 grade or better.

(ii) The Department shall maintain a list of species for each category of replacement tree. This list may be amended from time to time, as necessary.

Replacement tree heights shall be determined by overall height measured from where the tree meets the ground to the top-most branch.

1. All category 1 replacement shade trees shall be a minimum of twelve (12) feet in height at the time of planting and at maturity should have a canopy coverage of five hundred (500) square feet under normal growing conditions.

2. All category 2 replacement shade trees shall be a minimum of eight (8) feet in height at the time of planting and at maturity should have a canopy coverage of [[~~five hundred (500)~~]]>>three hundred (300)<< square feet under normal growing conditions.

3. All category 1 replacement palm trees shall have a minimum height of ten (10) feet at the time of planting and at maturity should have a canopy coverage of three hundred (300) square feet under normal growing conditions.

* * *

Section 3. Section 24-49.9 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 24-49.9. Prohibited plant species >>and controlled plant species<<.

(1) >>Controlled plant species listed in the Miami-Dade County Landscape Manual on the effective date of this ordinance shall not be planted within 500 feet of native plant communities as defined pursuant to Section 18-3, Code of Miami-Dade County, Florida.<< [[~~With exception of Ficus benjamina, the list of~~]] >>Additionally, the following<< exotic pest plant >>and nuisance species, with scientific nomenclature as set forth in Wunderlin, Richard P. and Hansen, Bruce F. , Guide to the Vascular Plants of Florida, 2nd Ed. University of Florida Press, Gainesville, FL. (2003), a copy of which shall be maintained by the Director or Director's designee and available for review by the public,<< [[~~species that~~]] may not be sold, propagated or planted

anywhere in Miami-Dade County [[~~pursuant to Policy 8I of the Conservation Element of the Comprehensive Development Master Plan for Miami-Dade County, Florida, as may be amended from time to time, is hereby incorporated by reference~~]]. If present on a development >>or redevelopment<< site, they shall be removed prior to development >>or redevelopment<<, and their sale, propagation, planting, importation or transportation shall be prohibited. >>Pursuant to this subsection and in accordance with Chapter 19 of the Code of Miami-Dade County, Florida, developed sites shall be maintained to prevent the growth or accumulation of prohibited species including grass, weeds and non-native undergrowth.<<

>> *Abrus precatorius* (Rosary pea)

Acacia auriculiformis (Earleaf acacia)

Adenanthera pavonina (Red beadtree, red sandalwood)

Albizia lebbeck (Woman's tongue, lebbeck tree, siris tree)

Antigonon leptopus (Coral vine, queen's jewels)

Ardisia crenata (Scratchthroat, coral ardisia)

Ardisia elliptica (Shoebutton, shoebutton ardisia)

Bischofia javanica (Javanese bishopwood, bishopwood, bischofia, toog)

Casuarina spp. (Australian pine, sheoak, beefwood)

Cestrum diurnum (Dayflowering jessamine, day blooming jasmine, day jessamine)

Cinnamomum camphora (Camphortree, camphor tree)

Colubrina asiatica (Asian nakedwood, leatherleaf, latherleaf)

Cupaniopsis anacardioides (Carrotwood)

Dalbergia sissoo (Indian rosewood, sissoo)

Dioscorea alata (White yam, winged yam)

Dioscorea bulbifera (Air potato, bitter yam, potato vine)

Eichhornia crassipes (Common water-hyacinth, water-hyacinth)

Ficus altissima (Council tree, lofty fig, banyan tree, false banyan)

Ficus benghalensis (Banyan tree, banyan fig, Indian banyan, East Indian fig tree, Bengal fig)

Ficus microcarpa (Indian laurel, laurel fig, Malay banyan, Chinese banyan, glossy leaf banyan)*

Flacourtia indica (Governor's plum, Madagascar plum, batoko plum, ramonchi)

Hydrilla verticillata (Water thyme, hydrilla)

Hygrophila polysperma (Indian swampweed, green hygro)

Hymenachne amplexicaulis (Trompetilla, West Indian marsh grass)

Imperata cylindrica (Cogongrass)

Ipomoea aquatica (Water-spinach)

Jasminum dichotomum (Gold Coast jasmine)

Jasminum fluminense (Brazilian jasmine, jazmin de trapo)

Leucaena leucocephala (White leadtree, lead tree, jumbie bean, tan-tan)

Ludwigia peruviana (Peruvian primrosewillow)

Lygodium spp. except *L. palmatum* (Climbing fern, e.g. Old World climbing fern, Japanese climbing fern)

Macfadyena unguis-cati (Catclaw vine)

Melaleuca quinquenervia (Punk tree, melaleuca, cajeput, paperbark tree, tea tree, swamp tea tree)

Melia azedarach (Chinaberrytree, Chinaberry)

Merremia tuberosa (yellow morning-glory, woodrose, Hawaiian woodrose)

Mikania micrantha (Mile-a-minute, bittervine)

Mimosa pigra (Black mimosa, Catclaw mimosa)

Neyraudia reynaudiana (Burmareed, silkreed)

Paederia spp. (Sewervine, skunkvine, onion vine)

Panicum repens (Torpedograss)

Pennisetum purpureum (Elephantgrass, Napiergrass)

Pistia stratiotes (Water lettuce)

Pueraria montana var. *lobata* (Kudzu)

Rhodomyrtus tomentosa (Rose myrtle, Downy rose-myrtle)

Rhynchelytrum repens (Rose natalgrass, Natal grass)

Ricinus communis (Castorbean, castor oil plant, palma christi, wonder tree)

Sapium sebiferum (Popcorntree, Chinese tallowtree)

Scaevola taccada (Beach naupaka, scaevola, half-flower)

Schefflera actinophylla (Australian umbrella tree, octopus tree, Queensland umbrella tree)

Schinus terebinthifolius (Brazilian pepper, Christmas berry tree, Florida holly)

Senna pendula var. *glabrata* (Valamuerto, Climbing cassia, Christmas cassia, Christmas senna)

Solanum tampicense (Aquatic soda apple, wetland nightshade)

Solanum viarum (Tropical soda apple)

Talipariti tiliaceum (Mahoe, sea hibiscus, yellow mahoe)

Tectaria incisa (Incised halberd fern)

Thespesia populnea (Portia tree, seaside mahoe, cork tree, false rosewood)

Tribulus cistoides (Puncture vine, burrnut, Jamaican feverplant, billy-goat weed, large yellow caltrop)

Urochloa mutica (Paragrass)

* *Ficus microcarpa* may be propagated for export outside of the State of Florida.<<

* * *

(3) Variances.

(a) A variance by the Director from the [[~~transportation, propagation and planting~~]] >>requirements or<< prohibitions of this section may be requested, subject to the conditions justifying variance approval outlined below in Section 24-49.9(3)(b)[[~~(i) and (ii)~~]]. Said variance request shall be made in writing to the Director and shall include the following information:

(i) Name and address of the person or persons requesting the variance.

(ii) Location of the property for which the variance is requested.

(iii) A sketch or drawing indicating the location within the subject property where the planting or field propagation of the otherwise prohibited plant species will occur. (Container propagation shall be exempt from said sketch or drawing requirements.)

(iv) The reason or reasons for requesting the variance.

(b) The Director may, in the Director's discretion, issue a variance from the provisions of this [[~~section~~]] >>subsection<< based upon the following factors:

(i) Proximity of the subject planting or propagation to any environmentally sensitive areas (e.g., wetlands, hammocks, pinelands, dunes).

(ii) Lack of appropriate alternative plant species to fulfill the same purpose or purposes for planting.

>>(iii) The designation of a tree as a Historic Tree by the local Historic Preservation Board.

(iv) Compensatory actions proposed to offset impacts for any adverse environmental impact or cumulative adverse environmental impact which may result from granting the variance.<<

Section 4. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 5. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 6. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as to form and legal sufficiency: _____

Prepared by: _____

Abbie Schwaderer-Raurell