

ARTICLE XXXV. - MANGROVE TRIMMING AND PRESERVATION

Sec. 54-1071. - Findings of fact.

The Board of County Commissioners of Sarasota County, Florida hereby finds that:

- (1) Mangroves play an important ecological role as habitat and food-web support for various species of marine and estuarine vertebrates, invertebrates, and other wildlife, including mammals, birds, and reptiles; as shore stabilization and storm protection; and for water quality protection. Through a combination of functions, Mangroves contribute to the economy of Sarasota County.
- (2) Riparian Mangrove Fringes do not provide all of the functions of Mangrove Swamps, or provide such functions to a lesser degree.
- (3) Mangroves are amenable to standard horticultural treatments, and waterfront property owners can coexist with Mangroves by incorporating such treatments into their landscaping practices.
- (4) Trimming of Mangroves by Professional Mangrove Trimmers (PMTs) has a significant potential to maintain the beneficial attributes of Mangroves, and PMTs should be authorized to conduct Mangrove Trimming, under certain circumstances, without prior government authorization.

(Ord. No. 2016-063, § 2, 10-10-2016)

Sec. 54-1072. - Purposes.

The Board of County Commissioners finds this ordinance will serve the following public purposes:

- (1) To protect and preserve Mangroves, which are valuable to our environment and economy, from unregulated removal, Defoliation, and destruction.
- (2) To prevent Trimming or Alteration of Mangroves existing on publicly-owned uninhabited islands, on Lands Set Aside for Conservation and Preservation, or within Mitigation areas, except where necessary to protect the public health, safety, and welfare; or to enhance public use of, or access to, conservation areas in accordance with approved management plans.
- (3) To provide waterfront property owners their riparian right of view, and other rights of riparian property ownership as recognized by Chapter 253, Florida Statutes, and other pertinent provisions of Florida law, by allowing for certain exemptions described herein for Mangrove Trimming in Riparian Mangrove Fringes, when not otherwise forbidden by conservation easement, through preservation on a plat, or by other instrument, when the Trimming activities will not result in the removal, Defoliation, or destruction of the Mangroves.
- (4) To encourage waterfront property owners to voluntarily Maintain Mangroves, encourage Mangrove growth, and plant Mangroves along their shorelines.
- (5) To provide for equitable distribution of riparian rights associated with Trimming or Alteration of Mangroves conducted on properties having multifamily residential units.
- (6) To grandfather certain historically established Mangrove Maintenance activities.

(Ord. No. 2016-063, § 3, 10-10-2016)

Sec. 54-1073. - Definitions.

The following terms and phrases, when used in this Article, shall have the meaning ascribed to them in this section:

Administrator or *County Administrator* means the Sarasota County Administrator, or an administrative official of Sarasota County government designated by the County Administrator to administer and enforce the provisions of this Article.

Alter or *Alteration* means anything other than Trimming, including human-induced destruction, Defoliation, or removal of Mangroves and Root Systems.

Applicant means the individual, firm, partnership, corporation, association, organization, trust, company, government agency, or any other legal entity that has submitted an application for Development.

Article means [Chapter 54](#), Article XXXV, of the Sarasota County Code of Ordinances, as amended, unless otherwise specified.

Board means the Board of County Commissioners of Sarasota County, Florida.

Defoliate or *Defoliation* means the removal of leaves from a Mangrove to the extent that it causes mortality to all or part of the tree.

Development means the making of any material change in the use or appearance of the land including, construction, Alteration, Trimming, Defoliation, or altering a shore or bank of a seacoast, river, stream, lake, pond, or canal.

Lands Set Aside for Conservation or Preservation means:

- (1) Conservation and recreation lands under F.S. ch. 259;
- (2) State and national parks;
- (3) State and national reserves and preserves except as provided in F.S. § 403.9326(3);
- (4) State and national wilderness areas;

- (5) National wildlife refuges (only those lands under Federal Government ownership);
- (6) Lands acquired through the Water Management Lands Trust Fund, Save Our Rivers Program;
- (7) Lands acquired under the Save Our Coast Program;
- (8) Lands acquired under the environmentally endangered lands bond program;
- (9) Lands purchased by a water management district, the Florida Fish and Wildlife Conservation Commission, or any other state agency for conservation or preservation purposes;
- (10) Lands encumbered by a conservation easement that does not provide an exception from a general prohibition of Trimming or Alteration of vegetation by specifically allowing for the Trimming or Alteration of Mangroves;
- (11) Public lands designated as critical wildlife areas by the Florida Fish and Wildlife Conservation Commission;
- (12) Lands designated as conservation or preservation on a plat;
- (13) Lands acquired through the Environmentally Sensitive Lands Protection Program except as provided for under a resource management plan to affect management of these lands, and to accommodate public access; and
- (14) Zoning districts designated Open Use Conservation (OUC).

Maintenance or *Maintained* means Trimming activities intended to manage the height and configuration of Mangroves:

- (1) Trimmed before the enactment of Mangrove Trimming regulations; or
- (2) Resulting from Trimming or Alteration conducted under an exemption or a permit. However, Maintenance shall not include Reestablishment of a Previous Mangrove Configuration where the view or use otherwise intended and obtained has been broken or lost for three or more growing seasons.

Mangrove means any specimen of the species *Avicennia germinans* (black Mangrove), *Laguncularia racemosa* (white Mangrove), or *Rhizophora mangle* (red Mangrove).

Mangrove Swamp means a coastal wetland found in tropical and subtropical regions, being characterized by the presence of one or more of the three Mangrove species, halophytic (salt loving) trees, shrubs and other plants growing in brackish to saline tidal waters and as defined by the Sarasota County Comprehensive Plan. A Mangrove Swamp differs from a Riparian Mangrove Fringe because it typically encompasses a larger area.

Mean High Water Line (MHWL) means the intersection of the tidal plane of mean high water with the shore. Mean high water is the average elevation of tidal high waters recorded at a particular point or station over a considerable period of time. typically 19 years.

Mitigation means an action or series of actions to offset the adverse impacts that would otherwise cause an activity regulated under this Article to fail to meet success criteria set forth in this Article. Mitigation usually consists of restoration, enhancement, creation, preservation, or a combination thereof, associated with a permitted activity, or a result of a compliance action.

Nuisance/Invasive Species means an exotic plant species whose introduction into an ecosystem in which the species is not native, or causes or is likely to cause environmental or economic harm or harm to human health including but not limited to: Australian Pine (*Casuarina* spp.), Beach Naupaka (*Scaevola taccada* or *Scaevola sericea*), Brazilian Pepper (*Schinus terebinthifolius*), Carrotwood (*Cupaniopsis anacardioides*), Chinese Tallow (*Sapium sebiferum*), Melaleuca (*Melaleuca quinquenervia*), and Wedelia (*Sphagneticola trilobata*).

Person means all natural Persons, as well as all organizations and other entities, including the State of Florida, Sarasota County, or any other governmental board or bureau, except where otherwise noted.

Pre-trimmed Height means the height, as measured from the Substrate to the top of a Mangrove, immediately before a Trimming or Alteration activity, as long as the height is not the result of a violation of this Article.

Previous Mangrove Configuration means the historical height and shape of Mangroves previously Trimmed or Altered pursuant to a permit or exemption whether through windowing, hedging, or undercutting.

Professional Mangrove Trimmer (PMT) means a Person who meets the qualifications set forth in [Section 54-1079](#) of this Article.

Root Systems means the arching, reddish tinted prop roots of the red Mangrove that provide structural tree support, the pneumatophore finger roots of the black Mangrove, or the underground branching roots of white Mangroves that provide shoreline stabilization and ecological benefits.

Reestablish or Reestablishment means the return of a Riparian Mangrove Fringe or other Mangrove or Mangroves previously authorized to be Trimmed by a previous determination of the Administrator or Florida Department of Environmental Protection to a documentable Previous Mangrove Configuration consistent with this Article.

Riparian Mangrove Fringe means Mangroves growing along the shoreline on private property, property owned by a governmental entity or sovereign submerged land the depth of which is 50 feet or less as measured waterward from the trunk of the most landward Mangrove in a direction perpendicular to the shoreline to the trunk of the most waterward Mangrove.

- (1) the height of which is 24 feet or less from the Substrate,
- (2) does not include Mangroves on uninhabited islands, or Lands Set Aside for Conservation or Preservation, or Mangroves on lands that have been set aside as Mitigation, unless the instrument creating the conservation area, preservation area, or the Mitigation area included provisions allowing the Trimming or Alteration of Mangroves.

Riparian Property Owner means the owner of lands that extend waterward to the Mean High Water Line.

Substrate means the submerged bottom or exposed earth into which Mangroves are rooted.

Trim, Trimmed or Trimming means to cut dead or living Mangrove branches, twigs, limbs, and foliage, but does not mean to remove, Defoliate, or destroy the Mangroves.

(Ord. No. 2016-063, § 4, 10-10-2016)

Sec. 54-1074. - Applicability.

The provisions of this Article shall be applicable and enforceable throughout the unincorporated area of Sarasota County, Florida.

(Ord. No. 2016-063, § 5, 10-10-2016)

Sec. 54-1075. - Administration and procedures.

- (1) *Administration.* The Administrator shall be responsible for carrying out the provisions of this Article.
- (2) *Fees.* The Board is authorized to set reasonable fees and charges for the implementation of this Article. Such fees shall be set by resolution.
 - (a) Fees charged will substantially finance the expenditures of reviewing projects pursuant to this Article. An Applicant's failure to pay the requisite filing fees and costs may result in removal of the application from consideration for approval by the Administrator.
 - (b) Applicants for after-the-fact authorization shall be assessed a fee of two times the current fee, in addition to any fines and penalties assessed, providing the property owner(s) that committed the violation still owns the property. A single fee shall apply to any new owners of the property who are not responsible for causing the violation.
- (3) *Overlapping Administration.*
 - (a) If proposed activities on a site are subject to overlapping code provisions from different Articles of [Chapter 54](#) of the Sarasota County Code, the more stringent regulations shall be applicable.
 1. *Simultaneous Reviews.* In the event that an Applicant seeks authorization to conduct activities that are subject to overlapping code provisions from different Articles of [Chapter 54](#) of the Sarasota County Code of Ordinances, the Administrator shall perform simultaneous environmental and natural resource reviews to the greatest extent practicable.
 2. *Joint Authorization.* In the event that proposed activities are subject to overlapping administration between Articles of [Chapter 54](#) of the Sarasota County Code, the Applicant has the option of obtaining joint authorization from the County to satisfy the requirements of all applicable code provisions. The proposed activity shall meet the requirements of all applicable code provisions in [Chapter 54](#) of the Sarasota County Code. Any joint authorizations for the project shall be heard concurrently before the Board, if Board approval is required.
 3. *WNCA Exemption.* A Person who receives a Water and Navigation Control Authority (WNCA) permit under [Chapter 54](#), Article XX of this Code, shall not need a separate permit for Trimming or Alteration of Mangroves for Development consistent with the WNCA permit.
 - (b) A permit is not required to Trim or Alter Mangroves if the Trimming or Alteration is part of an activity that is exempt under Part V of F.S. ch. 403 (e.g., Dredge and Fill Permits) or is permitted under Part IV of F.S. ch. 373 (e.g., Management and Storage of Surface Waters and Environmental Resource Permits). The procedures for permitting under Part IV of F.S. ch. 373 will control in those instances.
- (4) *Applications.* Whenever a Person seeks to perform any work herein described that is not otherwise exempted under this Article, such Person shall, before commencing any such operation, file an application for a permit or variance, and obtain approval from the Administrator or Board, respectively. The application shall include:
 - (a) The address and ownership of the property where the work is to take place.
 - (b) The proposed start and completion dates of the Trimming or Alteration.
 - (c) The name, address and a daytime telephone number of the Person who will do the work, if different from the information in subsection (a) of this section.
 - (d) The approximate Pre-trimmed Height and/or Previous Mangrove Configuration for the trees the Applicant proposes to be Trimmed or Altered.
 - (e) If Mangrove Alteration is proposed, justification for the proposed Alteration.
 - (f) A description of the proposed activity, in sufficient detail, to enable the Administrator or Board to determine the scope of the proposed activities.
 - (g) If Mangrove Alteration is proposed, an ecological assessment describing the current condition of the vegetation along the shoreline.
 - (h) Any other information necessary to complete the application and establish the location of the proposed activities or Previous Mangrove Configuration, including such things as photographs, affidavits, Mean High Water Line survey, boundary survey, riparian rights survey, or sketch.
- (5) *Processing Permit Applications.* Upon receipt of a complete application as specified herein, the Administrator will have 30 days to inspect the site, determine compliance with the criteria listed in [Section 54-1077](#) of this Article, and notify the Applicant as to a permit approval or denial. The review time may be adjusted if the Applicant is required to provide additional information for correction of errors or omissions. If revised plans or other documents conforming to requested additional information are not submitted within 30 days after notice of the need for revisions, the permit application shall be deemed withdrawn, unless a written request for an extension is approved by the Administrator. Failure to satisfy the review timeframe shall not result in approval of the application by default. The processing of variance applications shall proceed as described in [Section 54-1078](#) of this Article.
- (6) *Consistency with Sarasota County Comprehensive Plan.* Any activity authorized by a permit or variance issued under this Article shall constitute Development. Therefore, the permit or variance shall be consistent with the Sarasota County Comprehensive Plan.

- (7) *Appeal Procedure.* The Applicant, owner or other substantially affected party may appeal any determination of the Administrator in reviewing an application for a permit. Upon receipt of an appeal, the Administrator shall schedule a quasi-judicial hearing in front of the Board within 60 days and with a seven-day notice to the appellant. The hearing shall be conducted in the same manner as other quasi-judicial hearings. For any quasi-judicial hearing of an appeal, the Applicant or owner shall satisfy the same notice requirements as for variances, as stated in [Section 54-1078\(3\)](#) of this Article. Upon review, the Board may affirm, reverse, remand, or modify the Administrator's determination, and shall have the powers of the Administrator from whom the appeal is taken.
- (8) *Payment of Fees Prior to Hearing.* For any variance application or appeal requiring a hearing before the Board, all required fees shall be paid no later than seven days before the scheduled hearing date. A failure to make payment of the required fees shall result in removal of the proposal or appeal from the Board's agenda and shall be considered a waiver of the right to a hearing.

(Ord. No. 2016-063, § 6, 10-10-2016)

Sec. 54-1076. - Exemptions.

- (1) The following Mangrove Trimming activities are exempt from the permitting requirements of this Article:
- (a) *Owner Exemption.* Mangrove Trimming in Riparian Mangrove Fringe areas that meet each of the following four criteria:
1. The Riparian Mangrove Fringe must be located: (a) on lands owned or controlled by the Person who will supervise or conduct the Trimming activities; or (b) on sovereign submerged lands immediately waterward and perpendicular to the lands.
 2. Mangroves must not be taller than ten feet in Pre-trimmed Height as measured from the Substrate.
 3. Trimming may not reduce the overall height of any Mangrove to less than 6 feet as measured from the Substrate.
 4. The Trimming along the shoreline of the property must: (a) involve a property with a shoreline of 150 feet or less; or (b) involve less than 65 percent Trimming of Mangroves along the shoreline for properties with a shoreline greater than 150 feet.
- (b) *Professional Mangrove Trimmer Exemption.* Mangrove Trimming supervised or conducted exclusively by a certified, registered PMT as defined in [Section 54-1073](#), in Riparian Mangrove Fringe areas that meet each of the following six criteria:
1. The Riparian Mangrove Fringe must be located on lands: (a) owned or controlled by the Person contracting with the Professional Mangrove Trimmer to perform Trimming activities; or (b) on sovereign submerged lands immediately waterward and perpendicular to such lands.
 2. Trimming of Mangroves 16 feet to 24 feet in Pre-trimmed Height must be conducted in stages so that no more than 25 percent of the foliage is removed annually.
 3. Trimming shall not be conducted on Mangroves taller than 24 feet in Pre-trimmed Height under an exemption.
 4. Trimming may not reduce the overall height of any Mangrove to less than 6 feet as measured from the Substrate.
 5. When Trimming red Mangroves for the first time at the property subject to the exemption provided by this paragraph, the Administrator must be notified in writing at least ten days before commencing the Trimming activities.
 6. The Trimming along a shoreline must: (a) involve a property 150 feet or less in width; or (b) involve less than 65 percent of the Mangroves along the shoreline for properties greater than 150 feet in width.
- (c) *Reestablishment Exemption.* Mangrove Trimming in a Riparian Mangrove Fringe designed to Reestablish or Maintain a Previous Mangrove Configuration if the Mangroves are not taller than 24 feet in Pre-trimmed Height, subject to the following criteria:
1. The Previous Mangrove Configuration must be documented. Documentation of Previous Mangrove Configuration may be established by affidavit of a Person with personal knowledge of such configuration, through current or past permits from the state or local government, or by photographs.
 2. The Reestablishment of a Previous Mangrove Configuration must not result in the destruction, Defoliation, or removal of Mangroves.
 3. Trimming shall be conducted by a certified, registered Professional Mangrove Trimmer when the Mangroves have a Pre-trimmed Height that exceeds 10 feet as measured from the Substrate.
 4. When Trimming red Mangroves for the first time at the property subject to the exemption provided by this paragraph, the Administrator must be notified in writing at least ten days before commencing the Trimming activities.
- (d) *Maintenance Exemption.* Maintenance of Mangroves previously trimmed in accordance with an exemption or government authorization, including those Mangroves that naturally recruited into the area and any Mangrove growth that has expanded from a Previous Mangrove Configuration subsequent to the authorization, if the Maintenance does not exceed the Previous Mangrove Configuration. Documentation of a Previous Mangrove Configuration may be verified by affidavit of a Person with personal knowledge or by photographs. The Maintenance of a Previous Mangrove Configuration must not result in the destruction, Alteration, or removal of Mangroves.
- (e) *Surveyor Exemption.* The Trimming of Mangroves by a state-licensed surveyor in the performance of her or his duties, if the Trimming is limited to a swath of three feet or less in width.
- (f) *Utilities Exemption—Governmental Function.* The Trimming of Mangroves by a duly constituted communications, water sewerage, stormwater, electrical, or other utility company, or by a federal, state, county, or municipal agency, or by an engineer or a surveyor and mapper working under a contract with such utility company or agency, when Trimming is done as a governmental function of the agency.

- (g) *Utilities Exemption—Line or Facilities Maintenance or Construction.* The Trimming of Mangroves by a duly constituted communications, water, sewerage, stormwater, electrical, or other utility company in or adjacent to a public or private easement or right-of-way, if the Trimming is limited to those areas where it is necessary for the maintenance of existing lines or facilities or for the construction of new lines or facilities in furtherance of providing utility service to its customers and if work is conducted so as to avoid any unnecessary Trimming of Mangroves.
- (h) *Utilities Exemption—Plant or Substation Grounds.* The Trimming of Mangroves by a duly constituted communications, water, sewerage, stormwater or electrical utility company on the grounds of a water treatment plant, sewerage treatment plant, or electrical power plant or substation in furtherance of providing utility service to its customers, if work is conducted so as to avoid any unnecessary Trimming of Mangroves.
- (2) Any rule, regulation, or other provision of law must be strictly construed so as not to limit directly or indirectly the exemptions provided by this section for Trimming in Riparian Mangrove Fringe areas.
- (3) The designation of Riparian Mangrove Fringe areas as aquatic preserves or Outstanding Florida Waters shall not affect the use of the exemptions provided by this section unless the Riparian Mangrove Fringe resides upon Lands Set Aside for Conservation or Preservation.
- (4) Trimming that does not qualify for an exemption under this section requires a permit as provided for in [Section 54-1077](#), or a variance as provided for in [Section 54-1078](#).
- (5) Voluntary planting of Mangroves.
- (6) It is recommended that any Person intending to Trim Mangroves under an exemption as outlined in this Section contact the Administrator prior to the anticipated start of Trimming for assistance with an exemption determination.

(Ord. No. 2016-063, § 7, 10-10-2016)

Sec. 54-1077. - Permits.

- (1) *General Prohibition.* No work shall be performed having the effect of Trimming or Altering Mangroves without first obtaining a permit from the Administrator, unless specifically exempted under the provisions of [Section 54-1076](#). Trimming or Altering Mangroves on Lands Set Aside for Conservation or Preservation is prohibited.
- (2) *Permit Duration and Permit Extensions.* Permits shall remain valid for 5 years from the date of issuance. The Administrator may extend a permit the period of one year past the expiration date of that permit upon review of a written request for the extension. A fee will be associated with this extension.
- (3) *Professional Mangrove Trimmer.* All Trimming and Alteration of Mangroves performed under an approved Trimming permit, or an approved Alteration permit, shall be directly supervised or conducted by a certified, registered PMT.
- (4) *Herbicide Use.* No herbicide or other chemical will be used for the purpose of Defoliation of a Mangrove.
- (5) *Consistency Requirements.* The Administrator and Board shall apply the following consistency criteria in deciding whether to issue a permit pursuant to subsections (5) and (6), and on any appeal of an Administrator's decision denying a permit, respectively.
 - (a) Notwithstanding the riparian right of view, no permit shall be granted where the Applicant has failed to implement the principles of avoidance and then minimization of adverse impacts to Mangroves.
 - (b) No permit shall be granted unless the proposed activity is consistent with the permitted use of the property under the County Zoning Ordinance, as amended or municipal zoning ordinance, if applicable.
 - (c) Permits must be consistent with the Environment Chapter of the Comprehensive Plan.
- (6) *Permit for Trimming Mangroves.* A permit is required for the Trimming of Mangroves that does not qualify for an exemption under [Section 54-1076](#) of this Article. Under the following situations, an Applicant must comply with to the following conditions:
 - (a) General Permit Conditions:
 - 1. A permit issued under this section may be used only once on any property to achieve a Mangrove height of no less than six feet as measured from the Substrate;
 - 2. Trimming may not occur where a Mangrove Swamp covers more than 250 feet landward or waterward from the Mean High Water Line in a direction perpendicular to the shoreline;
 - 3. Trimming must be conducted in stages so that no more than 25 percent of the foliage is removed annually; and
 - 4. The height and configuration of Mangroves Trimmed in accordance with a permit issued under this section may be Maintained under an exemption as outlined in [Section 54-1076](#).
 - 5. Nuisance/Invasive Species may be required to be removed as Mitigation for impacts associated with Trimming or Alteration.
 - (b) Special Permit Conditions for Riparian Property Owners:
 - 1. Trimming shall not exceed 65 percent of the Mangroves along the shoreline that are taller than six feet in Pre-trimmed Height as measured from the Substrate.
 - 2. No Mangrove will be Trimmed so that the overall height of any Mangrove is reduced to less than six feet as measured from the Substrate.
 - (c) Special Permit Conditions for Trimming Within Existing Navigational Channels, Basins, or Canals to Provide Clearance for Navigation of Watercraft:
 - 1. For Mangroves located on lands within existing navigation channels, basin, or canals an Applicant must utilize the services of a certified, registered PMT to perform the Trimming activities.
 - 2. Trimming is limited to those portions of branches or trunks of Mangroves that extend into the navigation channel beyond a vertical plane of the most waterward Prop Root or Root System.
 - (d) Special Permit Conditions for Multi-Family Residential Units:
 - 1. Trimming shall not exceed 65 percent of the shoreline, with such Trimming equitably distributed so that each

owner's riparian view is similarly affected.

2. Notwithstanding the limitations in subsection 1 above, the Administrator or Board may allow a greater percentage than 65 percent of the Mangroves along the shoreline in order to provide a water view from each unit, but no more than necessary to preserve such views. This subsection applies only to property on which multi-family residential units exist as of June 1, 1996.
- (7) *Permit for Altering Mangroves.* A permit is required for Altering Mangroves when such activity cannot be authorized as an exempt activity or pursuant to a Permit for Trimming Mangroves issued under [Section 54-1077\(5\)](#) of this Article. An Applicant for a Permit for Altering Mangroves shall provide reasonable assurances that the proposed activities meet the permitting criteria outlined below.
- (a) When deciding to issue or deny a permit for Mangrove Alteration under this section the Administrator or Board shall consider the following:
 1. Whether the activity will adversely affect the public health, safety, or welfare, or the property of others;
 2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
 3. Whether the activity will adversely affect navigation, or the flow of water, or cause harmful erosion or shoaling;
 4. Whether the activity will adversely affect the fishing, or recreational values, or marine productivity in the vicinity of the activity;
 5. Whether the activity will be of a temporary or permanent nature;
 6. Whether the activity will adversely affect archaeological resources under the provisions of F.S. ch. 267;
 7. The current condition and relative value of functions being performed by areas affected by the proposed activity; and
 8. The cumulative impact of similar activities pursuant to Part IV of F.S. ch. 373.
 - (b) If the Applicant is unable to meet the criteria outlined in [Section 54-1077\(6\)\(a\)](#) of this Article, the Applicant shall first consider measures to reduce or eliminate the adverse impacts. If adverse impacts remain, the Applicant may propose, and the Administrator shall consider, measures to mitigate the otherwise adverse impacts.
 - (c) A request for a permit to Alter Mangroves must be submitted in writing with sufficient specificity to enable the Administrator to determine the scope and impacts of the proposed Alteration activities.
 - (d) The Administrator may authorize the transfer of a permit to a new owner of a permitted property upon review of a written request for the transfer. The written request must include proof of ownership. A fee will be associated with this transfer.
 - (e) The use of herbicides or other chemicals for the purpose of Defoliation is prohibited.

(Ord. No. 2016-063, § 8, 10-10-2016)

Sec. 54-1078. - Variances.

- (1) *Variance Criteria.* Upon application, the Board may grant a variance from the provisions of this Article if an Applicant demonstrates that the proposed Trimming or Alteration meets the following criteria:
 - (a) Compliance would impose a unique and unnecessary hardship on the owner or any other Person in control of the affected property.
 - (b) The hardship is not self-imposed.
 - (c) The proposed variance is consistent with the general intent and purpose of this Article.
 - (d) The requested variance is the minimum variance necessary to permit reasonable use of the property.
 - (e) The requested variance is consistent with the Sarasota County Comprehensive Plan.
- (2) *Variance Application Procedures.* A written determination by the Administrator that a variance petition application is complete or incomplete will be provided to the Applicant within approximately 15 days following receipt of the application. If additional information is required by the Administrator, the Applicant shall provide it within 90 days, unless a waiver has been granted by the Administrator. If this information response deadline has not been met, the application shall be deactivated and a new application shall be necessary. Any requested additional information must include a cover letter describing changes made to the original plan. Upon receipt of additional information, the Administrator shall submit revised comments regarding completeness within approximately ten days. Once the application is deemed complete, an inspection of the subject site will be completed by the Administrator within approximately ten days, and a formal review period will begin. A written staff report and recommendation to the Board will be completed by the Administrator within approximately 45 days after commencement of the formal review. The public hearing before the Board will be scheduled as soon as possible thereafter, in accordance with the notification requirements listed in [Section 54-1078\(3\)](#).
- (3) *Public Hearings.* No variance shall be considered by the Board until such time as the following public hearing notices have been provided:
 - (a) *Published Notice:* A minimum of ten days prior to the public hearing date, a notice shall be published in a newspaper of general circulation that has been selected by the County. The content and form of the published notice shall be consistent with the requirements of F.S. § 125.66, as amended.
 - (b) *Mailed Notice:* Once the Administrator has deemed the application complete, the Applicant shall be responsible for mailing a notice provided by Sarasota County to the appropriate neighborhood association and all property owners within 500 feet of the property boundaries. The Applicant shall be responsible for copying and mailing the notices to all property owners based on the Property Appraiser's records within 500 feet of the property boundaries of the land for which the variance is sought. Where such land is adjacent to the property in the Applicant's ownership, the distance shall be measured from the boundaries of the entire ownership. Where the notification boundaries include a multifamily dwelling (e.g., condominium), each individual unit owner shall be notified. Notice shall be deemed mailed by its deposit in the United States mail, first class, properly addressed, and postage paid. An affidavit attesting to such

mailings shall be submitted to the Administrator a minimum of five days prior to the public hearing date. The notice shall state the proposed activity for which a variance is sought, a general description of the area involved, and shall include a drawing depicting the proposed activity and the location of same as it relates to the surrounding area.

- (c) Posted Notice. A minimum of 15 days prior to the public hearing date, the Applicant shall be responsible for posting each individual property where a variance is sought with waterproof notices provided by the Administrator. These notices shall be placed along all streets that the property(ies) front(s). Where the street is privately-owned, the Applicant may also be responsible for posting a notice at a nearby public location, as determined by the Administrator. Where the land does not front a street, signs shall be erected on the nearest street with an attached notation indicating the general direction and distance to the land for which a variance is sought. Notices posted along a street shall be set back no further than 25 feet from the street and shall be visible for all to see from the road. All posted notices shall be removed no later than ten days following the public hearing. The Applicant shall be responsible for ensuring that the appropriate posted notice is maintained on the lands for which a variance is sought until the completion of the public hearing. An affidavit attesting to the required posting and locations shall be submitted to the Administrator by the owner of the property for which the variance is sought or his or her agent.
- (d) The Applicant shall be responsible for the cost of all notice requirements. Notwithstanding any other provision herein contained, failure to provide written or posted notice to adjacent property owners shall not constitute a jurisdictional defect provided that proper legal notice has been published. The County shall supply the Applicant with a list of all municipalities or other public agencies that may be affected by the proposed Development. The Applicant shall notify these municipalities and other public agencies by mail and inform them that they have the right to be heard.
- (4) All Trimming and Alteration of Mangroves performed under an approved variance shall be directly supervised or conducted by a certified, registered Professional Mangrove Trimmer.
- (5) Any Applicant, owner or substantially affected third party may appeal a variance determination to the circuit court through a petition for writ of certiorari.

(Ord. No. 2016-063, § 9, 10-10-2016)

Sec. 54-1079. - Professional mangrove trimmers.

- (1) For the purposes of this Article, the following Persons are considered Professional Mangrove Trimmers:
 - (a) Certified arborists, certified by the International Society of Arboriculture.
 - (b) Professional wetland scientists, certified by the Society of Wetland Scientists.
 - (c) Certified environmental professionals, certified by the Academy of Board Certified Environmental Professionals.
 - (d) Ecologists, certified by the Ecological Society of America.
 - (e) Landscape architects licensed by the state Board of Landscape Architecture, following establishment of appropriate standards and continuing legal education requirements by the Board of Landscape Architecture.
 - (f) Persons who have conducted Mangrove Trimming as part of their business or employment and who are able to demonstrate to the Administrator, as provided in [Section 54-1079\(2\)](#), a sufficient level of competence to assure that they are able to conduct Mangrove Trimming in a manner that will ensure the survival of the Mangroves that are Trimmed and that the Applicant has successfully completed a minimum of ten permitted mangrove-Trimming projects authorized by the program.
- (2) A Person who seeks to assert Professional Mangrove Trimmer status under [Section 54-1079\(1\)\(f\)](#), must first successfully complete the county's PMT training and certification course, and shall have passed an examination designed to test the Applicant's knowledge and ability in this field.
- (3) A Professional Mangrove Trimmer status granted by the Department of Environmental Protection or Sarasota County may be suspended, or revoked by the Administrator when any Person violates the Mangrove Trimming and Preservation Act or the provisions of this Article.
- (4) All Professional Mangrove Trimmers conducting Trimming or Alteration, or directly supervising Trimming or Alteration activities shall first register with the Administrator, the initial fee for which shall be established by the Board.
 - (a) In order to register as a Professional Mangrove Trimmer all PMTs conducting Trimming or Alteration, or directly supervising Trimming or Alteration activities, must first successfully complete the county's PMT training and certification course, and shall have passed an examination designed to test the Professional Mangrove Trimmer's knowledge and ability in this field.
 - (b) Professional Mangrove Trimmers conducting Trimming or Alteration, or directly supervising Trimming or Alteration activities, who have initially registered with the Administrator, shall renew said registration annually, subject to a fee that shall be established by the Board.
- (5) The Administrator may suspend or revoke the registration of a Professional Mangrove Trimmer when any PMT violates the Mangrove Trimming and Preservation Act or the provisions of this Article. Disciplinary actions will be reported to the Department of Environmental Protection.
- (6) Suspension of a Professional Mangrove Trimmer registration may be for the period of time necessary to fully investigate the actions leading to the suspension, but less than one year.
- (7) Revocation of a Professional Mangrove Trimmer registration will be for a minimum of one year. Re-registration will first require payment of any violation associated fees, successfully completing the county's PMT training and certification course, and passing an examination designed to test the prospective PMT's knowledge and ability in this field.
- (8) An appeal of an order suspending or revoking registration as a Professional Mangrove Trimmer shall be made in writing through an Appeal Form to the County Administrator within 15 days of the final decision. Upon receipt of an Appeal Form, the County Administrator shall rule on the administrative appeal within 15 days. In reaching a decision to affirm, reverse, or modify the decision, the County Administrator shall consider the following factors:
 - (a) the gravity of the violation;
 - (b) any actions taken by the violator to correct the violation; and

- (c) any previous violations committed by the violator in Sarasota County or other jurisdictions.

The County Administrator's decision shall be provided to the appellant in writing.

(Ord. No. 2016-063, § 10, 10-10-2016)

Sec. 54-1080. - Mitigation and enforcement.

- (1) Mitigation. Mitigation shall be required to offset adverse ecological and environmental impacts of Mangrove Trimming and Alteration.
 - (a) Any area in which five percent or more of the Mangroves have been Altered, Defoliated, or Trimmed below six feet in height, except as allowed by exemption provided in [Section 54-1076](#) of this Article must be mitigated by:
 1. Replanting Mangroves, in the same location and of the same species as each Mangrove Altered, Defoliated, or Trimmed, to achieve a canopy area equivalent to the area Altered, Defoliated, or Trimmed within five years.
 2. Payment in lieu of Mitigation, if all, or a portion of the onsite or offsite Mitigation is not practicable as determined by the Administrator, the payment must be equivalent to the cost, as verified by the Administrator, of creating Mangrove Swamp at a two to one, created versus affected ratio, based on canopy area.

Payments in lieu of Mitigation shall be made: (a) by contributing to the Sarasota County Reforestation Fund, from which the money shall be used for restoration, enhancement, or preservation of Mangrove Swamp within a restoration, enhancement, creation, or preservation project approved by the Administrator; or (b) by purchasing credits from a Mitigation bank created under Part IV of F.S. ch. 373, at a Mitigation ratio of two to one credits to the affected area.
 - (b) If Mangroves are Altered, Defoliated, or Trimmed below six feet in height, either under a permit or illegally as unpermitted work, the Administrator may require Mitigation in accordance with the State of Florida Uniform Mitigation Assessment Method (UMAM) established in F.S. ch. 373.
- (2) In all cases, an Applicant, landowner, and any Person performing Trimming or Alteration are jointly and severally liable for performing Mitigation or restoration as provided in this section, and for ensuring that the Mitigation or restoration successfully results in a variable Mangrove community that can offset the impacts caused by the removal, destruction, or Defoliation of Mangroves. The Applicant, landowner, and Person performing the Trimming or Alteration are also jointly and severally subject to penalties.
- (3) Any replanting for Mitigation under this subsection must result in at least 80 percent canopy cover of the planted Mangroves within five years after planting. In addition planted Mangroves shall meet an 85 percent survival rate one year after planting.
- (4) Enforcement and Penalties. Sarasota County may enforce any permit condition or stipulation, as well as, any provisions of this Article, through Chapter 2, Article VIII, of the Sarasota County Code of Ordinances and per the provisions of F.S. ch. 162.
 - (a) Each day of any violation shall constitute a separate and distinct offense.
 - (b) The Administrator may require corrective actions, including but not limited to, restoration of any native habitats impacted as a result of a violation. The Administrator may also require monitoring in accordance with the standards established within [Chapter 124](#) (Unified Development Code, as amended) of the Sarasota County Code of Ordinances.
 - (c) Restoration. Unauthorized impacts to Mangrove habitat that cannot otherwise be authorized under an after-the-fact permit, or a variance shall be restored by replanting Mangroves, in the same location and of the same species as each Mangrove destroyed, Defoliated, removed, or Trimmed, to achieve a canopy area equivalent to the area destroyed, Defoliated, removed, or Trimmed within five years after planting. In addition planted Mangroves shall meet an 85 percent survival rate one year after planting.
 - (d) Administrative costs and penalties collected as part of enforcement of this Article shall be placed in the Sarasota County Reforestation Fund, as established by resolution of the Board.
 - (e) The Board may establish minimum and maximum penalties for violations of this Article through resolution.
 - (f) Notwithstanding any other provisions of this Article for enforcement or penalties, the Board may also enforce this Article by actions at law or in equity for damages and injunctive relief. In the event the Board prevails in any such action, the Board shall be entitled to an award of its costs.
- (5) Civil and Administrative.
 - (a) The Administrator may withhold issuance of a permit or deny an application or other authorization if there is an existing unresolved violation of the Sarasota County Code of Ordinances on the subject property.
 - (b) The Administrator will issue a stop work order when it has been determined that work at the site:
 1. Is proceeding in violation of this Article, a permit or other authorization issued hereunder or proceeding without any required authorization; or
 2. Poses an imminent and significant hazard to the public health, safety, or welfare, or to the environment.
 - (c) The County may issue an after-the-fact authorization to correct a violation.
 1. The Administrator has the authority to review and approve after-the-fact activities that meet all of the standard approval and technical criteria for Trimming and Alteration permits contained within this Article.
 2. All after-the-fact activities requiring a variance shall only be reviewed by the Board.
 - (6) Criminal violation. A knowing violation of any of the provisions of this Article or of any regulations adopted or permit conditions approved pursuant to this Article shall be punishable in the same manner as a misdemeanor as provided by law.

(Ord. No. 2016-063, § 11, 10-10-2016; Ord. No. 2018-047, § 3B., 11-27-2018)

Sec. 54-1081. - Interpretation.

The provisions of this Article shall be liberally construed in order to effectively carry out its purpose. Where any provision of this Article refers to or incorporates another provision, ordinance, statute, rule, regulation, policy, official publication, or other authority, it refers to the most current version, incorporating any amendments thereto or e thereof.

(Ord. No. 2016-063, § 12, 10-10-2016)

Sec. 54-1082. - Severability.

It is declared to be the legislative intent that, if any section, subsection, sentence, clause or provision of this Article is held invalid, the remainder of this Article shall not be affected.

(Ord. No. 2016-063, § 13, 10-10-2016)

Sec. 54-1083. - Conflict with County Code.

To the extent that this Article conflicts with the requirements of any other provision of the Code of Ordinances of Sarasota County, the more restrictive requirement shall govern.

(Ord. No. 2016-063, § 14, 10-10-2016)

Secs. 54-1084—54-1085. - Reserved.