

Regular Workshop – April 20, 2015  
Agenda Item 15

Agenda Item: Recommendation to Amend the Town Code to Address Applicable Law Relating to Mangrove Regulation

Presenter: Town Manager and Town Attorney

Summary: Florida's Mangrove Trimming and Preservation Act, Sections 403.9321 - 403.9333, Florida Statutes (F.S.) sets forth a comprehensive regulatory program for the regulation of the alteration and trimming of mangroves within the State of Florida. The Act is generally administered by the FDEP. Absent a formal delegation of authority issued by the FDEP to a local government, local governments are restricted by applicable law from regulating the trimming or alternation of mangroves. Two (2) recent court decisions have reaffirmed the limitation on local government's ability to regulate mangroves through local ordinances and enforcement proceedings.

Accordingly, it is recommended that the Town Commission consider amending provisions in Chapters 98, 104, 151, and 154 of the Town Code to remove provisions that conflict with the Act.

Pending Commission consideration of this item, Town staff is prepared to bring an Ordinance to the May 4, 2015 Regular Meeting to align our Town Code with State requirements.

Attachment: 4-14-15 Memo, Town Attorney to Town Commission.

Recommended

Action: Pending discussion, provide direction to Manager.

## MEMORANDUM

Date: April 14, 2015

**TO:** Town Commission

**THROUGH:** Dave Bullock, Town Manager

**FROM:** Maggie Mooney-Portale, Town Attorney, and  
R. David Jackson, Assistant Town Attorney

**SUBJECT:** Recommendation to Amend the Town Code to Address  
Applicable Law Relating to Mangrove Regulation

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Florida's Mangrove Trimming and Preservation Act ("Act") is set forth under Sections 403.9321 - 403.9333, Florida Statutes (F.S.). The stated intent of the Act is "to protect and preserve mangrove resources valuable to our environment and economy from unregulated removal, defoliation, and destruction." Section 403.9323(1), F.S. Generally, the Act regulates the manner by which the alteration<sup>1</sup> and trimming of mangroves occurs and establishes a regulatory permitting program for obtaining authorization to perform alteration or trimming activities. The permitting and enforcement program established by the Act is primarily administered by the Florida Department of Environmental Protection's (FDEP), however there are provisions in the Act that afford local governments the ability to obtain a delegation of authority to regulate such mangrove alteration or trimming activities.

More specifically, Section 403.9324(1), F.S., provides that these laws along with any lawful regulations adopted by a local government that receives a delegation (from the FDEP of such authority to administer and enforce the regulation of mangroves) shall be the sole regulations in the State of Florida for the trimming and alteration of mangroves on privately or publicly owned lands. In order to receive delegation of the FDEP's authority to regulate the trimming and alteration of mangroves, a local government must make a written request for delegation and demonstrate that it has sufficient resources and procedures to adequately administer and enforce such a regulatory program. Section 403.9324(2), F.S. According to the FDEP, the Town of Jupiter Island and the City of Sanibel, along with Miami-Dade, Broward, Hillsborough, and Pinellas Counties are the only local governments to have been delegated the authority to implement such a program. Accordingly, the Act provides that in the absence of a delegation from the FDEP, the regulation of the trimming or alteration of mangroves is a subject matter that has been pre-empted by the Act to the state/FDEP to regulate.

The Town has not entered into a delegation agreement with the FDEP relating to the regulation of the trimming and alteration of mangroves. Nevertheless, several chapters of the Town's Code of Ordinances include provisions that appear to attempt to regulate various aspects relating to the protection of mangrove trees within the Town of Longboat

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<sup>1</sup> "Alter" is defined by the Act as "anything other than trimming of mangroves." Section 403.9325(1), F.S..

Key. Some of these Code provisions include regulations relating to the trimming and removal of mangroves, as well as a section setting forth penalties for those found guilty of violating the provisions of this chapter. With respect to mangroves, enforcement of these Town Code provisions by the Town would be unenforceable without having been delegated the authority to do so by the FDEP.

In addition, the issue of local government regulation over mangroves was recently addressed in a 2014 decision from the State of Florida's Fourth District Court of Appeals where the Town of Jupiter (not the Town of Jupiter Island) tried to impose penalties through a code enforcement proceeding against a property owner who had removed 109 mangroves from its property without a permit from the municipality. The Court held that the Act expressly preempted the Town of Jupiter's local regulation of mangroves and enforcement unless it had received a delegation of such authority from the FDEP. *Town of Jupiter v. Byrd Family Trust*, 39 Fla. L. Weekly D237 (Fla. 4th DCA February 7, 2014). Further, the *Town of Jupiter* decision was recently cited by Judge Bonner in a similar case from the 12<sup>th</sup> Judicial Circuit (*Maurer v. Sarasota County*, Case No. 2014 CA 4833) which held that Sarasota County lacked jurisdiction to regulate the alteration of mangroves.

Based upon the language of the Act and the recent case law on the subject matter, it is recommended that the Town Commission authorize the Town Manager and Town Attorney to work with staff to prepare an ordinance that will amend the Town Code to remove any language where the Town is asserting authority to regulate the trimming or removal of mangroves.

Please do not hesitate to contact us if you have any questions.



**End of Agenda Item**