

ORDINANCE NO. 21-2018

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AT CHAPTER 66, NATURAL RESOURCE PROTECTION, AT ARTICLE 1, IN GENERAL, SECTION 66-2, DEFINITIONS; AT ARTICLE IV, VEGETATION, SECTION 66-212, PURPOSE AND INTENT; TO INCLUDE A NEW SECTION 66-285, GENERAL UNDER DIVISION 4, DESIGN REQUIREMENTS; AMENDING SECTION 66-286, WATER CONSERVING LANDSCAPE DESIGN; AND AMENDING SECTION 66-311, PROHIBITED PLANTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are hereby ratified and confirmed.

Section 2. The code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 66, Natural Resource Protection; Article I, In General; Section 66-2, Definitions, to read as follows:

“Sec. 66-2. - Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

DSH means diameter at standard height (4.5 feet or 1.37 meters) measured from the top of rootball

~~Evapotranspiration-based controller means an irrigation controller that calculates soil moisture from known weather and related inputs, as follows:~~

- ~~(1) Receives and monitors weather data or on-site environmental conditions;~~
- ~~(2) Calculates the amount of moisture input to and moisture lost from the soil and plants;~~
- ~~(3) Automatically creates or adjusts the irrigation schedule to apply only the amount of water necessary to maintain adequate soil moisture.~~

Hat-racking means the removal of main stems, tops of trees, or a significant percentage of tree canopy, generally by cross-cutting the main stem(s) or leaders, leaving stubs.

Hedge means a dense row of regularly spaced shrubs planted to form a continuous, unbroken visual screen.

Mulch means ~~nonliving~~ organic, arsenic free material such as wood chips, ~~pine straw or bark~~ placed on the soil to reduce evaporation, prevent soil erosion, control weeds and buffer soil

~~temperature. and synthetic materials customarily used in landscape design to retard erosion and retain moisture.~~

~~Native plant community is a natural association of plants dominated by one or more prominent native plant species, or a characteristic physical attribute as indicated by the Town of Palm Beach.~~

~~Native plant species shall be the plant species indigenous to the ecological communities of South Florida, as indicated as native to South Florida by the University of Florida in the Atlas of Vascular Plants, or that can be scientifically documented to be native to South Florida.~~

COMMENTS RECEIVED:

- **Landscape Architects/Design Professionals:** No comments received on this section.
- **The Garden Club of Palm Beach:** No comments received on this section.
- **Palm Beach Civic Association Town Beautification Committee:** “We concur with the clarification of definitions in this section.”
- **The Preservation Foundation of Palm Beach:** No comments received on this section.

Section 3. The code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 66, Natural Resource Protection; Article IV, Vegetation, to read as follows:

“DIVISION 1. - GENERALLY

Sec. 66-212. - Purpose and intent.

It is the intent of the town to promote the health, safety and welfare of existing and future residents of the town by establishing minimum standards for the protection of natural plant communities, and the installation and continued maintenance of landscaping within the town, in order to:

- (1) ~~Promote water conservation and~~ Improve air quality by promoting evapotranspiration and through the use of permeable land areas for aquifer recharge and surface water filtration.
- (2) Maintain and improve the aesthetic appearance of the town through appropriate landscape design; thereby protecting and increasing property values throughout the community.
- (3) Improve the environmental quality of the town.
- (4) Eradicate or control ~~certain invasive~~ exotic plant species as listed on the Florida Exotic Pest Plant Council’s List of Invasive Plant Species.
- (5) Protect and encourage native shoreline and wetland ecosystems.
- (6) Offer special guidelines for the removal and control of those pestilent exotic species that are particularly deleterious to native shoreline environments.
- (7) Protect listed plant species that inhabit the town as referenced in Sec. 66-312.

- (8) Reduce noise and pollution by designing landscaping to visually screen unsightly views, and reduce noise impacts from major roadways and incompatible uses, through the filtering capacity of living trees and vegetation.
- (9) Provide a visual buffer between otherwise incompatible types of land uses,
- (10) Strengthen important vistas and reinforce desirable site design.
- (11) Promote the use of vegetation for energy conservation by encouraging cooling through the provisions of shade and channeling of breezes.
- (12) Encourage the use of rain harvesting systems such as cisterns, as a means to conserve water by reducing overwatering of landscapes.
- (13) Promote water conservation and lower water costs through the use of smart irrigation systems.
- (14) Promote health and safety through greater use of cultural and biological controls and reduced use of chemical pesticides for the management of pests such as whitefly infestations.
- (15) Promote the planting of native vegetation to encourage the presence of birds and wildlife.

COMMENTS RECEIVED:

- **Landscape Architects/Design Professionals:** No comments received on this section.
- **The Garden Club of Palm Beach:** No comments received on this section.
- **Palm Beach Civic Association Town Beautification Committee:** “We concur with these revisions.”
- **The Preservation Foundation of Palm Beach:** “4) Regarding invasive plants. The FLEPPC list contains Category I and Category II invasive exotic plants. “Invasive exotic plants are termed **Category I** invasives when they are altering native plant communities by displacing native species, changing community structures or ecological functions, or hybridizing with natives. This definition does not rely on the economic severity or geographic range of the problem, but on the documented ecological damage caused. **Category II** invasive exotics have increased in abundance or frequency but have not yet altered Florida plant communities to the extent shown by **Category I** species. These species may become **Category I** if ecological damage is demonstrated.’
<https://www.fleppc.org/list/list.htm>
 - Suggested wording: Eradicate category I invasive exotic plant species and eradicate or control category II invasive exotic plant species as listed on the most current Florida Exotic Pest Plant Council’s List of Invasive Plant Species.

13) Water conservation is also achieved by using native plants in the landscape and is recommended by the Environmental Protection Agency.

<https://www.epa.gov/watersense/what-plant>

<https://archive.epa.gov/greenacres/web/html/factsht.html>

- Suggested wording: Promote water conservation and lower water costs through the use of smart irrigation systems and planting native plants appropriate for the location.

15) Planting appropriate native vegetation has many benefits in addition of birds and wildlife. Again, from the EPA factsheet linked above:

Why Should I Use Native Plants?

Native plants provide a beautiful, hardy, drought resistant, low maintenance landscape while benefiting the environment. Native plants, once established, save time and money by eliminating or significantly reducing the need for fertilizers, pesticides, water and lawn maintenance equipment.

Native plants do not require fertilizers. Vast amounts of fertilizers are applied to lawns. Excess phosphorus and nitrogen (the main components of fertilizers) run off into lakes and rivers causing excess algae growth. This depletes oxygen in our waters, harms aquatic life and interferes with recreational uses.

Native plants require fewer pesticides than lawns. Nationally, over 70 million pounds of pesticides are applied to lawns each year. Pesticides run off lawns and can contaminate rivers and lakes. People and pets in contact with chemically treated lawns can be exposed to pesticides.

Native plants require less water than lawns. The modern lawn requires significant amounts of water to thrive. In urban areas, lawn irrigation uses as much as 30% of the water consumption on the East Coast and up to 60% on the West Coast. The deep root systems of many native Midwestern plants increase the soil's capacity to store water. Native plants can significantly reduce water runoff and, consequently, flooding.

Native plants help reduce air pollution. Natural landscapes do not require mowing. Lawns, however, must be mowed regularly. Gas powered garden tools emit 5% of the nation's air pollution. Forty million lawnmowers consume 200 million gallons of gasoline per year. One gas-powered lawnmower emits 11 times the air pollution of a new car for each hour of operation. Excessive carbon from the burning of fossil fuels contributes to global warming. Native plants sequester, or remove, carbon from the air.

Native plants provide shelter and food for wildlife. Native plants attract a variety of birds, butterflies, and other wildlife by providing diverse habitats and food sources. Closely mowed lawns are of little use to most wildlife.

Native plants promote biodiversity and stewardship of our natural heritage. In the U.S., approximately 20 million acres of lawn are cultivated, covering more land than any single crop. Native plants are a part of our natural heritage. Natural landscaping is an opportunity to reestablish diverse native plants, thereby inviting the birds and butterflies back home.

Native plants save money. A study by Applied Ecological Services (Brodhead, WI) of larger properties estimates that over a twenty year period, the cumulative cost of

maintaining a prairie or a wetland totals \$3,000 per acre versus \$20,000 per acre for non-native turf grasses.

- Suggested wording: Promote the planting of appropriate native vegetation to encourage the presence of birds and wildlife, and to eliminate or significantly reduce the need for fertilizers, pesticides and water.

Section 4. The code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 66, Natural Resource Protection; Article IV, Vegetation, to read as follows:

DIVISION 4. - DESIGN REQUIREMENTS

Sec. 66-285. – General

- (1). At least 25 percent (25%) of all required landscaping, by category in the form of trees, shrubs and ground cover plants, other than grass, shall consist of native vegetation. The Xeriscape Plant Guide by the South Florida Water Management District, or if available County or regional lists as amended may be used to determine appropriate native vegetation.
- (2) The hatracking of trees is prohibited.

COMMENTS RECEIVED:

- **Landscape Architects/Design Professionals:** Regarding (1): “I would suggest going into this realm slowly. Possibly having a 15% native vegetation requirement. Let’s not forget that PB was created as a Long Islander’s dream of the Tropics; not Native. Let’s not try to change our history too fast. Don’t forget the obvious: 25% of anything is an entire quarter of everything.” Regarding (2): “Along with a definition of Hatracking there should be one for Pollarding. The latter has been used in the best examples of gardens for over a couple of thousand years. We should not outlaw it.”
- **The Garden Club of Palm Beach:** “The Garden Club of Palm Beach wishes to extend its support of the 25% native plant requirement, not using Cypress mulch or dyed mulch, banning the use of Ficus Benjamina for new hedges and the proper pruning of trees.”
- **Palm Beach Civic Association Town Beautification Committee:** “We concur with having a minimum of 25% of native plants included in all landscaping projects on the island is progressive and critical to improve sustainability, reduce the amount of pesticides used and attract birds/butterflies/honeybees and other pollinators. The selective use of native plants will not negatively impact the aesthetics of landscaping and garden projects on the island. Pan’s and the Mounts Botanical Gardens are role model examples of how native plants can be used and selected to achieve formal and attractive landscaping preferred by some residents in Palm Beach. We concur with prohibiting hat racking. It would be beneficial to better define hat racking as the practice of removing whole tops of trees or large branches and/or trunks from the tops of trees, leaving stubs or lateral branches that are too small to assume the role of a terminal leader. We recommend instead of hat racking to use selective pruning and thinning methods in accordance with ANSI A300 Standards to ensure the health of the tree and allow for more

light penetration and air circulation. Hat racking can damage the bark of the tree and the substantial loss of leaves reduce the tree's ability to photosynthesize and produce food. When a tree is topped many new shoots or suckers begin to grow from the wound. This type of growth attracts insects and other pathogens that can directly enter the open wound and eventually kill the tree."

- **The Preservation Foundation of Palm Beach:** "An excellent resource for appropriate native plants is the Institute for Regional Conservation website, specifically "Natives for Your Neighborhood". <https://www.regionalconservation.org/beta/nfyn/>. I am very pleased to see the town move toward requiring a percentage of native plants, joining the numerous counties and municipalities in the state that have done the same. Some of the municipalities with native plant requirements: Brevard, Dade County, Indian River County, Islamorada, Key Colony Beach, Key West, Lee County, Manatee County, Marathon, Martin County, Monroe County, Miami, Ocoee, Palm Beach County, Pasco County, Polk County, St Lucie County, West Palm Beach. Hat racking is a damaging tree-trimming practice in any locale, even more treacherous in coastal Palm Beach with high winds. The recent Palm Beach Daily News article addressed the issues very well. <https://www.palmbeachdailynews.com/lifestyles/home/why-hatracking-weakens-trees/YTh8IPtHU7ILPTuIPdUYcP/>."

Section 5. The code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 66, Natural Resource Protection; Article IV, Vegetation, to read as follows:

Sec. 66-286. - Water conserving landscape design.

- (3) *Required vegetation.* The following vegetation is required. The nine principles of Florida Friendly landscaping shall be utilized.

c. Trees.

1. A minimum of one shade/canopy tree is required for every 5,000 square feet, or portion thereof, of a lot, for lots 10,000 square feet or more.
 2. A minimum of one shade/canopy tree is required for lots less than 10,000 square feet.
 3. Every effort should be utilized to reduce the risk of damage and liability by utilizing more salt tolerant and wind tolerant trees and palms due to the town's coastal proximity and the high risk of hurricanes in South Florida.
 4. The selection and placement of all street trees must refer and adhere to the Town of Palm Beach Standards Applicable To Public Rights-Of-Way And Easements Within The Town Of Palm Beach.
- (5) *Use of organic mulches.* When appropriate, a minimum of two inches of arsenic-free organic mulch shall be installed around each tree planting for a minimum of 18 inches beyond its trunk in all directions, including palms, and throughout all hedge, shrub, and groundcover plantings. Mulch shall be pulled a minimum of two inches away from trees and palms. Appropriate mulching material consists of by-product

or alternative mulches such as eucalyptus, utility or other mulch as recommended by Florida Friendly Landscaping principles. The use of Cypress mulch and dyed mulches are prohibited.

COMMENTS RECEIVED:

- **Landscape Architects/Design Professionals:** Regarding (3): “I feel this is a good intention but, again, one that crosses the line here in town. Independence in design is what makes our town’s gardens the example to every other town. Forcing residents to do this is not correct. I took the time to look at the following addresses: 1139 North Ocean Blvd, 277 Pendleton Ave, 229 Barton Ave, 1490 Via Manana, 2335 South Ocean Blvd, 212 Caribbean Rd. I think I can safely say that not one of those properties meet this requirement. Much less most of our Town’s properties: public beach; Royal Poinciana Way; Royal Palm Way. The list could go on. Let’s make sure we know what we are going to force residents to do.” Regarding (4)—suggested the following rewording: “Appropriate mulching material consists of by-product or alternative mulches such as eucalyptus, pine needles, pine finds, oak leaf, Atlas grow soil, utility or other mulch as recommended by Florida Friendly Landscaping principles. The use of Cypress mulch and dyed mulches are prohibited.”
- **The Garden Club of Palm Beach:** “The Garden Club of Palm Beach wishes to extend its support of the 25% native plant requirement, not using Cypress mulch or dyed mulch, banning the use of Ficus Benjamina for new hedges and the proper pruning of trees.”
- **Palm Beach Civic Association Town Beautification Committee:** “We concur with the proposed minimum standards for the inclusion of shade tree canopy trees in new landscape projects. According to University of Florida IFAS, shade trees reduce air pollution, block city noise, provide privacy, increase property values, reduce air conditioning costs, absorb carbon dioxide and produce oxygen all vital to environmental sustainability. We concur with the types of mulches allowed. When mulching, good practices should be followed especially around the trunks of trees. Refer to the University of Florida mulching recommendations and their Florida Friendly Landscapes standard.”
- **The Preservation Foundation of Palm Beach:** No comments received on this section.

Section 6. Sec. 66-311. Prohibited Plants is hereby amended to include the following provisions:

(d) Prohibition of ficus benjamina. Due to extreme susceptibility of the invasive white fly pest and the consequent enforcement issues to require owners to treat or remove infested ficus benjamina, no new planting of ficus benjamina shall be allowed.

~~(ed)~~ *Protection of natural area and incentives.* The county has recognized the Palm Beach Island Sanctuaries (R43 T43 S34; R43 T44 S03/10/15) located within the town as a natural area containing high quality ecosystems that are worthy of protection. The town hereby adopts for purposes of the protection of said natural area and for purposes of the regulation of the buffer area around said natural area those sections of the County Code known as the "Palm Beach

County Countywide Prohibited Invasive Non-Native Vegetation Removal Ordinance" relating to the protection and regulation of these areas. Additionally, the town adopts the incentive program offered by the county as incorporated within the "Palm Beach County Countywide Prohibited Invasive Non-Native Vegetation Removal Ordinance."

(~~f~~*e*) *Enforcement*. Violations of this section shall be:

- (1) Failure of a property owner to remove or eradicate prohibited invasive non-native vegetation in accordance with subsection (a) and (c) of this section.
- (2) Failure of a property owner to maintain nonexempt properties free of prohibited invasive non-native vegetation in accordance with subsection (c) of this section.

COMMENTS RECEIVED:

- **Landscape Architects/Design Professionals:** No comments received on this section.
- **The Garden Club of Palm Beach:** "The Garden Club of Palm Beach wishes to extend its support of the 25% native plant requirement, not using Cypress mulch or dyed mulch, banning the use of Ficus Benjamina for new hedges and the proper pruning of trees."
- **Palm Beach Civic Association Town Beautification Committee:** "We concur with limiting the use of Ficus Benjamina on the island. There are several other alternatives to be used as hedges that are less prone to whitefly damage and extensive use of pesticides e.g. Podocarpus, Clusia, Cocoplum, etc. Ficus Nitida as a replacement of Ficus Benjamina should also be discouraged."
- **The Preservation Foundation of Palm Beach:** See previous comments on native vegetation.

Section 7. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 8. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 9. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 10. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this _____ day of _____, 2018, and for second and final reading on this _____ day of _____, 2018.

Gail L. Coniglio, Mayor

Danielle H. Moore, Town Council President

Margaret A. Zeidman, Council President Pro Tem

Julie Araskog, Town Council Member

ATTEST:

Lewis S.W. Crampton, Town Council Member

Kathleen Dominguez, Town Clerk

Bobbie Lindsay, Town Council Member