

ORDINANCE NO. 2009-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO THE REGULATION OF TREE TRIMMERS; AMENDING CHAPTER 9, ARTICLE I, SECTION 9-3, DEFINITIONS; CREATING CHAPTER 9, ARTICLE XI, REGULATION OF TREE TRIMMERS, SECTIONS 9-160 THROUGH 9-177; TRANSFERRING AND AMENDING SECTION 27-419 TO CREATE SECTION 9-160, PURPOSE; TRANSFERRING AND AMENDING SECTION 27-420 TO CREATE SECTION 9-161, DEFINITIONS; TRANSFERRING AND AMENDING SECTION 27-421 TO CREATE SECTION 9-162, REQUIREMENTS AND STANDARDS FOR TREE TRIMMER LICENSURE; TRANSFERRING AND AMENDING SECTION 27-422 TO CREATE SECTION 9-163, CLASS A AND CLASS B TREE TRIMMER LICENSE AND TRAINING REQUIREMENTS; RENEWALS; TRANSFERRING AND AMENDING SECTION 27-423 TO CREATE SECTION 9-164, LICENSE APPLICATION; TRANSFERRING AND AMENDING SECTION 27-424 TO CREATE SECTION 9-165, MAINTENANCE OF QUALIFICATIONS; TRANSFERRING AND AMENDING SECTION 27-425 TO CREATE SECTION 9-166, ADVERTISING; CREATING SECTION 9-167, COMPLAINTS; PROCESS; CREATING SECTION 9-168, SERVICE OF NOTICES OF VIOLATION AND CITATIONS; CREATING SECTION 9-169, EVIDENCE; CREATING SECTION 9-170, HEARINGS; HEARING OFFICER; CREATING SECTION 9-171, ORDERS OF THE HEARING OFFICER; CREATING SECTION 9-172, PENALTIES AND DISCIPLINARY ACTIONS; CREATING SECTION 9-173, CITATIONS; TRANSFERRING AND AMENDING SECTION 27-427 TO CREATE SECTION 9-174, STOP WORK ORDERS; CREATING SECTION 9-175, COLLECTION AND RECOVERY OF CIVIL PENALTIES; CREATING SECTION 9-176, APPEALS OF CITATIONS AND NOTICES OF VIOLATION; CREATING SECTION 9-177, PROVISIONS CONTAINED HEREIN ARE SUPPLEMENTAL; AMENDING SUBSECTION 27-38(h), SCHEDULE FOR CIVIL PENALTIES FOR CITATIONS; DELETING SECTION 27-426, VIOLATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, the Broward County Development and Environmental Regulation Division currently administers and regulates the licensure and enforcement thereof for tree trimmers; and

1 WHEREAS, it would be more efficient for the Broward County Permitting,
2 Licensing and Consumer Protection Division to administer and regulate the licensure
3 and enforcement thereof for tree trimmers.

4 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
5 BROWARD COUNTY, FLORIDA:

6 Section 1. Chapter 9, Article I, Section 9-3, Definitions, is hereby amended to
7 read as follows:

8 **Sec. 9-3. Definitions.**

9 The following terms and phrases, when used in this chapter, shall have the
10 meaning ascribed to them in this section, except where the context clearly indicates a
11 different meaning. Words used in the present tense shall include the future, and the
12 singular number includes the plural, and the plural, the singular. However, there are
13 other words, phrases, and terms which apply to a particular section, division, or article;
14 and those definitions for a specific section, division, or article shall control for that
15 specific section, division, or article.

16 . . .

17 Section 2. Sections 27-419 through 27-425 of Chapter 27, Article XV,
18 Regulation of Tree Trimmers, are hereby amended and transferred to Chapter 9, Article
19 XI, Regulation of Tree Trimmers, Sections 9-160 through 9-166, to read as follows:

20 **ARTICLE XV. XI. REGULATION OF TREE TRIMMERS**

21 **Sec. ~~27-419~~. 9-160. Purpose.**

22 It is hereby declared by the Broward County Board of County Commissioners
23 that, in order to safeguard the life, safety, property, and public welfare of the people of
24 Broward County and to protect and enhance the urban forest environmental resource of

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscored type are additions.

1 Broward County, it is necessary to license and regulate sole proprietors and business
2 organizations, which contract to perform tree trimming services, and governmental
3 agencies, which trim trees.

4 **Sec. 27-420. 9-161. Definitions.**

5 The following terms and phrases, when used in this article, shall have the
6 meaning ascribed to them in this section, except where the context clearly indicates a
7 different meaning. Words used in the present tense shall include the future, and the
8 singular number includes the plural, and the plural, the singular.

9 (a) ~~Advertise or other advertising medium shall mean business cards,~~
10 ~~business stationery, business proposals, contracts, signs, all newspapers, airwave~~
11 ~~transmissions (other than internal company communications), classified telephone~~
12 ~~directories, magazines (including trade association publications), classified~~
13 ~~advertisements, other media including handbills, billboards, flyers, shopping and service~~
14 ~~guides (coupon offerings), and signs on vehicles. However, the terms advertise and~~
15 ~~other advertising medium shall not apply to balloons, pencils, pens, hats, articles of~~
16 ~~clothing, or other small promotional novelties. Additionally, it shall not apply to free~~
17 ~~classified telephone directory listings (regardless of page color) of one (1), two (2), or~~
18 ~~three (3) lines, which display nothing more than the proper name, company name,~~
19 ~~address, and telephone number in whole or in part in an un-bolded or un-highlighted~~
20 ~~print and without further textual or pictorial elaboration or touting in its overall display.~~

21 (b) (a) Applicant shall mean and include all sole proprietors, business
22 organizations, and governmental agencies which apply for or request licensure from the
23 County.

1 ~~(e)~~ (b) *Business organization* shall mean and include any partnership,
2 corporation, business trust, joint venture, or other legal entity which engages or offers to
3 engage in the business of contracting to perform tree trimming services or acts as a tree
4 trimming contractor.

5 (c) Contractor shall mean and refer to any person who undertakes to, or
6 submits a bid to, perform tree trimming on the property of another person within
7 Broward County.

8 ~~(d) Employee shall mean a person who receives compensation from, and is~~
9 ~~under the supervision and control of, an employer who regularly deducts or should~~
10 ~~deduct F.I.C.A. and withholding tax and is required to provide Workers' Compensation~~
11 ~~insurance, as prescribed by law.~~

12 (d) Division shall mean and refer to the Broward County Permitting, Licensing
13 and Consumer Protection Division, its successor agency or designee.

14 (e) *Governmental agency* shall mean the State of Florida, Broward County,
15 municipalities within Broward County, dependent and independent special districts, and
16 the South Florida Water Management District.

17 (f) Hearing officer shall mean a member of The Florida Bar who shall conduct
18 hearings in accordance with this article and Chapter 162, Florida Statutes, as amended.

19 ~~(f)~~ (g) *Job site* shall mean each street address at which tree trimming activities
20 take place.

21 ~~(g)~~ (h) *License holder* shall mean a sole proprietor, business organization, or
22 governmental agency possessing a Class A or Class B Tree Trimmer License required
23 pursuant to Chapter 27 9, Article ~~XV~~ XI, of the Broward County Code of Ordinances.

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1 ~~(h) Moral turpitude shall mean a crime which is inherently immoral or~~
2 ~~dishonest including, but not limited to, fraud, extortion, blackmail or crimes against~~
3 ~~minors.~~

4 (i) Repeat violation shall mean a recurring violation of a provision of this
5 article by a violator whom a hearing officer has previously found to have violated the
6 same provision, or a violator against whom penalties were assessed for the same
7 provision, within five (5) years prior to the violation.

8 ~~(j)~~ (i) Sole proprietor shall mean an individual who engages in, or proposes to
9 engage in, the business of contracting as a tree trimmer in the individual's own name, or
10 a fictitious name.

11 ~~(k)~~ (k) Subcontractor shall mean any sole proprietor or business organization,
12 which contracts with a tree trimming contractor to perform all or part of the tree trimming
13 contractor's work.

14 ~~(l)~~ (l) Trained person shall mean a sole proprietor or an employee who complies
15 with the provisions of Subsection 27-422 9-163(a)(2), Broward County Code of
16 Ordinances.

17 ~~(m)~~ (m) Tree shall mean any living, self-supporting, dicotyledonous or
18 monocotyledonous, woody, perennial plant which has a DBH (diameter breast height) of
19 no less than three (3) inches, and which normally grows to an overall height of no less
20 than ten (10) feet in Southeast Florida.

21 ~~(n)~~ (n) Tree trimmer shall mean any sole proprietor or business organization,
22 which contracts to perform tree trimming services, or any governmental agency, which
23 trims trees, and is required to obtain one of the following licenses:

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1 *Class A Tree Trimmer License.* A license which requires a sole proprietor,
2 or a qualified individual for a business organization, or a governmental
3 agency to possess an International Society of Arboriculture Arborist
4 Certification or to be a Registered Consulting Arborist with the American
5 Society of Consulting Arborists and to provide an annual affidavit stating
6 that the required number of employees have either successfully completed
7 the training course offered by the Broward County Extension Education
8 ~~Division~~ Section, or any successor agency, or have completed a substitute
9 training course.

10 *Class B Tree Trimmer License.* A license which requires a sole proprietor,
11 a business organization, or a governmental agency to demonstrate that
12 the sole proprietor, the business organization, or the governmental agency
13 has the required number of employees who have successfully completed
14 the training course offered by the Broward County Extension Education
15 ~~Division~~ Section, or any successor agency, or have completed a substitute
16 training course and have passed the examination offered by the Broward
17 County Extension Education ~~Division~~ Section, or any successor agency.

18 (n) (o) *Tree trimming* shall mean the removal of branches more than one inch in
19 diameter from a tree or the removal of live palm fronds from any type of palm tree with
20 six feet or more of clear trunk, or cutting down, digging up, destroying, effectively
21 destroying, removing, or relocating any tree.

- 22 (1) Tree trimming shall not include the removal, destruction, or relocation of
23 any tree performed pursuant to a Broward County Environmental
24 Protection and Growth Management Department or municipal tree

1 removal license, or a Broward County Environmental Protection and
2 Growth Management Department environmental resource license or
3 general license, in accordance with the requirements of Chapter 27 of the
4 Broward County Code of Ordinances, as amended..

5 (2) Tree trimming shall not include the removal, destruction, or relocation of
6 any tree performed as part of land development clearing activities which
7 otherwise comply with the Broward County Code of Ordinances, as
8 amended.

9 (3) Tree trimming shall not include the removal, destruction, or relocation of
10 any nuisance tree, as defined in Section 27-404 of the Broward County
11 Code of Ordinances, as amended.

12 ~~(p)~~ (p) *Unlicensed* shall mean a sole proprietor, business organization, or
13 governmental agency which does not possess a Class A or Class B Tree Trimmer
14 License required pursuant to ~~Chapter 27, Article XV~~ Chapter 9, Article XI, of the
15 Broward County Code of Ordinances.

16 **Sec. ~~27-421. 9-162.~~ 9-162. Requirements and standards for tree trimmer licensure.**

17 (a) Before any sole proprietor or business organization may contract to
18 perform tree trimming services or before any governmental agency shall trim trees, such
19 sole proprietor, business organization, or governmental agency shall first apply for and
20 obtain a Class A or Class B Tree Trimmer License from the County.

21 (b) It shall be a violation of this Aarticle for any sole proprietor, business
22 organization, or governmental agency to engage in or represent that such sole
23 proprietor, business organization, or governmental agency is qualified to perform work
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1 or contracts as a tree trimmer without first having obtained a current valid Class A or
2 Class B Tree Trimmer License from the County.

3 (c) Nothing herein shall be construed to mean that a person cannot trim trees
4 without a Class A or Class B Tree Trimmer License when such person is an employee
5 of a sole proprietor, business organization, or governmental agency licensed as a tree
6 trimmer and is under the direct supervision of a trained person.

7 (d) A trained person shall be present at every job site while tree trimming is in
8 progress. If the sole proprietor, business organization, or governmental agency utilizes
9 subcontractors, such entity shall ensure that the subcontractor has a Class A or Class B
10 Tree Trimmer ~~License~~ issued by Broward County.

11 (e) While engaged in any work or activity which relates to, is referred to, or
12 which is covered by this Aarticle, at least one person at the job site shall have at all
13 times a picture identification issued by a governmental entity or agency and evidence
14 that the person meets the training requirements set forth within ~~Section 27-422~~ 9-163.

15 (f) Each license holder shall notify the County, in writing, if there is a change
16 in any information that is required to be stated on the application.

17 (g) Each license holder shall be responsible for ensuring that all employees
18 engaged in tree trimming are adequately trained regarding safety procedures in
19 accordance with applicable federal and state law, including the federal Occupational
20 Safety and Health Act of 1970 (~~OSHA currently set forth within the Code of Federal~~
21 ~~Regulations as~~ and 29 C.F.R., s. 1910.269, App. E, ANSI Z133.1, American National
22 Standard Safety Requirements for Pruning, Trimming, Repairing, Maintaining, and
23 Removing Trees, and for Cutting Brush).

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1 (h) A copy of the insurance policy(ies) or a copy of a certificate of insurance
2 required by Subsection 27-423(d) 9-164(d) shall be available for inspection at each site
3 where tree trimming activities are in progress.

4 **Sec. ~~27-422.~~ 9-163. Class A and Class B tree trimmer license and training**
5 **requirements; renewals.**

6 (a) *Sole Proprietors:*

7 (1) Every sole proprietor₁ who contracts for or performs work as a tree
8 trimmer and who wishes to obtain a Class A Tree Trimmer License from
9 the County₁ shall provide evidence that the sole proprietor is either
10 certified by the International Society of Arboriculture Arborists or is a
11 Registered Consulting Arborist with the American Society of Consulting
12 Arborists. Every sole proprietor shall also provide evidence that a
13 sufficient number of its employees comply with the training requirements
14 set forth within ~~Sec. 27-422(a)(2)~~ Subsection 9-163(a)(2) below or that it
15 intends to subcontract with licensed tree trimmer subcontractors₁ if a
16 sufficient number of its employees do not comply with the training
17 requirements₁ to ensure that a trained person is present at all times at
18 every job site when tree trimming is in progress.

19 (2) Every sole proprietor₁ who wishes to obtain a Class B Tree Trimmer
20 License from the County₁ shall provide evidence that the sole proprietor
21 has a sufficient number of employees to ensure that a trained ~~employee~~
22 person is present at all times at every job site when tree trimming is in
23 progress who have has:

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1 a. Successfully completed the training course offered by the Broward
2 County Extension Education ~~Division~~ Section, or any successor
3 agency, and passed the examination; or

4 b. Completed an equivalent substitute training course and ~~have~~ has
5 passed the examination offered by the Broward County Extension
6 Education ~~Division~~ Section, or any successor agency.

7 (3) A sole proprietor, who can demonstrate at least five (5) years of tree
8 trimming experience, may be granted a Class B Tree Trimmer License
9 without benefit of exam if the sole proprietor otherwise meets the
10 qualifications set forth within this Article of the Broward County Code of
11 Ordinances and can demonstrate an ability to trim trees in accordance
12 with the American National Standards Institute for Tree Care Operations,
13 Tree, Shrub and Other Woody Plant Maintenance Standard Practices.

14 (b) *Business Organizations:*

15 (1) Every business organization, which contracts to perform work as a tree
16 trimmer service and wishes to obtain a Class A Tree Trimmer License
17 from the County, shall provide evidence that at least one (1) person
18 affiliated with the business organization is certified by the International
19 Society of Arboricultural Arborists or is a Registered Consulting Arborist
20 with the American Society of Consulting Arborists. The business
21 organization shall also provide evidence that a sufficient number of its
22 employees comply with the training requirements set forth within
23 Subsection ~~27-422(b)(2)~~ 9-163(b)(2) below or that it intends to subcontract
24 with licensed tree trimmer subcontractors, if a sufficient number of its

1 employees do not comply with the training requirements, to ensure that a
2 trained person is present at all times at every job site when tree trimming
3 is in progress.

4 (2) To ensure that a trained person is present at all times at every job site
5 when tree trimming is in progress, every business organization, which
6 contracts to perform work as a tree trimmer service and wishes to obtain a
7 Class B Tree Trimmer License, shall provide evidence that the business
8 organization:

9 a. Has a sufficient number of trained employees who have
10 successfully completed the training course offered by the Broward
11 County Extension Education ~~Division~~ Section, or any successor
12 agency; or

13 b. Has a sufficient number of trained employees who have completed
14 an equivalent substitute training course and have passed the
15 examination offered by the Broward County Extension Education
16 ~~Division~~ Section, or any successor agency; or

17 c. Intends to subcontract with licensed tree trimmer subcontractors, if
18 it does not have a sufficient number of trained employees, to
19 ensure that a trained person is present at all times at every job site
20 when tree trimming is in progress.

21 (c) *Governmental Agency:*

22 (1) Every governmental agency, which trims trees and wishes to obtain a
23 Class A Tree Trimmer License, shall provide evidence that at least one (1)
24 person employed by the governmental agency is certified by the

1 International Society of Arboriculture Arborists or is a Registered
2 Consulting Arborist with the American Society of Consulting Arborists.
3 The governmental agency shall also provide evidence that a sufficient
4 number of its employees comply with the applicable training requirements
5 set forth within Subsection 27-422(c)(2) 9-163(c)(2) below or that it intends
6 to subcontract with licensed tree trimmer subcontractors, if a sufficient
7 number of its employees do not comply with the training requirements, to
8 ensure that a trained person is present at all times at every job site when
9 tree trimming is in progress.

10 (2) To ensure that a trained person is present at all times at every job site
11 when tree trimming is in progress, every governmental agency, which
12 trims trees and wishes to obtain a Class B Tree Trimmer License, shall
13 provide evidence that the governmental agency:

- 14 a. Has a sufficient number of trained employees who have
15 successfully completed the training course offered by the Broward
16 County Extension Education ~~Division~~ Section, or any successor
17 agency; or
- 18 b. Has a sufficient number of trained employees who have completed
19 an equivalent substitute training course and have passed the
20 examination offered by the Broward County Extension Education
21 ~~Division~~ Section, or any successor agency; or
- 22 c. Intends to subcontract with licensed tree trimmer subcontractors, if
23 it does not have a sufficient number of trained employees, to
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1 ensure that a trained person is present at all times at every job site
2 when tree trimming is in progress.

3 (d) Successful completion of the training course or retraining course offered
4 by the Broward County Extension Education ~~Division~~ Section, or any successor agency,
5 includes obtaining a passing grade on the examination offered by the ~~Division~~ Broward
6 County Extension Education Section, or any successor agency.

7 (e) All tree trimmer licenses shall expire on the thirty-first (31st) day of August
8 of every other year following the date of original issuance. Licenses shall be valid for no
9 more than two (2) years; however, licenses shall be renewable for successive two-year
10 periods. Licenses shall be renewable biennially by the first (1st) day of September of
11 every other year upon the payment of the fees established by the County. If a license is
12 not timely renewed, a late fee will be imposed. A license issued pursuant to the
13 provisions of this ~~A~~article shall not be transferable.

14 (f) Tree trimmer ~~L~~licenses shall be issued in the name of the sole proprietor,
15 business organization, or governmental agency meeting the standards and
16 requirements for licensure, as set forth in this article.

17 (g) A sole proprietor, who is entitled to receive a license and who proposes to
18 do business as a contractor or subcontractor in the sole proprietor's own name as an
19 individual, shall be issued a license in the individual's own name.

20 (h) When a tree trimmer license has expired or lapsed for any reason, the
21 County may require retraining before such license is renewed. When a license has
22 been revoked or suspended, the County shall require retraining before such license is
23 reinstated.

1 (i) Reasonable fees shall be collected for the training and retraining classes
2 and the administrative processing and review of applications for Class A and Class B
3 Tree Trimmer Licenses. The schedule of fees to be collected shall be established by
4 resolution of the Board of County Commissioners of Broward County and incorporated
5 into the Broward County Administrative Code.

6 (j) For the purposes of this Aarticle, no person certified by the International
7 Society of Arboriculture Arborists or registered as a Registered Consulting Arborist with
8 the American Society of Consulting Arborists may be affiliated with more than one
9 business organization.

10 **Sec. ~~27-423~~ 9-164. License application.**

11 (a) *Application; ~~individual~~ sole proprietor.* If an individual proposes to engage
12 in contracting as a tree trimmer in the individual's own name, or a fictitious name where
13 the individual is doing business as a sole proprietor, the individual shall submit an
14 application in writing to the County containing the statement that the applicant desires
15 either Class A or Class B Tree Trimmer licensure on a form containing the information
16 prescribed by the County. The sole proprietor must possess a reputation for honesty,
17 integrity, and good character, which may be determined from the information contained
18 in letters of reference and the information required by Ssubsection (8) below. The
19 application shall be signed and verified under oath by the applicant for sole proprietor
20 licensure. The following information shall be provided by the applicant:

21 (1) Name, residence, and business address of applicant;

22 (2) At least two (2) notarized letters attesting to the work experience of the
23 applicant;

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- 1 (3) The names and addresses of at least three (3) local residents, not related
2 to the applicant, who can attest to the character and reputation of the
3 applicant;
- 4 (4) Two (2) recent passport-size photographs of the applicant;
- 5 (5) At least one (1) credit reference for the applicant which shall not be over
6 ninety (90) days old;
- 7 (6) If the applicant is applying for a Class A Tree Trimmer License, the
8 applicant shall provide a copy of the International Society of Arboriculture
9 Arborist Certification or a copy of the registration demonstrating that the
10 applicant is a Registered Consulting Arborist with the American Society of
11 Consulting Arborists;
- 12 (7) If the applicant is applying for a Class B Tree Trimmer License, the
13 applicant shall provide evidence that the applicant has successfully
14 completed the training course offered by the Broward County Extension
15 Education ~~Division~~ Section, or any successor agency, or completed an
16 equivalent substitute training course, and passed the examination offered
17 by the Broward County Extension Education ~~Division~~ Section, or any
18 successor agency; and
- 19 (8) The applicant shall indicate on the application whether the applicant has:
20 a. Been adjudicated within the past five (5) years of a misdemeanor or
21 a felony, which, if committed or done by a licensed tree trimmer
22 under this Aarticle, would be grounds for suspension or revocation
23 of such license;
- 24

- 1 b. Been adjudicated within the past five (5) years of a misdemeanor or
2 a felony involving dishonesty, fraud, deceit, or lack of integrity in the
3 operation or conduct of the business of tree trimming;
4 c. ~~Has been~~ found to be in violation of the Broward County
5 Consumer Protection Code of Ordinances;
6 d. ~~Has been~~ served with a demand to cease and desist by the
7 director of the ~~Consumer Affairs Division, or designee~~; or
8 e. ~~Has been~~ convicted of a felony or offense involving moral
9 turpitude within the past five (5) years and for which ~~he or she~~ the
10 applicant has not been rehabilitated or discharged from probation
11 or parole; and

12 (9) Such other information as the County may deem necessary to complete
13 its investigation of the application.

14 (b) *Application; business organization.* An applicant, which engages in
15 business, contracts, or subcontracts as a business organization in any name other than
16 the applicant's legal name or as a sole proprietor, shall submit an application in writing
17 to the County containing the statement that the applicant desires either Class A or Class
18 B Tree Trimmer licensure of the business organization on a form containing the
19 information prescribed by the County. Each member of the business organization and
20 all officers, directors, partners, and supervisors must possess a reputation for honesty,
21 integrity, and good character, which may be established by letters of reference and the
22 information required by Ssubsection (8) below for any member, officer, director,
23 supervisor, partner, or other responsible individual of the business organization. The
24 application shall be signed and verified under oath by the chief executive officer or other

1 authorized corporate officer of the business organization. The following information
2 shall be provided:

3 (1) The name and address of the business organization;

4 (2) If the business organization is a partnership, the names of the partnership
5 and of its partners shall be listed. If the business organization is a
6 corporation, the names of the corporation and of its officers and directors
7 and the names of each of its stockholders who ~~is~~ are also ~~an~~ officers or
8 directors shall be listed. If the business organization is a business trust,
9 the names of the business trust and its trustees shall be listed. If the
10 business organization is another legal entity, the names of such other
11 legal entity and its members shall be listed. The application must also
12 state the fictitious name, if any, under which the business organization is
13 doing business. The residence address of all officers, directors, partners,
14 and trustees and their respective share of interest in the business
15 organization shall be listed; except that the general shareholders of public
16 corporations do not have to be included in an application. If the business
17 organization is a partnership, corporation, business trust, or other legal
18 entity, a license of incorporation, trust agreement, partnership agreement,
19 or other evidence of the business organization's legal existence and
20 evidence of statutory compliance, if a fictitious name is used, shall be
21 attached to the application;

22 (3) A notarized affidavit signed by the chief executive officer or other
23 authorized corporate officer stating that the business organization has a
24 sufficient number of trained persons employed by the business

1 organization, or intends to subcontract with licensed tree trimmer
2 subcontractors, to ensure that a trained person is present at all times on
3 each job site when tree trimming is in progress;

4 (4) At least one (1) credit reference for the applicant, which shall not be over
5 ninety (90) days old; and

6 (5) At least two (2) notarized letters attesting to the work experience of the
7 business organization;

8 (6) If the business organization is applying for a Class A Tree Trimmer
9 License, the business organization shall provide the name and business
10 address of the person affiliated with the business organization who is
11 either certified by the International Society of Arboriculture Arborists or is a
12 Registered Consulting Arborist with the American Society of Consulting
13 Arborists and also a copy of the certification or registration;

14 (7) If the business organization is applying for either a Class A or Class B
15 Tree Trimmer License and does not intend to subcontract with licensed
16 tree trimmer subcontractors, the business organization shall provide
17 evidence that a sufficient number of employees have successfully
18 completed the training course offered by the Broward County Extension
19 Education ~~Division~~ Section, or any successor agency, or completed an
20 equivalent substitute training course and passed the examination offered
21 by the Broward County Extension Education ~~Division~~ Section, or any
22 successor agency; and

1 (8) The applicant shall indicate on the application whether any officer,
2 director, partner, supervisor, or other responsible individual of the
3 business organization has:

4 a. Been adjudicated within the past five (5) years of a misdemeanor or
5 a felony, which, if committed or done by a licensed tree trimmer
6 under this Article, would be grounds for suspension or revocation
7 of such license;

8 b. Been adjudicated within the past five (5) years of a misdemeanor
9 or a felony involving dishonesty, fraud, deceit, or lack of integrity in
10 the operation or conduct of the business of tree trimming;

11 c. ~~Has been~~ found to be in violation of the Broward County
12 Consumer Protection Code of Ordinances;

13 d. ~~Has been~~ served with a demand to cease and desist by the
14 director of the Consumer Affairs Division, or designee; or

15 e. ~~Has been~~ convicted of a felony or offense involving moral
16 turpitude within the past five (5) years and for which ~~he or she~~ the
17 officer, director, partner, supervisor, or other responsible individual
18 of the business organization has not been rehabilitated or
19 discharged from probation or parole; and

20 (9) Such other information as the County may deem necessary to complete
21 its investigation of an application.

22 (c) *Application; governmental agency.* Each governmental agency, which
23 requires its employees to trim trees, shall submit an application in writing for a Class A
24 or Class B Tree Trimmer License to the County on a form containing the information

1 prescribed by the County. Tree trimmer ~~L~~licenses shall be issued in the name of the
2 governmental agency. Governmental agencies shall not be required to provide
3 evidence of insurance. The application shall be signed and verified under oath by a
4 person authorized to submit such an application on behalf of the governmental agency.

5 The following information shall be provided:

- 6 (1) The name and address of the governmental agency;
- 7 (2) A notarized affidavit signed by an authorized person stating that the
8 governmental agency has a sufficient number of trained persons
9 employed by the governmental agency, or intends to subcontract with
10 licensed tree trimmer subcontractors, to ensure that a trained person is
11 present at all times on each job site when tree trimming is in progress;
- 12 (3) If the governmental agency is applying for a Class A Tree Trimmer
13 License, the governmental agency shall provide the name and business
14 address of the employee who is either certified by the International Society
15 of Arboriculture Arborists or is a Registered Consulting Arborist with the
16 American Society of Consulting Arborists and also a copy of the
17 certification or registration;
- 18 (4) If the governmental agency is applying for either a Class A or Class B
19 Tree Trimmer License and does not intend to subcontract with licensed
20 tree trimmer subcontractors, the governmental agency shall provide
21 evidence that a sufficient number of employees have successfully
22 completed the training course offered by the Broward County Extension
23 Education ~~Division~~ Section, or any successor agency, or completed an
24 equivalent substitute training course and passed the examination offered

1 by the Broward County Extension Education ~~Division~~ Section, or any
2 successor agency; and

3 (5) Such other information as the County may deem necessary to complete
4 its investigation of an application.

5 (d) As part of the application process, each sole proprietor and business
6 organization shall provide the County with a certificate of insurance, reflecting a
7 minimum of three hundred thousand dollars (\$300,000.00) of commercial general
8 liability insurance to include bodily injury and property damage. The following
9 deductibles may be applied: \$300,000.00 Limit of Liability - Maximum Deductible
10 permitted \$500.00; \$500,000.00 Limit of Liability - Maximum Deductible permitted
11 \$1,000.00; \$1,000,000.00 Limit of Liability - Maximum Deductible permitted \$10,000.00.

12 The applicant shall certify compliance with Chapter 440, F.S. Florida Statutes, Workers'
13 Compensation Insurance, as amended. The Workers' Compensation Insurance shall
14 be for tree trimmers. The policy(ies) of insurance shall be issued in the name of the
15 applicant or the business organization. Broward County shall be named as additional
16 insured. A copy of the required policy(ies) or a copy of a certificate of insurance shall
17 be available for inspection at each site where tree trimming activities are in progress.

18 (e) As part of the application process, each sole proprietor and business
19 organization shall provide a signed affidavit that the license holder's employees are
20 adequately trained regarding safety procedures in accordance with applicable federal
21 and state law, including the federal Occupational Safety and Health Act of 1970 (OSHA
22 ~~currently set forth within the Code of Federal Regulations as~~ and 29 C.F.R.,
23 s. 1910.269, App. E, ANSI Z133.1, American National Standard Safety Requirements
24

1 for Pruning, Trimming, Repairing, Maintaining, and Removing Trees, and for Cutting
2 Brush).

3 ~~(f) A sole proprietor who can demonstrate at least five (5) years of~~
4 ~~experience may be granted a Class B Tree Trimmer License without benefit of exam if~~
5 ~~the sole proprietor meets the qualifications set forth within this Article and can~~
6 ~~demonstrate an ability to trim trees in accordance with the American National Standard~~
7 ~~for Tree Care Operations, Tree, Shrub and Other Woody Plant Maintenance Standard~~
8 ~~Practices.~~

9 ~~(g) (f)~~ The training and testing course offered by the Broward County Extension
10 Education ~~Division~~ Section, or any successor agency, shall make reasonable
11 accommodations for applicants who are not literate or whose first language is not
12 English.

13 ~~(h) (g)~~ Misrepresenting or falsifying any information supplied to the County in the
14 application for tree trimmer licensure which the applicant knew, or had reasonable
15 grounds to know, was false shall be a violation of this ~~ordinance~~ article.

16 ~~(i) (h)~~ When an applicant is found to be unqualified for a tree trimmer license, the
17 applicant shall be furnished with a statement containing the findings, a complete record
18 of the evidence upon which the determination was based, and a notice of the rights of
19 the applicant to an administrative review of the determination ~~in accordance with the~~
20 ~~provisions of Section 27-14~~ before a hearing officer.

21 **Sec. ~~27-424. 9-165.~~ Maintenance of qualifications.**

22 (a) All tree trimmer license holders shall have the duty and obligation to
23 inform the County in writing of any change to the business, legal status, business or
24 home mailing address, or telephone number. The license holder shall be responsible

1 for retaining proof that the license holder has notified the County of the license holder's
2 current address of record.

3 (b) Whenever a license holder fails to maintain any of the qualifications or
4 standards required for licensure, such license holder shall report such lack of
5 qualifications to the County.

6 (c) The County may review the qualifications of any license holder prior to
7 renewal of the license. If the license holder fails to continue to meet the County's
8 qualifications for licensure, the County shall refuse to renew the license. Failure to pay
9 a civil penalty for a citation issued pursuant to the requirements of this article shall be
10 grounds for the County to refuse to renew the license.

11 (d) Every sole proprietor who has been issued a Class A Tree Trimmer
12 License must maintain a current International Society of Arboriculture Arborist
13 Certification or continue to be a Registered Consulting Arborist with the American
14 Society of Consulting Arborists. Every business organization which has been issued a
15 Class A Tree Trimmer License shall ensure that at least one (1) person affiliated with
16 the business organization maintains a current International Society of Arboriculture
17 Arborist Certification or continues to be a Registered Consulting Arborist with the
18 American Society of Consulting Arborists. Every sole proprietor who has been issued a
19 Class B Tree Trimmer License and every trained employee of a business organization
20 or governmental agency which has been issued a Class A or Class B Tree Trimmer
21 License shall be required to undergo retraining and retesting every other year through
22 courses offered by the Broward County Extension Education ~~Division~~ Section, or any
23 successor agency. Failure to maintain the qualifications set forth in this sSubsection
24 27-424(d) 9-165(d) shall be a violation of this Aarticle.

1 (e) Failure to maintain the insurance required by Subsection 27-423(d)
2 9-164(d) shall be a violation of this Article.

3 **Sec. ~~27-425~~. 9-166. Advertising.**

4 (a) ~~Prohibition~~ Prohibition. All sole proprietors and business organizations
5 required to be licensed under the provisions of this ~~chapter~~ article, which have not been
6 issued a current active license by the County, shall not advertise in any newspaper,
7 airwave transmission, classified telephone directory, or other advertising medium
8 accessible to the public within Broward County as a tree trimming contractor or tree
9 trimming subcontractor.

10 (b) All sole proprietors and business organizations required to be licensed
11 under the provisions of this ~~chapter~~ article shall include their license number in all
12 advertisements in newspapers, magazines, airwave transmissions, classified telephone
13 directories, or other advertising medium utilizing printed material distributed within
14 Broward County.

15 (c) Sole proprietors and business organizations shall not advertise with a
16 license number indicating a higher classification than for which the license holder has
17 received a license.

18 (d) Any sole proprietor or business organization, which conducts any tree
19 trimming business in Broward County, shall have prominently displayed on each side of
20 each vehicle used to conduct business within Broward County the following information
21 in bold letters and numerals, at least one and one-half (1½) inches high, distinctly
22 contrasting in color with the background, and affixed to the vehicle in such a manner so
23 as to be readily distinguishable from a distance of not less than ten (10) meters (32.8
24 feet):

- 1 (1) The trade name, symbol, or "logo" of the sole proprietor or business
2 organization utilizing the vehicle for commercial or business purposes;
3 (2) The telephone number of the individual owning or operating the business;
4 and
5 (3) The license number of the individual operating as a sole proprietor or the
6 license number of the business organization.

7 The above information shall be permanently affixed to any vehicle used to conduct tree
8 trimming business which is over 10,000 ~~GVW~~ gross vehicle weight. Any vehicle under
9 10,000 ~~GVW~~ gross vehicle weight shall have such required information either
10 permanently affixed to the vehicle or the license holder may provide such information on
11 a magnetic sign. However, any vehicle which utilizes a magnetic sign shall be required
12 to have such sign affixed to the vehicle at all times when business is being conducted.

13 (e) No person or business organization, whose business is the publication of
14 classified telephone directories, shall refuse to include and print in a paid directory
15 display advertisement the license number of a tree trimmer contractor where the
16 applicant for the display advertisement provides the number to the person or business
17 organization who publishes the telephone directory. This subsection (e) is a nonpenal
18 provision of the Code. No liability shall attach to the person or business organization
19 whose business it is to publish classified telephone directories for errors, failures, or
20 omissions relating to the inclusion or printing of a license number.

21 Section 3. Sections 9-167 through 9-173 of Chapter 9, Article XI, Regulation of
22 Tree Trimmers, are hereby created to read as follows:

23 **Sec. 9-167. Complaints; process.**
24

1 (a) On its own motion, or the verified written complaint of any person, the
2 County may investigate the action of any sole proprietor, business organization, or
3 governmental agency performing, or offering to contract for, tree trimming services
4 within Broward County. If, after such investigation, the County has reasonable grounds
5 to believe that a sole proprietor, business organization, or governmental agency has
6 violated any provision of this article, the County may forward the complaint to a hearing
7 officer. A disciplinary hearing shall be held in accordance with the rules and procedures
8 established by this article. The hearing officer shall order whatever disciplinary action is
9 appropriate if the sole proprietor, business organization, or governmental agency is
10 found guilty of, or in violation of, any provision of this article.

11 (b) No sole proprietor or business organization under this article shall:

12 (1) Willfully, deliberately, or negligently disregard or violate any provision of
13 this article;

14 (2) Perform any act which assists any person or entity to engage in the
15 prohibited unlicensed practice of tree trimming, if the license holder
16 knows, or has reasonable grounds to know, that the person or entity was
17 unlicensed;

18 (3) Knowingly combine or conspire with an unlicensed individual or business
19 organization by allowing the sole proprietor's license or the business
20 organization's license to be used by an unlicensed individual or business
21 organization with intent to evade the provisions of this article;

22 (4) Commit mismanagement or misconduct in the practice of contracting for
23 tree trimming that causes financial harm to a customer;
24

- 1 (5) Misrepresent or falsify any information supplied to the County in the
2 application for licensure which the applicant knew, or had reasonable
3 grounds to know, was false;
- 4 (6) Fail to have a trained person at the work site at all times during which
5 work regulated by this article is in progress;
- 6 (7) Commit in any jurisdiction fraud or deceit in the practice of contracting;
- 7 (8) Fail to comply, in any material respect, with the provisions of this article or
8 the Broward County Code of Ordinances;
- 9 (9) Fail to maintain in full force and effect any insurance required by this
10 article;
- 11 (10) Fail to ensure that the license number appears in advertisements where
12 the sole proprietor or business organization has been issued a current
13 active license by the County and who advertises as a contractor in any
14 newspaper, magazine, classified telephone directory, sign, or other
15 advertising medium utilizing printed material distributed or consumed
16 within Broward County;
- 17 (11) Advertise with a license number indicating a higher classification than for
18 which the license holder has received a license;
- 19 (12) Commit in any jurisdiction incompetence or misconduct in the practice of
20 contracting;
- 21 (13) Commit in any jurisdiction negligence resulting in a significant danger to
22 life or property, gross negligence, or repeated negligence;
- 23 (14) Fail to maintain Workers' Compensation Insurance coverage as required
24 by law;

1 (15) Advertise as capable of performing work for which licensure is required by
2 this article without first obtaining a license;

3 (16) Fail to notify the County within thirty (30) days after a change of mailing
4 address and/or telephone number and, if it is a business organization, of a
5 change in its legal status;

6 (17) Fail to comply with an order issued by the hearing officer;

7 (18) Fail to properly clear all tree trimming debris from property and dispose of
8 such debris; or

9 (19) Fail to have copies of the required insurance policy(ies) or certificates of
10 insurance available for inspection at every job site where work regulated
11 by this article is in progress.

12 (c) No governmental agency under this article shall:

13 (1) Willfully, deliberately, or negligently disregard or violate any applicable
14 provision of this article;

15 (2) Fail to have a trained person at the work site at all times during which tree
16 trimming is in progress;

17 (3) Fail to comply, in any material respect, with the provisions of this article; or

18 (4) Fail to comply with an order issued by the hearing officer.

19 (d) Any sole proprietor, business organization, or governmental agency
20 conducting tree trimming services within Broward County, which has been adjudicated
21 of two (2) violations of tree abuse within a period of three (3) years pursuant to Chapter
22 27, Article XIV, Broward County Code of Ordinances, or pursuant to any ordinance
23 enacted by a municipality and certified by the County, shall be subject to a disciplinary
24 hearing to be held in accordance with the rules and procedures established by this

1 article. The hearing officer shall order whatever disciplinary action is appropriate if the
2 sole proprietor, business organization, or governmental agency is found guilty. Before
3 any revoked license may be reissued, the sole proprietor, an officer or agent of the
4 business organization, or an authorized agent of the governmental agency must appear
5 before the hearing officer to show rehabilitation.

6 **Sec. 9-168. Service of notices of violation and citations.**

7 (a) Upon receiving evidence that a violation of any of the provisions of this
8 article has occurred, the County shall cause to be served upon the alleged responsible
9 party a citation or notice of violation to give notice of a hearing to assess a civil penalty.

10 (b) Notice of hearings or proceedings before the hearing officer shall
11 incorporate and set out the following:

12 (1) The name of the complainant, if other than the County;

13 (2) The name of the respondent;

14 (3) A statement of the alleged facts upon which the violation is based;

15 (4) The time, date, and place of the hearing;

16 (5) A statement that "failure to attend may result in an order being issued
17 adverse to your interests";

18 (6) That all parties may be represented by counsel;

19 (7) That all parties shall be given an opportunity to present witnesses and
20 evidence in support of their position; and

21 (8) A conspicuous statement reflecting the requirements of Chapter 286,
22 Florida Statutes, that a person deciding to appeal any decision of a
23 hearing officer will need to ensure that a verbatim record of the
24 proceedings is made.

1 (c) Service on a sole proprietor is sufficient if made by delivering a copy of the
2 complaint or pleading to the person to be served or by leaving such copies at the
3 individual's usual place of abode with some person of the household over fifteen (15)
4 years of age, and informing such person of its contents.

5 (d) Service on a business organization is sufficient if made by delivering a
6 copy of the complaint or pleading to the president, vice-president, or other head of the
7 business organization or as otherwise provided by general law.

8 (e) Service on a governmental agency is sufficient if made by delivering a
9 copy of the complaint or pleading to the person authorized by law to receive such
10 service on behalf of the governmental agency.

11 (f) When a sole proprietor or business organization cannot be personally
12 served within Broward County, and after diligent search and inquiry cannot be located
13 within the County, then service is sufficient if made in one or more of the following ways:

14 (1) By publication in a newspaper of general circulation in Broward County
15 once during each week for four (4) consecutive weeks; or

16 (2) By certified mail, return receipt requested, addressed to the respondent at
17 the respondent's last-known business address and deposited with the
18 U.S. Postal Service.

19 (g) If service was perfected upon a sole proprietor, business organization, or
20 governmental agency, all subsequent process or service shall be sufficient if mailed by
21 regular mail to such person or entity at the address where service was originally
22 perfected.

23 (h) Service is sufficient if made by an officer authorized to serve process
24 under the laws of the state of Florida or by a code enforcement officer.

1 (i) Subpoenas.

2 (1) The hearing officer has the power to issue subpoenas for the production of
3 documents or for the attendance of witnesses at a hearing upon the
4 written request of the complainant, the respondent, the County, or upon
5 the hearing officer's own motion;

6 (2) A subpoena may be served by any person authorized by law to serve
7 process or by any person who is not a party and who is of majority age.
8 Service shall be made by delivering a copy thereof to the person named in
9 the subpoena. Proof of such service shall be made by affidavit of the
10 person making service, if not served by an officer authorized by law to do
11 so; and

12 (3) A party may seek enforcement of a subpoena issued under the authority
13 of this article by filing a petition for enforcement in the County Court.

14 **Sec. 9-169. Evidence.**

15 (a) In any hearing before the hearing officer, irrelevant, immaterial, or unduly
16 repetitious evidence shall be excluded, but all other evidence of a type commonly relied
17 upon by reasonably prudent persons in the conduct of their affairs shall be admissible,
18 whether or not such evidence would be admissible at trial in the courts of Florida. Any
19 part of the evidence may be received in written form, and all testimony of parties and
20 witnesses shall be made under oath. Hearsay evidence may be used for the purpose of
21 supplementing or explaining other evidence, but it shall not be sufficient in itself to
22 support a finding unless it would be admissible over objection in civil actions.

1 (b) Documentary evidence may be received in the form of a copy or excerpt if
2 the original is not readily available. Upon request, parties shall be given an opportunity
3 to compare the copy with the original.

4 (c) A party shall be permitted to conduct cross-examination when testimony is
5 taken or documents are made a part of the record.

6 (d) The rules of privilege shall be effective to the same extent that they are
7 now or hereafter may be recognized in civil actions.

8 (e) The hearing officer shall ensure that a full record of the hearing is
9 preserved, which record shall be public and open to inspection and transcription by any
10 person.

11 **Sec. 9-170. Hearings; hearing officer.**

12 (a) There is hereby created, for the purposes of conducting hearings pursuant
13 to this article, the position of hearing officer. The hearing officer shall be a member in
14 good standing with The Florida Bar, engaged in the practice of law in Broward County.

15 (b) Upon receipt of a timely request for an administrative hearing, the matter
16 shall be set for hearing on the next regularly scheduled hearing date, or as soon as
17 possible thereafter.

18 (c) The general procedure for hearings shall be in such form as shall be
19 approved by the Office of the County Attorney and each party shall have the following
20 rights:

21 (1) To call and examine witnesses;

22 (2) To introduce exhibits;

23 (3) To cross-examine opposing witnesses on any relevant matter, even
24 though the matter was not covered under direct examination;

1 (4) To impeach any witness, regardless of which party first called the witness
2 to testify; and

3 (5) To rebut the evidence.

4 (d) Any interested affected party or person may make application and, upon
5 good cause shown, may be allowed by the hearing officer to intervene and appear in a
6 proceeding pending before the hearing officer.

7 (e) A hearing may be held upon giving no less than ten (10) days' notice to
8 the respondent.

9 (f) All hearings shall be open to the public. All testimony shall be under oath,
10 minutes shall be taken, and the proceedings shall be recorded.

11 (g) The County shall provide clerical and administrative personnel as may be
12 reasonably necessary for each hearing officer.

13 (h) Each case before a hearing officer shall be presented by the personnel
14 designated by the County Administrator and/or the County Attorney, or their designee.

15 (i) The hearing officer shall have the power to:

16 (1) Take testimony under oath;

17 (2) Determine whether the cited violations occurred;

18 (3) Determine whether a reasonable time period for compliance was given;

19 (4) Assess and order the payment of civil penalties and financial restitution as
20 provided under this article;

21 (5) Impose liens as provided by this article;

22 (6) Revoke or suspend a license as provided in this article;

23 (7) Hear appeals of an administrative determination denying a license
24 pursuant to this article; and

1 (8) Exercise such other and further powers and authority as may be
2 necessary to implement and give effect to the provisions of this article.

3 **Sec. 9-171. Orders of the hearing officer.**

4 (a) The orders of the hearing officer shall contain findings of fact and
5 conclusions of law based upon the evidence presented. In order to make a finding
6 affirming a code enforcement officer's decision, the hearing officer must find by clear
7 and convincing evidence that the sole proprietor, business organization, or
8 governmental agency was responsible for the violation of the relevant code provision as
9 cited. In regard to a review of an administrative determination denying a license
10 application, the applicant shall have the burden of showing, by a preponderance of the
11 evidence, that the determination was an arbitrary and/or capricious abuse of discretion,
12 not supported by competent, substantial evidence, or not in conformance with the
13 essential requirements of this article.

14 (b) If, at the conclusion of a hearing, the hearing officer orders a dismissal of
15 the complaint and finds that the sole proprietor, business organization, or governmental
16 agency complained against has not violated a provision of this article, then the hearing
17 officer shall so state and issue an order dismissing the complaint.

18 (c) To establish a cause of action under this article, it need not be shown that
19 any person was actually injured.

20 (d) The hearing officer shall retain jurisdiction over the parties to an action
21 pursuant to this article for thirty (30) days from rendition of the order and may modify or
22 set aside the order for good cause at any time within thirty (30) days after the rendition
23 of the order by rehearing, upon the hearing officer's own motion or motion of an
24 interested party, when such rehearing is in the interest of the public. Absent a motion

1 for rehearing, the hearing officer may not rehear a complaint brought against a sole
2 proprietor, business organization, or governmental agency based on the same
3 transaction(s) for which the hearing officer has previously held a disciplinary proceeding
4 and entered an order.

5 (e) An order is deemed rendered when a signed, written order is filed with the
6 clerk of the hearing officer. However, if an order has been entered and a motion for
7 rehearing has been filed, the final order shall not be deemed rendered until the filing of
8 a signed written order disposing of the motion for rehearing.

9 **Sec. 9-172. Penalties and disciplinary actions.**

10 (a) Any license holder found to be in violation of any provision of this article or
11 the Broward County Code of Ordinances by the hearing officer shall be subject to the
12 following disciplinary actions:

13 (1) Revocation of license;

14 (2) Suspension of license;

15 (3) Probation with such conditions as may be determined by the hearing
16 officer;

17 (4) Inactivation of certification;

18 (5) Levying of civil penalties;

19 (6) Restitution; and

20 (7) A combination of any of the above disciplinary actions.

21 (b) Any license holder, whose license has been revoked or suspended, shall
22 pay an administrative fee set by the County prior to renewal or reinstatement of the
23 license.

1 (c) For both licensed and unlicensed sole proprietors, business organizations,
2 or governmental agencies conducting tree trimming services within Broward County, the
3 hearing officer may order financial restitution to a consumer for financial harm directly
4 related to a violation of this article and the hearing officer may also levy a civil penalty
5 not to exceed one thousand dollars (\$1,000.00) per day for a first violation and not to
6 exceed five thousand dollars (\$5,000.00) per day for a repeat violation. If the hearing
7 officer finds that the violation is irreparable or irreversible in nature, the hearing officer
8 may impose a civil penalty not to exceed fifteen thousand dollars (\$15,000.00) per
9 violation.

10 (d) In determining the disciplinary action or the amount of the civil penalty to
11 be levied against the licensed or unlicensed sole proprietor, business organization, or
12 governmental agency, the hearing officer shall consider the following aggravating and
13 mitigating factors:

- 14 (1) The gravity of the violation;
- 15 (2) Any voluntary actions taken by the violator to correct the violation;
- 16 (3) Any previous or repeat violations committed by the violator;
- 17 (4) Monetary or other damage to the sole proprietor or business
18 organization's customer (the consumer), which damage has not been
19 corrected as of the time that the penalty is assessed;
- 20 (5) Conditions exhibiting gross negligence, incompetence, or misconduct,
21 which have not been corrected as of the time that the penalty is assessed;
- 22 (6) The danger to the public;
- 23 (7) The number of repetitions of similar offenses;

24

1 (8) The number of complaints filed against the sole proprietor, business
2 organization, or governmental agency;

3 (9) The length of time the sole proprietor or business organization has
4 practiced;

5 (10) The actual damage, physical or otherwise, to the customer (the consumer)
6 of the sole proprietor or business organization;

7 (11) The deterrent effect of the penalty imposed;

8 (12) The effect of the penalty upon the livelihood of the sole proprietor or
9 business organization;

10 (13) Any efforts at rehabilitation; and

11 (14) Any other mitigating or aggravating circumstances.

12 (e) In cases where a civil penalty has been imposed, the penalty shall be paid
13 within thirty (30) days of its rendition, unless a later period of time is specified in the
14 order. Failure to pay the civil penalty within the time frame specified shall be grounds
15 for further action.

16 (f) Civil penalties assessed shall be cumulative and consecutive unless
17 otherwise determined by the hearing officer.

18 **Sec. 9-173. Citations.**

19 (a) Code enforcement officers shall have the authority to issue citations
20 pursuant to this article. The issuance of a citation shall not be a condition precedent to
21 the issuance of a notice of violation.

22 (b) Prior to payment, a citation may be rescinded by the Director of the
23 Division, or designee, and the violation may subsequently be prosecuted as a notice of
24 violation, as provided in this article.

1 (c) Citation Issuance Procedure:

2 (1) A code enforcement officer may issue a citation in accordance with the
3 schedule of violations and civil penalties set forth in this article if, based
4 upon personal investigation, the code enforcement officer has reasonable
5 grounds to believe that a violation has occurred. The code enforcement
6 officer shall not issue a citation and must issue a notice of violation when
7 the violation is not identified in or does not satisfy the "Schedule of Civil
8 Penalties for Citation" standards of this article. The maximum civil penalty
9 that may be levied pursuant to the issuance of a citation shall be
10 established in the schedule of civil penalties for citations, which shall be
11 no more than five hundred dollars (\$500.00).

12 (2) Prior to issuing a citation for a violation of this article, the code
13 enforcement officer must provide the violator with one (1) initial warning
14 notice identifying the violation of this article and establishing a reasonable
15 time period within which the violation must be corrected. If, upon
16 investigation, the violator has not corrected the violation within the time
17 specified, a citation may be issued to the violator by the code enforcement
18 officer. Additional warning notices need not be provided to the violator for
19 the same violation prior to the issuance of additional citations. If the
20 violation is irreversible or irreparable, a warning notice need not be issued
21 prior to the issuance of a citation.

22 (3) A citation must provide the following information, and the following
23 requirements shall apply:

24 a. The time and date of issuance.

- 1 b. The name and address of the sole proprietor, business
2 organization, or governmental agency to whom the citation is
3 issued.
- 4 c. The date and time of the violation.
- 5 d. A brief description of the violation and the facts constituting
6 reasonable cause, including the location of the violation.
- 7 e. The name of the code enforcement officer.
- 8 f. The procedure for the sole proprietor, business organization, or
9 governmental agency cited to follow in order to pay the civil penalty
10 or to contest the citation.
- 11 g. The applicable civil penalty if the sole proprietor, business
12 organization, or governmental agency cited elects not to contest the
13 citation.
- 14 h. The section of this article that is the subject of the violation.
- 15 i. Notice that additional citations may be issued for each day that the
16 applicable violation is found to exist.
- 17 j. Notice that failure to request an administrative hearing within ten
18 (10) days after service of the citation shall constitute a waiver of the
19 violator's right to an administrative hearing before the hearing
20 officer, and that such waiver shall constitute an admission of
21 violation.
- 22 k. Notice that the violator may be liable for the reasonable costs of the
23 administrative hearing should the violator be found guilty of the
24 violation.

1 l. Appropriate mitigation of, and remedial action for, the violation,
2 such as obtaining the appropriate license.

3 m. That, if the violator does not elect to appeal the citation to the
4 hearing officer, the civil penalty must be paid within thirty (30) days.

5 n. That, if the violator does not elect to appeal the citation to the
6 hearing officer, fails to pay the civil penalty within the time allowed,
7 or fails to appear to contest the citation, the violator shall be
8 deemed to have waived its right to contest the citation and that, in
9 such case, judgment shall be rendered ex parte, without notice to
10 the violator, by the hearing officer into a final order for an amount
11 up to five hundred dollars (\$500.00).

12 (d) Effect of the Issuance of a Citation:

13 (1) A sole proprietor, business organization, or governmental agency, which
14 has been served with a citation, shall have the option to elect either to:

15 a. Correct the violation and pay the civil penalty in the manner
16 indicated on the notice; or

17 b. Request an administrative hearing before a hearing officer to
18 appeal the decision of the code enforcement officer to issue the
19 citation.

20 (2) If the sole proprietor, business organization, or governmental agency,
21 which has been served with a citation, does not elect to appeal the citation
22 to a hearing officer, fails to pay the civil penalty within the time allowed, or
23 fails to appear to contest the citation, said sole proprietor, business
24 organization, or governmental agency shall be deemed to have waived its

1 right to contest the citation. In such case, judgment shall be rendered
2 ex parte, without further notice, by the hearing officer into a final order for
3 an amount up to five hundred dollars (\$500.00). The civil penalty must be
4 paid within thirty (30) days. Failure to pay the civil penalty shall be a
5 violation of this article.

6 (3) A sole proprietor, business organization, or governmental agency issued a
7 citation pursuant to this section for a violation of this article is charged with
8 a noncriminal infraction. This shall not preclude the prosecution of
9 criminal violations arising from the same incident.

10 (e) Citation Appeal Procedure:

11 (1) Appeal by administrative hearing of the citation shall be accomplished by
12 filing a request in writing to the address indicated on the citation, not later
13 than ten (10) days after service of the citation.

14 (2) Upon receipt of a timely request for an administrative hearing, the matter
15 shall be set for hearing before the hearing officer on the next regularly
16 scheduled hearing date or as soon thereafter as possible.

17 (3) The County shall serve a notice of hearing to the sole proprietor, business
18 organization, or governmental agency which was issued a citation, which
19 notice shall include, but not be limited to, the following:

20 a. Place, date, and time of the hearing;

21 b. Opportunity for the sole proprietor, business organization, or
22 governmental agency which received a citation to be represented
23 by an attorney at the hearing, at its own expense;
24

1 c. Right of the sole proprietor, business organization, or governmental
2 agency which received a citation to present witnesses and
3 evidence and conduct cross-examination; and

4 d. A conspicuous statement reflecting the requirements of Chapter
5 286, Florida Statutes, that a person deciding to appeal a decision of
6 a hearing officer on a citation will need to ensure that a verbatim
7 record of the proceedings made.

8 In lieu of providing a notice of hearing as provided above, the County may
9 include a hearing date in the citation that will be scheduled if the sole
10 proprietor, business organization, or governmental agency which received
11 a citation requests an administrative hearing, provided that the citation
12 includes the information required by this subsection.

13 (4) If the hearing officer finds that a violation occurred but determines that the
14 time given for correction was not reasonable, the hearing examiner shall
15 determine a reasonable time period and enter an order that the sole
16 proprietor, business organization, or governmental agency comply with
17 this article. If the hearing officer finds that the citation was issued before
18 the reasonable time period for correction expired, the hearing officer shall
19 enter an order finding that the violation occurred, but shall not assess the
20 applicable civil penalty against the sole proprietor, business organization,
21 or governmental agency which received the citation. However, if the
22 hearing officer finds that the alleged violator has not complied by the time
23 of the hearing, the hearing officer may choose to disregard the failure of
24 the code enforcement officer to provide a reasonable time for the alleged

1 violation to come into compliance and may enter an appropriate civil
2 penalty.

3 (f) Schedule of Civil Penalties for Citations: The following table sets forth the
4 code violations for which a citation may be issued under this article. The descriptions of
5 violations are provided for purposes of general identification only. Where specific code
6 provisions apply, the same are indicated following the respective violation description.

7 Schedule of Civil Penalties for Citations

<u>Violation</u>	<u>Civil Penalty</u>	
	<u>First Violation</u>	<u>Repeat Violation</u>
(1) <u>Failure to have a trained person at the work site at all times during which tree trimming is in progress. [Subsection 9-162(d)]</u>	1 st	\$250.00
<u>Penalty amount for second violation if within one year of first violation.</u>	2 nd	\$500.00
<u>escalates to NOV</u>		
(2) <u>Failure to have picture identification and evidence that individual meets training requirements. [Subsection 9-162(e)]</u>	1 st	\$250.00
<u>Penalty amount for second violation if within one year of first violation.</u>	2 nd	\$500.00
<u>escalates to NOV</u>		
(3) <u>Failure to notify County of change in any information required on application. [Subsection 9-162(f)]</u>	1 st	\$250.00
<u>Penalty amount for second violation if within one year of first violation.</u>	2 nd	\$500.00
<u>escalates to NOV</u>		
(4) <u>Failure to have all employees adequately trained in safety procedures. [Subsection 9-162(g)]</u>	1 st	\$250.00
<u>Penalty amount for second violation if within one year of first violation.</u>	2 nd	\$500.00
<u>escalates to NOV</u>		
(5) <u>Failure to have copies of insurance</u>		

Coding: Words in ~~strikethrough~~ type are deletions from existing text. Words in underscored type are additions.

1	<u>coverage available for inspection at every job site where tree trimming is in progress. [Subsection 9-162(h)]</u>	<u>1st</u>	<u>\$250.00</u>	
2				<u>escalates</u>
3	<u>Penalty amount for second violation if within one year of first violation.</u>	<u>2nd</u>	<u>\$500.00</u>	<u>to NOV</u>
4	(6) <u>Misrepresenting or falsifying any information supplied to the County in the application for licensure. [Subsection 9-164(g)]</u>	<u>1st</u>	<u>\$250.00</u>	
5				<u>escalates</u>
6	<u>Penalty amount for second violation if within one year of first violation.</u>	<u>2nd</u>	<u>\$500.00</u>	<u>to NOV</u>
7				
8	(7) <u>Failure to maintain any of the qualifications or standards required for licensure. [Subsection 9-165(b)]</u>	<u>1st</u>	<u>\$250.00</u>	
9				<u>escalates</u>
10	<u>Penalty amount for second violation if within one year of first violation.</u>	<u>2nd</u>	<u>\$500.00</u>	<u>to NOV</u>
11				
12	(8) <u>Failure to maintain a current Class A or Class B Tree Trimmer License. [Subsection 9-165(d)]</u>		<u>\$500.00</u>	<u>escalates</u>
13				<u>to NOV</u>
14				
15	(9) <u>Failure to maintain required insurance. [Subsection 9-165(e)]</u>		<u>\$500.00</u>	<u>escalates</u>
16				<u>To NOV</u>
17	(10) <u>Advertising as a tree trimmer without a license. [Subsection 9-166(a)]</u>		<u>\$500.00</u>	<u>escalates</u>
18				<u>to NOV</u>
19	(11) <u>Failure to include license number in advertisements. [Subsection 9-166(b)]</u>	<u>1st</u>	<u>\$250.00</u>	
20				<u>escalates</u>
21	<u>Penalty amount for second violation if within one year of first violation.</u>	<u>2nd</u>	<u>\$500.00</u>	<u>to NOV</u>
22				
23	(12) <u>Advertising with a license number of a higher classification than for which the license holder received a license. [Subsection 9-166(c)]</u>	<u>1st</u>	<u>\$250.00</u>	
24				<u>escalates</u>
	<u>Penalty amount for second violation if within one year of first violation.</u>	<u>2nd</u>	<u>\$500.00</u>	<u>to NOV</u>

Coding: Words in struck-through type are deletions from existing text. Words in underscored type are additions.

1	<u>(13) Failure to display license number on vehicle. [Subsection 9-166(d)]</u>	<u>1st</u>	<u>\$250.00</u>	
2	<u>Penalty amount for second violation if within one year of first violation.</u>	<u>2nd</u>	<u>\$500.00</u>	<u>escalates to NOV</u>
3				
4				

5 Section 4. Section 27-427 of Chapter 27, Article XV, Regulation of Tree
6 Trimmers, is hereby amended and transferred to Chapter 9, Article XI, Regulation of
7 Tree Trimmers, Section 9-174 to read as follows:

8 **Sec. 27-427. 9-174. Stop work orders.**

9 Whenever any tree trimming is being done by sole proprietors, business
10 organizations, or governmental agencies without the proper licenses as required by this
11 ~~A~~article or if at least one trained individual person is not present at the job site, the
12 ~~Natural Resource code Enforcement Officer~~ may order all tree trimming work stopped
13 and such persons performing such work shall immediately cease such work. The tree
14 trimming work may not resume until such time as the sole proprietor, business
15 organization, or governmental agency is in compliance with this ~~A~~article.

16 Section 5. Sections 9-175 through 9-177 of Chapter 9, Article XI, Regulation of
17 Tree Trimmers, are hereby created to read as follows:

18 **Sec. 9-175. Collection and recovery of civil penalties.**

19 (a) The County Administrator, or designee, shall provide by administrative
20 order the appropriate guidelines and procedures for the administration, collection,
21 record keeping, reporting, and accountability of civil penalties assessed under this
22 article.

23 (b) The County may institute proceedings in a court of competent jurisdiction
24 to compel payment of civil penalties.

1 (c) If the hearing officer finds that a violation exists and assesses a civil
2 penalty, or if a violator does not contest a citation as provided under this article, and the
3 violator fails to pay the applicable civil penalty, the hearing officer may enter an order
4 imposing the civil penalty previously set. A certified copy of an order imposing a civil
5 penalty may be recorded in the public records and thereafter shall constitute a lien
6 against the real and personal property of the violator. Upon petition to the circuit court,
7 such order may be enforced in the same manner as a court judgment by the sheriffs of
8 this state, including a levy against the personal property, but shall not be deemed to be
9 a court judgment except for enforcement purposes. After three (3) months from the
10 filing of any such lien which remains unpaid, the County may foreclose or otherwise
11 execute on the lien. No lien created pursuant to the provisions of this article may be
12 foreclosed on real property which is homestead property under Section 4, Article X of
13 the Florida Constitution.

14 **Sec. 9-176. Appeals of citations and notices of violation.**

15 (a) The sole proprietor, business organization, or governmental agency or the
16 County may seek a rehearing of the case by filing a written motion for rehearing within
17 five (5) business days of rendition of the decision by the hearing officer. The motion for
18 rehearing shall set forth the issues which were overlooked or omitted at the hearing but
19 shall not consist of a reargument of the case. If the motion is made by the violator, said
20 motion shall be sent to the Division, or any successor agency, at the address set forth
21 on the notice or citation. The Division shall immediately forward the motion for
22 rehearing to the hearing officer. If the motion is made by the County, the County shall
23 forward a copy of the motion to the hearing officer and to the violator at the violator's
24 last known address. Within ten (10) days of receipt of the motion, the hearing officer

1 shall enter an order on the motion for rehearing. If the motion for rehearing is granted,
2 the case shall be set for rehearing on the next regularly scheduled hearing date or as
3 soon thereafter as possible.

4 (b) The sole proprietor, business organization, or governmental agency or the
5 County may appeal a decision of a hearing officer by certiorari to the Seventeenth
6 Judicial Circuit within thirty (30) days of the date of rendition of the decision of the
7 hearing officer as provided by the Florida Rules of Appellate Procedure.

8 **Sec. 9-177. Provisions contained herein are supplemental.**

9 Nothing contained in this article shall prohibit the County from enforcing its codes
10 and ordinances by any other means.

11 Section 6. Chapter 27, Article I, Subsection 27-38(h), Schedule of Civil
12 Penalties for Citations is hereby amended to delete the following from said Schedule of
13 Civil Penalties:

14 ...

15 *Schedule of Civil Penalties for Citations*

	<i>Violation</i>	<i>Civil Penalty</i>	
		<i>First Violation</i>	<i>Repeat Violation</i>
18	...		
19	(15) Failure to have a trained person at the		
20	work site at all times during which tree	1 st	\$250.00
21	trimming is in progress. [§27-421(d)]	2 nd	\$500.00
22	Penalty amount for second violation		escalates
23	if within one year of first violation.		to NOV
24	(16) Failure to have picture identification and		
	evidence that individual meets training	1 st	\$250.00
	requirements. [§27-421(e)]	2 nd	\$500.00
	Penalty amount for second violation		escalates
			to NOV

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in underscored type are additions.

1	if within one year of first violation.			
2	(17) Failure to notify County of change in			
3	any information required on			
4	application. [§27-421(f)]	1 st	\$250.00	
5	Penalty amount for second violation	2 nd	\$500.00	escalates
6	if within one year of first violation.			to NOV
7	(18) Failure to have all employees			
8	adequately trained in safety			
9	procedures. [§27-421(g)]	1 st	\$250.00	
10	Penalty amount for second violation	2 nd	\$500.00	escalates
11	if within one year of first violation.			to NOV
12	(19) Failure to have copies of insurance			
13	coverage available for inspection at			
14	every job site where tree trimming is			
15	in progress. [§27-421(h)]	1 st	\$250.00	
16	Penalty amount for second violation	2 nd	\$500.00	escalates
17	if within one year of first violation.			to NOV
18	(20) Misrepresenting or falsifying any information			
19	supplied to the County in the application			
20	for licensure. [§27-423(c)]	1 st	\$250.00	
21	Penalty amount for second violation	2 nd	\$500.00	escalates
22	if within one year of first violation.			to NOV
23	(21) Failure to maintain any of the			
24	qualifications or standards			
25	required for licensure. [§27-424(b)]	1 st	\$250.00	
26	Penalty amount for second violation	2 nd	\$500.00	escalates
27	if within one year of first violation.			to NOV
28	(22) Failure to maintain a current Class A			
29	or Class B License. [§27-424(d)]		\$500.00	escalates
30				to NOV
31	(23) Failure to maintain required insurance.			
32	[§27-424(e)]		\$500.00	escalates
33				To NOV
34	(24) Advertising as a tree trimmer without a			
35	License. [§27-425(a)]		\$500.00	escalates
36				to NOV

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in underscored type are additions.

1	(25)	Failure to include license number in advertisements. [§27-425(b)]	1 st	\$250.00	
2		Penalty amount for second violation if within one year of first violation.	2 nd	\$500.00	escalates to NOV
3					
4	(26)	Advertising with a license number of a higher classification than for which the license holder received a license. [§27-425(c)]	1 st	\$250.00	
5			2 nd	\$500.00	escalates to NOV
6		Penalty amount for second violation if within one year of first violation.			
7					
8	(27)	Failure to display license number on vehicle. [§27-425(d)]	1 st	\$250.00	
9		Penalty amount for second violation if within one year of first violation.	2 nd	\$500.00	escalates to NOV
10					

11 Section 7. Chapter 27, Article XV, Section 27-426, Violations, is hereby
 12 deleted in its entirety.

13 Section 8. SEVERABILITY.

14 If any portion of this Ordinance is determined by any Court to be invalid, the
 15 invalid portion shall be stricken, and such striking shall not affect the validity of the
 16 remainder of this Ordinance. If any Court determines that this Ordinance, or any portion
 17 hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies),
 18 or circumstance(s), such determination shall not affect the applicability hereof to any
 19 other individual, group, entity, property or circumstance.

20 Section 9. INCLUSION IN CODE.

21 It is the intention of the Board of County Commissioners that the provisions of
 22 this Ordinance shall become and be made a part of the Broward County Code; and that
 23 the sections of this Ordinance may be renumbered or re-lettered and the word
 24

1 "ordinance" may be changed to "section," "article," or such other appropriate word or
2 phrase in order to accomplish such intentions.

3 Section 10. EFFECTIVE DATE.

4 This Ordinance shall become effective as provided by law.

5

6 ENACTED

7 FILED WITH THE DEPARTMENT OF STATE

8 EFFECTIVE

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Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in underscored type are additions.