ORDINANCE NO. 2016-28

AN ORDINANCE AMENDING THE CITY OF BREVARD CODE OF ORDINANCES AND UNIFIED DEVELOPMENT ORDINANCE TO PROHIBIT THE INTRODUCTION OF INVASIVE PLANT SPECIES

WHEREAS, the purpose of nuisance ordinances is to provide for the health, safety, and general welfare of the inhabitants of the city; and,

WHEREAS, the purpose of zoning regulations is to provide a comprehensive plan for the use of land and buildings in conditions of good health and safety and in conditions of orderly community development, these regulations shall apply to all land and structures within the respective zoning district; and,

WHEREAS, the City of Brevard Planning Board unanimously recommended approval on August 16, 2016; and,

WHEREAS, a public hearing was conducted on September 19, 2016, by Brevard City Council, and, after hearing all persons wishing to comment, and upon review and consideration of the proposed amendments, it is the desire of the City Council of the City of Brevard that Brevard City Code, Part II, Chapter 38, and Unified Development Ordinance, Chapter 8, be amended as outlined below; and,

WHEREAS, in accordance with North Carolina General Statute 160A-384, Brevard City Council finds the following:

1) That the proposed amendments are consistent with Element 3 – Environmental Health of the 2015 Comprehensive Plan:

Goals

Through appropriate conservation and preservation measures that protect the health and sustainability of the environment and our abundant natural resources, Brevard will:

- Successfully preserve our woods and water for future generations.
- Promote our world-class natural resources as an asset.
- Prevent development in environmentally sensitive and critical areas.
- Preserve farmland.

2) That the proposed amendments support the 2012 City of Brevard Vision Statement:

Foster economic diversity while enhancing the quality of life in an environmentally friendly way by creating an environment that promotes and encourages businesses, and business owners, attracted to and utilizing our natural assets of woods and water and our cultural/historic assets of music, arts, and outdoor recreation.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

Section 1. Brevard City Code, Part II, Chapter 38 is hereby amended as depicted in Exhibit A.

Section 2. Brevard Unified Development Ordinance, Chapter 8 is hereby amended as depicted in Exhibit B.

Section 3. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of

competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

Section 3. Ordinance shall become effective upon its adoption and approval.

Adopted and approved this the 19th day of September, 2016.

Jimmy Harris
Mayor

ATTEST:

Desiree D. Perry, CMC, NCCMC
City Clerk

APPROVED AS TO FORM:

Michael K. Pratt
City Attorney

ORDINANCE NO. 2016-28
EXHBIT A

Text amendments shown in blue underline and deletions shown in red ~~strikethrough~~.

CODE OF ORDINANCES CITY OF BREVARD, NORTH CAROLINA

Chapter 38 – Health and Sanitation

Article II – Nuisances

Sec. 38-32 – Enumeration

The following enumerated and described conditions are hereby found, deemed and declared to constitute a detriment, danger and hazard to the health, safety, and general welfare of the inhabitants of the city, and the same are found, deemed and declared, to be public nuisances wherever the same may exist and are hereby declared unlawful; however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive.

1) Any condition which constitutes a breeding ground or harbor for rats, mosquitoes, harmful insects, or other pests.

2) Any growth or overgrowth of grass, weeds or other vegetation that is greater than 18 inches on the average, or any accumulation of dead weeds, grass, brush or undergrowth. This section shall not apply to lots that are natural area lots unless the lot is found to violate section 38-32(1) or 38-32(6). Natural area lots are lots that have never been cleared in anticipation of development, or lots that have been landscaped or replanted to appear as natural, undeveloped areas. ~~Accumulations of invasive exotic species shall be prohibited.~~ If a natural area lot is adjacent to a property occupied by a dwelling or other structure, and that dwelling or other structure is located within 50 feet of the natural area lot, then the natural area lot shall comply with the requirements of this subsection to a depth of ten feet from said adjacent property line, however, this requirement shall not apply to property that consists of a ravine, creek bank or other severe slope where maintenance would be unsafe and the chance of erosion would increase if the vegetation were decreased.

3) Any concentration of combustible items including but not limited to mattresses, boxes, paper, automobile tires and tubes, garbage, trash, refuse, brush, old clothes and rags.

4) Any collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind.

5) Any indoor furniture, indoor appliances, or metal products of any kind or nature openly kept which are broken or inoperable or have jagged edges of metal or glass, or areas of confinement.

6) Any condition which blocks, hinders, or obstructs in any way the natural flow of branches, streams, creeks, surface waters, ditches, or drains, to the extent that the premises is not free from standing water.

7) Any improper or inadequate drainage on private property which causes flooding or interferes with the use of or endangers in any way the streets, sidewalks, parks or other city-owned property of any kind; provided, the notices required and powers conferred by this article by and on the code enforcement officer in abating the nuisances defined by this subsection shall be given and exercised by the director of public works.

8) Any and all grass or weeds growing in any sidewalk and any hedges or plantings bordering thereon not properly trimmed.

9) Any and all trees or bushes dead, diseased or not properly trimmed, or any object or growth within the sight distance, on private property adjacent to city street rights-of-way that constitute a hazard to city property or to the health or safety of motorists or pedestrians. "Sight distance" shall be defined as the area required to provide a ten-foot by 70-foot unobstructed view across property primarily located at street intersections, driveways, and along sharp horizontal curves in the roadway. No owner, lessee or occupant, or any agent, servant, representative or employee of any such owner, lessee or occupant, having control of any lot or land in the city, regardless of whether the lot is occupied or not, shall permit or maintain on such lot or land, or on or along the sidewalk, street or alley adjacent to the same between the property line and the curb or middle of the alley or for ten feet outside the property line if there is no curb, any of the conditions described in this subsection. It shall be the joint and several duty of any owner, lessee and occupant of any lot or land to cut and/or remove or cause to be cut and/or removed all causes of such conditions as often as may be necessary to comply with the provisions of this chapter.

10) Any other condition specifically prohibited in this article, or any other condition specifically declared to be a nuisance or a danger to the public health, safety, morals and general welfare of inhabitants of the city and a public nuisance by the city council.

ORDINANCE NO. 2016-28
EXHIBIT B

Text amendments shown in **blue underline.**

UNIFIED DEVELOPMENT ORDINANCE CITY OF BREVARD, NORTH CAROLINA

Chapter 8 – Tree Protection and Landscaping

Sec. 8.2 – General Provisions

A. *Maintenance of existing built and vacant lots:* Every owner, occupant, agent or person in control of property shall cut down and remove from the property all weeds, grass, vines and other growth which endangers the property or any other property, or which is likely to burn. This requirement shall not require the clearance of surface water protection areas or the removal of significant or protected tree and shrub species.

B. *Pre-construction conference:* Prior to the commencement of any new development activities an on-site pre-construction conference shall take place with the developer and the administrator to review procedures for the protection and management of all protected landscape elements identified on the landscape protection plan.

C. *Existing vegetation, fences, walls, and berms:* The use of existing trees or shrubs to satisfy the landscaping requirements of this section is strongly encouraged. Existing significant vegetation within the landscaped area shall be preserved and credited toward standards for the type of perimeter landscaping required, unless otherwise approved by the City of Brevard at the time of site plan approval. Existing berms, walls, or fences within the landscaped area but not including chain link fencing, may be used to fulfill the standards for the type of perimeter landscaping required, provided that these elements are healthy and/or in a condition of good repair. Other existing site features within the required perimeter landscaped area which do not otherwise function to meet the standards for the required landscaping shall be screened from the view of other properties or removed, as determined during review and approval of the site plan.

D. *Installation of new vegetation and other features:* New plant material should complement existing vegetation native to the site. If existing significant vegetation and other site features do not fully meet the standards for the type of landscaping required, then additional vegetation and/or site features (including fences) shall be planted or installed within the required landscaping area. The use of indigenous, native and/or regionally grown species of trees, shrubs, vines, groundcovers and perennials is encouraged in order to make planted areas compatible with existing native habitats. The introduction of invasive-exotic species shall be prohibited (See Subsection P of this section for reference).

E. *Grading and development in required landscape areas:* The required landscaping shall not contain any development, impervious surfaces, or site features that do not function to meet these standards or that require removal of existing significant vegetation. No grading, development, or land-disturbing activities shall occur within this area if forest canopy, specimen trees, or significant vegetation exists within the buffer yard, unless approved by the administrator. If grading within a buffer yard is proposed, slopes of 3:1 or less are encouraged to ensure the proper transition of grades to the adjacent property and to facilitate landscaping and maintenance.

F. *Easements and rights-of-way:* Nothing shall be planted or installed within an underground or overhead utility easement or a drainage easement without the consent of the city and the easement holder at the time of site plan approval.

G. *Protection during surveying:* No tree greater than 12 inches in diameter at breast height (DBH) located on public property or within a required tree protection area shall be removed for the purpose of surveying without an approval from the administrator.

H. *Tree trimming:* Every owner of any tree overhanging any street or right-of-way within the city shall trim the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet above the surface of the street or sidewalk. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The public works director and utilities director are authorized to remove and/or trim trees and shrubs from public properties and public rights-of-way. North Carolina Department of Transportation is authorized to remove and/or trim trees and shrubs in the public rights-of-way owned by the State of North Carolina. Approval is required to trim a tree in a tree protection area, required landscaping area, or buffer yard more than 25 percent of its overall canopy.

I. *Trimming and removal by utility companies:* Trees to be removed from the public right-of-way by electric utilities and other overhead utilities must be replaced by such entity in equal quantity and minimum caliper size with an approved species.

J. *Tree topping:* Tree topping shall be prohibited on all trees on public property, designated rights-of-way, required tree protection areas, landscaping, and buffer yards unless otherwise approved by the administrator. Trees severely damaged by storms or other causes, or certain trees under utility lines or other obstructions where other pruning practices are impractical may be exempted from this article at the determination of the administrator.

K. *Removal of dead trees on public property:* Approval by the administrator shall be issued for trees that are dead, infected by disease, or determined to be a hazard to public safety and welfare. Should any tree designated in a tree protection area, required landscaping area, or buffer yard die, the agency shall replace it within 180 days with a tree(s) [of] equal size.

L. *Tree removal on private property:* The city may require removal of any dead or diseased trees or trees harboring insects, on private property when such trees constitute a threat to public property. The administrator will notify in writing the owner(s) of such trees. Removal shall be done at the owner(s) expense within 60 days after the date of service of notice. In the event of failure of the owner(s) to comply with such provisions, the city shall have the authority to remove such trees and charge the cost of removal as a lien on the owner's property taxes.

M. *Stumps:* All stumps of trees and park trees shall be removed so that the top of the stump does not project above the surface of the ground.

N. *Use of off-site landscape easements:* Permanent off-site landscape easements may be used to meet required buffer yards provided that the size or shape of the parcel significantly restricts the ability to reasonably use the property and meet the buffer yard requirements. These easements must be recorded prior to or in conjunction with the approval of the site or subdivision plan.

O. *Protective measures during construction:* Protective barricades shall be placed around all protected trees designated to be saved prior to the start of development activities or grading. Barricades shall be erected five feet past the drip line for any tree to be saved or tree save areas. Protective barricades shall remain in place until development

activities are completed. The area within the protective barricade shall remain free of all building materials, dirt or other construction debris, construction traffic, storage of vehicles and materials, and grading shall not take place within five feet of the drip line of the existing trees to be protected.

P. Invasive-exotic plant species: The administrator shall maintain a current list of invasive-exotic plant species by taking guidance from the latest edition of, "A Management Guide for Invasive Plants in Southern Forests," published by the United States Department of Agriculture Forest Services Southern Research Station, as applicable to the western North Carolina region, and by submitting periodic text amendments to reflect these changes. The introduction of the following shall be prohibited:

1. **Trees:** Mimosa (Albizia julibrissin), Princess Tree (Paulonia tomentosa), Russian Olive (Elaeagnus angustifolia), Tree of Heaven (Ailanthus altissima), Bradford Pear (Pyrus calleryana), Japanese Privet (Ligustrum japonicum), Norway Maple (Acer platanoides), Paper Mulberry (Broussonetia papyrifera), Thorney Olive (Elaeagnus pungens), White Mulberry (Morus alba), White Poplar (Populus alba), Chinese Elm (Ulmus parvifolia), Silver Maple (Acer saccharinum), Lombardy Poplar (Populus nigra), Chinese Tallow (Triadica sebiferum), Chinaberry (Melia azedarach).
2. **Shrubs:** Autumn Olive (Eleagnus umbellate), Chinese Privet (Ligustrum sinense), Multiflora Rose (Rosa multiflora), Winter Honeysuckle (Lonicera fragrantissima), Amur Honeysuckle (Lonicera maackii), Common privet (Ligustrum vulgare), Glossy Privet (Ligustrum lucidum), Japanese Barberry (Berberis thunbergii), Japanese Spiraea (Spiraea japonica), Morrow's Honeysuckle (Lonicera morrowii), Tatarian Honeysuckle (Lonicera tatarica), Sacred Bamboo (Nandina domestica), Burning Bush (Euonymus alata), Leatherleaf Mahonia (Mahonia bealei).
3. **Vines:** Chinese Wisteria (Wisteria sinensis), English Ivy (Hedera helix), Japanese Honeysuckle (Lonicera japonica), Kudzu (Pueraria Montana), Bittersweet (Celastrus obiculatus), Bigleaf Periwinkle (Vinca major), Common Periwinkle (Vinca minor), Fiveleaf Akebia (Akebia quinata), Japenese Wisteria (Wisteria floribunda), Porcelain Berry (Ampelopsis brevipedunculata), Sweet Autumn Clematis (Clematis terniflora), Wintercreeper (Euonymus fortune). **Herbaceous Plants:** Garlic Mustard (Alliaria petiolata), Japanese Knotweed (Polygonum cuspidatum), Japanese Stiltgrass (Microstegium vimineum), Korean or Chinese Lespedeza (Lespedeza cuneata), Shrubby Lespedeza (Lespedeza bicolor), Bamboo (Bambusa and Phyllostachya), Chinese Silvergrass (Miscanthus sinensis) Crownvetch (Securigera varia), Johnsongrass (Sorghum halepense), Purple Loosestrife (Lythrum salicaria), Queen Anne's Lace (Daucus carota).

8.3. - Tree protection

A. Applicability:

1. The provisions of the tree protection section of this chapter shall be applicable to any tree that falls within one or more of the following categories:
   i. Any tree which has a trunk six inches or more in diameter at one foot above the ground; or is of a horticultural variety or is highly ornamental (such as a dogwood, redbud, crab apple, sourwood, flowering cherry, holly or any like or similar such plant) and has a trunk diameter of three inches or more at one foot above the ground.
   ii. Any tree that is noted as part of a development plan or that is required as part of a special use permit, group development, planned development, Conditional Zoning District, or other development approval.
   iii. Any tree located within a historic district or any property containing a historically designated structure.

iv. Any tree located within an RMX, NMX, DMX, CMX, GI, GR, or IC Zoning District or associated Conditional District, and any other property containing a non-residential use.

v. Any tree subject to D, below.

B. Exemptions:

1. Trees located on properties developed for single family or duplex uses located within GR districts shall be exempt from the tree protection provisions of this chapter, except for those trees subject to A.1.ii.—iii., above, and trees and other vegetation in protection areas set forth in Chapter 6 and listed as Tier 1 trees in Section 8.3(D), below.
2. The following trees are exempt from the provisions of this Chapter: Mimosa *(Albizia julibrissin)*, Princess Tree *(Paulonia tomentosa)*, Russian Olive *(Elaeagnus angustifolia)*, Tree of Heaven *(Ailanthus altissima)*, Bradford Pear *(Pyrus calleryana)*, Japanese Privet *(Ligustrum japonicum)*, Norway Maple *(Acer platanoides)*, Paper Mulberry *(Broussonetia papyrifera)*, Thorney Olive *(Elaeagnus pungens)*, White Mulberry *(Morus alba)*, White Poplar *(Populus alba)*, Chinese Elm *(Ulmus parvifolia)*, Silver Maple *(Acer saccharinum)*, Lombardy Poplar *(Populus nigra)*, Chinese Tallow *(Triadica sebiferum)*, Chinaberry *(Melia azedarach)*.
3. Pruning trees as normal maintenance provided such pruning does not result in the mutilation, death or destruction of the tree.
4. All trees which are grown by a licensed plant or tree nursery or tree farm, provided such trees are planted and grown on the licensee's premises for the sale or intended sale to the general public in the ordinary course of the licensee's business.
5. All trees which have been destroyed or harmed by a storm or similar act of nature or casualty loss; provided the administrator is notified of such intended removal, replacement or relocation at least two business days prior to removal, replacement or relocation of any tree. The administrator shall approve or deny the request within the two-day period, and may require replacement subject to the requirements of this ordinance. There shall be no fee for this inspection and review.