

ORDINANCE NO. 2015-27

**AN ORDINANCE AMENDING BREVARD CITY CODE,
UNIFIED DEVELOPMENT ORDINANCE – CHAPTER 8.2.L – TREE
PROTECTION AND LANDSCAPING**

WHEREAS, the City of Brevard Planning Board and Planning Department Staff have recommended that Brevard City Code, Unified Development Ordinance, Chapter 8, be amended to modify the City's role in the removal of trees on private property; and,

WHEREAS, a public hearing was conducted on Monday, October 19, 2015, by Brevard City Council; and,

WHEREAS, 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, Unified Development Ordinance Chapter 8, be amended as outlined below.

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

SECTION 01. Brevard City Code, Unified Development Ordinance, Chapter 8.2.L is hereby amended (as shown in *italic*) to read as follows:

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.
- 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) 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.

Except for driveway access points, sidewalks, curb and gutter; no paving with concrete or other impervious materials within five feet of a tree drip line shall be allowed unless otherwise approved.

SECTION 02. As to any conflict between this Ordinance and any parts of existing Ordinances, the provisions of this Ordinance shall control.

SECTION 03. 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.

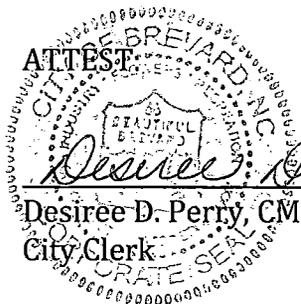
SECTION 04. The enactment of this Ordinance shall in no way affect the running of any Amortization provisions or enforcement actions, or otherwise cure any existing zoning violations.

SECTION 05. This Ordinance shall be in full force and effect from and after the date of its adoption.

Adopted and approved this the 19th day of October, 2015.



Jimmy Harris
Mayor


ATTEST


Desiree D. Perry, CMC, NCCMC
City Clerk

APPROVED AS TO FORM:



Michael K. Pratt
City Attorney