

ORDINANCE NO. 2021-20

**AN ORDINANCE AMENDING THE CODE OF ORDINANCE
CHAPTER 77**

WHEREAS, the Planning Department Staff has recommended that Brevard City Code of Ordinance, Chapter 77, Article I, Bracken Preserve Management Rules be amended to clarify requirements for permits; and,

WHEREAS, the City Council of the City of Brevard finds that the proposed amendment is generally consistent with the City of Brevard Comprehensive Plan; and,

WHEREAS, a legislative public hearing was conducted on Monday, March 15, 2021, 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 of Ordinance be amended as outlined below.

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

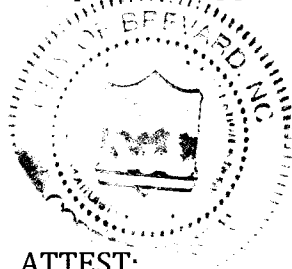
SECTION 01. Brevard City Code of Ordinance, Chapter 77, is hereby amended to amend Article I, as depicted in Exhibit A, which is attached hereto and incorporated herein by reference.

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

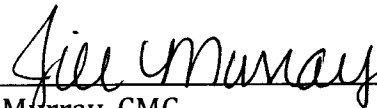
SECTION 03. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 04. This Ordinance shall be in full force and in effect from and after the date of its adoption and approval.

Adopted and approved this the 17th day of May, 2021.



ATTEST:




Jill Murray, CMC
City Clerk



Jimmy Harris
Mayor

APPROVED AS TO FORM:



Mack McKeller
City Attorney

Chapter 77 – PARKS AND RECREATION

ARTICLE I – BRACKEN PRESERVE MANAGEMENT RULES

Sec. 77-1. - Scope.

- (a) This article coordinates the use of the Bracken Preserve, which is hereby established as a City of Brevard public park. This article is in keeping with the City of Brevard's mission to protect and manage the resources of the Bracken Preserve through professional stewardship, enhancing the quality of life and recreational opportunities for our citizens while ensuring the continuity of these vital resources.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-2. - Definitions of terms.

As used in this rule the following terms have the following meanings:

Bike trail means any road or trail maintained for bicycles.

Conservation easement means an easement, held by the State of North Carolina under the administration of the North Carolina Clean Water Management Trust Fund, which binds the City of Brevard to certain terms and conditions governing uses of and activities upon the Bracken Preserve.

Forest management plan is a general management plan prepared by the City of Brevard and a forest management plan prepared by a forester licensed to practice forestry within the State of North Carolina.

Group means a number of individuals related by a common factor, having structured organization, defined leadership, and activities directed by a charter or written bylaws.

Hiking trail means any road or trail maintained for pedestrians.

Hunting means the lawful hunting of game animals as defined by the N.C. Wildlife Resources Commission.

Motorized vehicle means every vehicle which is self-propelled or which is pulled by a self-propelled vehicle (such as a camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper). A self-propelled vehicle shall include, but is not limited to passenger automobiles, mopeds, off-road vehicles (ORV), golf carts, motorcycles, mini-bikes, all-terrain vehicles, Segways, and go-carts. This does not include motorized wheel chairs or other similar vehicles designed for and used by persons with disabilities.

Multi-use trail means any trail maintained for use by any of the following: bicycle or pedestrian.

Park manager means an employee or employees of the City of Brevard, designated by the city manager, who coordinates management of the Bracken Preserve.

Permit means any written license issued by or under the authority of the City of Brevard permitting the performance of a specified act or acts.

Permittee means any person, corporation, company or association in possession of a valid permit.

Person means any individual, firm, partnership, corporation, association, public or private institution, political subdivision, or government agency.

Public nudity means a person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.

Rock climbing means traversing a rock face that is steep enough to require the use of hands and feet to get up or down.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-3. - Permits.

- (a) Temporary uses, structures and special events shall be established for operation only after the issuance of a temporary use or special event permit. A permit authorizes an act only when that act conforms with the terms contained in the permit or in applicable rules, and conforms to existing local, state and federal laws. (b) Any violation of the temporary use or special event permit constitutes grounds for its revocation by the City of Brevard. In case of revocation the permit holder shall forfeit to the City of Brevard all money for the permit. Furthermore, the City of Brevard shall consider the permit holder, together with his agents and employees who violated such terms, jointly and severally liable to the City of Brevard for all damages suffered in excess of money so forfeited. However, neither the forfeiture of such money, nor the recovery of such damages, nor both, relieves such person from statutory punishment for any violation of a provision of any local, state or federal law.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-4. - Rock or cliff climbing and repelling.

A person shall not engage in rock climbing, cliff climbing or rappelling within the boundaries of the Bracken Preserve.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-5. - Public nudity.

- (a) Public nudity is prohibited within the Bracken Preserve. This rule does not apply to the enclosed portions of tents.
- (b) Children under the age of five are exempt from this restriction.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-6. - Hunting and fishing.

- (a) A person shall not hunt or fish within the Bracken Preserve, nor shall a person discharge a firearm or bow and arrow within the Bracken Preserve.
- (b) A person who has a valid North Carolina Hunting License may carry a firearm or bow through the Bracken Preserve for the purpose of accessing game lands within Pisgah National Forest; provided, however, that a firearm shall be emptied of any ammunition and breached (if applicable) and bow shall have no arrows or bolts in place, with arrows or bolts in a quiver.
- (c) A person who has a valid North Carolina Hunting License may transport game that has been legally harvested within Pisgah National Forest, through the Bracken Preserve. However a person shall not field dress harvested game within the Bracken Preserve, nor shall a person dispose of or discard the remains of any game within the Bracken Preserve.
- (d) Any individual legally carrying a concealed handgun as identified in North Carolina General Statutes, unless prohibition is specifically identified or is allowed by North Carolina General Statutes, is allowed to carry firearms concealed in the Bracken Preserve.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12; Ord. No. 2013-18, § 2, 12-16-2013)

Sec. 77-7. - Animals at large.

- (a) No person shall have any dog, cat or other pet upon the Bracken Preserve unless the animal is on a leash and under the control of the owner or some other person.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-8. - Camping.

- (a) No person shall spend the night or maintain a camp within the Bracken Preserve except at such places and for such periods as may be designated by or under a temporary use or special event permit.
- (b) Unless otherwise provided in this section, the number of persons camping at a particular site may be limited by the park manager depending upon the size of the group and the size and nature of the campsite.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-9. - Sports and games.

No games or athletic contests shall be allowed except at such places and for such periods as may be designated by or under a temporary use or special event permit.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-10. - Horses.

- (a) No person shall use, ride or drive a horse within the Bracken Preserve.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-11. - Bicycles.

- (a) No person shall use or ride a bicycle except on a road or trail specifically designated as a bicycle or multi-use trail.
- (b) When crossing rivers or streams, bicycle use shall be confined to bridges or culverts if available.
- (c) Bicyclists shall yield to hikers on the trails, and shall reduce speed in narrow trail sections and when approaching curves.
- (d) Racing is not permitted except by a temporary use or special event permit.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-12. - Skates, blades and boards.

No person shall use or ride roller skates, in-line skates, roller blades, skate boards, or any similar device within the Bracken Preserve.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-13. - Explosives.

No person shall carry or possess any explosives or explosive substance including fireworks within the Bracken Preserve. This does not apply to employees or contractors of the City of Brevard when they engage in construction or maintenance activities.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-14. - Firearms.

No person except sworn law enforcement officers shall carry or possess firearms of any description or air guns or pellet guns, on or upon the Bracken Preserve. Properly licensed hunters that meet the requirements of section 77-6(b) of this article are exempt from this rule.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-15. - Fires.

- (a) No person shall build or start a fire in any area of the Bracken Preserve unless that area is designated for such purpose.
- (b) Fires ignited for forest management purposes under the provisions of a prescribed burning plan, approved by the North Carolina Forest Service, are exempt from this rule.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-16. - Disorderly conduct.

- (a) No person visiting the Bracken Preserve shall disobey a lawful order of a City of Brevard employee or law enforcement officer or endanger him/herself or endanger or disrupt others.
- (b) No person shall use, bicycle, walk or run on or along a road or trail that is designated closed for maintenance, tree removal or any other purpose, or enter an area that is designated "Park Closed," "No Entry," "Do Not Enter," or "Authorized Personnel Only," except for City of Brevard employees or contractors, volunteers, individuals or groups working under the direction of the City of Brevard.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-17. - Intoxicating beverages and drugs.

No person shall use, or be under the influences of intoxicants, marijuana, or non-prescribed narcotic drugs while within the Bracken Preserve. The public display or use of alcoholic beverages, marijuana or non-prescribed narcotic drugs is prohibited.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-18. - Damage to buildings, structures and signs.

No person shall injure, deface, disturb, destroy or disfigure any building, structure, sign, fence, vehicle, machine or any equipment within on the Bracken Preserve.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-19. - Commercial enterprises.

No person shall, while in or on the Bracken Preserve, sell or offer for sale, hire or lease, any object or merchandise, property, privilege, service or any other thing, or engage in any business except under a temporary use or special event permit and at such places and for such periods as may be designated. Sales from which proceeds are used in support of the Bracken Preserve or sales conducted or contracted by the City of Brevard are exempt from this rule.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-20. - Noise regulations.

The production or emission of noises over the level of 85 dBs, at a distance of ten feet, within the Bracken Preserve is prohibited.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-21. - Meetings and exhibitions.

A person, except for City of Brevard employees in performance of official duties, shall not hold any meetings or exhibitions, perform any ceremony, or make any speech, within the Bracken Preserve without a temporary use or special event permit.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-22. - Solicitation of contributions.

A person shall not solicit contributions for any purpose within the Bracken Preserve, unless approved by the park manager and such contributions are used, in whole or in part, to benefit the Bracken Preserve.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-23. - Aircraft.

- (a) Except as noted in paragraphs (b) and (c) of this rule, a person shall not voluntarily bring, land or cause to descend or alight, ascend or take off within or upon the Bracken Preserve, any airplane, flying machine, balloon, parachute, glider, hang glider, or other apparatus for aviation. "Voluntarily" in this connection shall mean anything other than a forced landing.
- (b) When aviation activities are part of planned forest management activities or military, law enforcement or rescue training, a temporary use or special event permit shall be required.
- (c) Emergency aircraft such as air ambulances and aerial search helicopters, and fire fighting aircraft are exempt from this rule.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-24. - Motorized vehicles.

- (a) A person shall not drive a motorized vehicle on or within the Bracken Preserve.
- (c) A person shall not park a motorized vehicle in a manner that blocks roads, trails or gates.
- (d) The speed limit within the Bracken Preserve parking area shall be ten miles per hour.
- (e) Vehicles exempt from this rule are: City of Brevard and authorized contractor vehicles, and other vehicles used in conjunction with park management and emergency operations vehicles.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-25. - Flowers, plants, minerals, etc.

- (a) A person shall not remove, destroy, cut down, scar, mutilate, take, gather or injure any tree, flower, artifact, fern, shrub, rock or other plant or mineral, or forage or collect plants, animals, minerals or other artifacts within the Bracken Preserve. Park management activities performed in accordance with an approved forest management plan and consistent with the conservation easement are exempt from this rule.
- (b) Groups organized for educational or research purposes may, after first having obtained a temporary use or special event permit, forage or collect plants, animals, minerals or other artifacts from the Bracken Preserve.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-26. - Trash and debris.

A person shall not deposit paper products, bottles, cans or any other rubbish, refuse, trash or debris within the Bracken Preserve, except in receptacles designated for such materials. Where trash receptacles are not provided persons shall pack their trash out of the park and dispose of it in a lawful manner.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-27. - Fees and charges.

- (a) There shall be no fee for the daily use of the Bracken Preserve. Applicable fees for temporary use or special event permits for group activities shall be set forth in the City of Brevard Schedule of Taxes, Fees and Charges.
- (b) When applicable, payment of the appropriate fee shall be a prerequisite for the use of the Bracken Preserve.
- (c) The number of persons camping at a particular site may be limited by the temporary use or special event permit depending upon the size of the group and the size and nature of the campsite.
- (d) A written request which sets forth the reasons for waiving applicable fees may be considered by the City Manager.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-28. - Hours of operation.

- (a) Hours of operation for the Bracken Preserve shall be dawn to dusk as published in the most recent sunrise/sunset table of the North Carolina Wildlife Resources Commission.
- (b) No person except City of Brevard employees and authorized persons shall be allowed within the Bracken Preserve between closing and opening hours except under a temporary use or special event permit.
- (c) Temporary use or special event permits may be issued for activities within the Bracken Preserve between closing and opening hours, including but not limited to camping, group night hikes, group night bicycle rides, research and educational activities, and special events. Permit holders and campers shall register the names, emergency contact information, and vehicle license plate number for each person and vehicle that will be within the Bracken Preserve between closing and opening hours.
- (d) Vehicles which are found to have remained within such parking area more than five consecutive days shall be towed by the City of Brevard. The owner of any towed vehicle shall be provided notification by first class mail that the vehicle has been towed, as well as the vehicle's storage location and retrieval procedures.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Sec. 77-29. - Enforcement and administration.

- (a) The city manager may appoint park managers, who may enact such administrative rules and procedures, and issue such orders as are necessary to effectuate the purpose of this article, the conservation easement, the forest management plan, and protect the general health, safety and welfare of the public.
- (b) Park managers and sworn law enforcement may enforce this article.
- (c) For violation of any rule in this article, a person shall be subject to criminal and civil penalties as set forth in Brevard City Code, Chapter 1, General Provisions, Section 1-8, General penalty; other remedies; and may be subject to other criminal and civil penalties as set forth in the North Carolina General Statutes.
- (d) Pursuant to G.S. 160A-286, as otherwise modified by state or federal law, the City of Brevard Police Department shall be the primary law enforcement agency in command within and upon the Bracken Preserve.
- (e) Except as modified by state or federal law, the City of Brevard Fire Department shall be the primary fire and rescue agency in command within and upon the Bracken Preserve.
- (f) For violation of any rule in this article, the City of Brevard may withdraw the right of a person or persons to remain on or within the Bracken Preserve.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

Secs. 77-30—77-39. - Reserved.