

**ORDINANCE NO. 2021-42**

**AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT  
ORDINANCE CHAPTER 8.3 – TREE PROTECTION**

WHEREAS, the City of Brevard Planning Board has recommended that Brevard City Code, Unified Development Ordinance, Chapter 8.3 – Tree Protection be amended; and,

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

- OBJECTIVE 3.1: Preservation of surrounding natural assets of mountains, farmlands, woods, and water for future generations.
- OBJECTIVE 3.2: Reduction of the City’s carbon and ecological footprint.
  - POLICY 3.2.B: Continue meeting the Arbor Day Foundation’s Tree City USA standards.

and,

WHEREAS, the City of Brevard City Council understands and values the many advantages that a thriving urban forest, from mitigation of the effects of climate change to increasing property values; and,

WHEREAS, a public hearing was conducted on Monday, September 20, 2021, by the 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, Unified Development Ordinance be amended as outlined below.

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

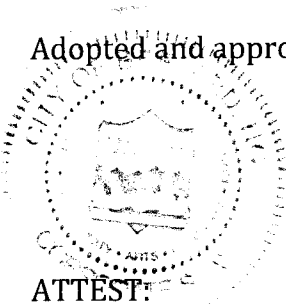
SECTION 01. Brevard City Code, Unified Development Ordinance Chapter 8 is hereby amended as depicted in Exhibit A, which is attached hereto and incorporated herein by reference.

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 20<sup>th</sup> day of September 2021.



ATTEST:

Mac Morrow  
Mayor Pro Tem

  
Jill Murray, CMC  
City Clerk

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read 'Mack McKeller', written over a horizontal line.

Mack McKeller  
City Attorney

### 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 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.
6. Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the North Carolina General Statutes.
7. Forestry activity that is conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with Chapter 89B of the North Carolina General Statutes.
8. Installation and maintenance activities conducted by public utility providers within utility easements, public lands, or public rights-of-way.

C. *Permit required:* It shall be unlawful for any person to remove, replace or relocate any tree within the city until an application for a permit has been submitted to the administrator. In determining whether a permit should be issued, the administrator shall consider the following criteria:

1. The condition of the trees with respect to disease, danger of falling, proximity to existing or proposed structures, and interference with utility services.
2. The necessity to remove trees in order to construct proposed improvements to allow economic enjoyment of the property.
3. Topography of the land and the effect of tree removal on erosion, soil retention and the diversion or increased flow of surface waters, and coordination with the city's drainage plans and recommendations on drainage patterns.
4. Number of trees existing in the neighborhood on improved property. Administrator shall be guided by the effect of tree removal upon property, as well as aesthetic values, in the area.

In all cases, the administrator may require the relocation or replacement of the trees as a condition of issuing the permit, on a one-for-one basis, with replacement trees having a caliper of two-inches or more in diameter at one foot above the ground

D. *Required tree protection areas:* Trees and existing vegetation shall be preserved in accordance with the table below. Exceptions to tree protection in Tier 2 and Tier 3 areas shall be reviewed by the board of adjustment on a case-by-case basis.

	Priority Tree Protection Area	Required Protection
Tier 1	Special Flood Hazard Areas Required Surface Water Protection Area Required Buffer Yard Slope Areas 25 percent or greater Wetlands	<p>All Vegetation and Soil to Remain Undisturbed</p> <p>In some cases, limited disturbance may occur within the areas to be protected provided all necessary approvals are obtained. Such activities include, but are not limited to the following:</p> <ul style="list-style-type: none"> <li>• Mitigation of development activities.</li> <li>• Restoration of previously disturb areas.</li> <li>• Stream restoration.</li> <li>• Utility installations and emergency public safety activities.</li> <li>• Construction of a trail or pedestrian walkway that will provide public access.</li> <li>• Required street or driveway connections.</li> </ul>
Tier 2	Front Setback Areas Required Landscaping Areas Required Open Space Slope Areas of 15—25 percent	<p>All Trees Greater than 12" DBH</p> <p>Replacement trees, if permitted, shall be planted at a rate of one tree per each 12" DBH</p>
Tier 3	All Other Locations	<p>All Trees Greater than 24" DBH</p> <p>Replacement trees, if permitted, shall be planted at a rate of 1 tree per each 12" DBH</p>

- E. *Credits for preservation of existing trees in parking areas:* Trees that are saved in a parking lot area (other than those in Tier 1 or Tier 2 Tree Save Areas in Section B above) can be used towards the interior tree landscape requirement in Section 8.7. Note that each tree preserved will require a minimum pervious area around it equal to its drip line.

Size of Preserved Trees	Deduction from Required Plantings
For Each Tree 6—12" DBH	One Required Parking Lot Tree
For Each Tree 13—24" DBH	Two Required Parking Lot Trees
For Each Tree 25" DBH or Greater	Three Required Parking Lot Trees

F. *Public Tree Care and Protection*

1. Responsibility for Public Tree Care:

- a. The City shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the City or State-owned rights-of-way or bounds of all streets, alleys, lanes, squares, and City-owned public grounds, or any that extend into the public right-of-way, or that harbors disease or insects in order to ensure public safety or to preserve or enhance the beauty of such public places.
- b. The City of Brevard Public Works Department is hereby granted the responsibility of public tree care within the City of Brevard.
- c. The Parks, Trails, and Recreation Committee shall assist and provide guidance to the Public Works Department regarding care and protection of public trees as necessary.

2. Public Tree Care

- a. The City may remove or cause to be removed by the appropriate agency/contractor, any tree or part thereof which is in an unsafe condition, or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is seriously affected with any injurious insect or disease.
- b. Trees, vines, shrubbery, flowers, or other ornamental vegetation standing in or upon any lot or land adjacent to any public street, sidewalk, greenway, or other public place shall be kept trimmed by the owner or occupant of the property on which the plants are growing so as not to interfere with the free and safe passage along the public way by pedestrians, bicyclists, and vehicular traffic.
- c. The Public Works Department may, in the interest of public health and safety, prune any tree that overhangs into any street, sidewalk, greenway, or right-of-way within the City, 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 walkways, a clear space of 13½ feet above the surface of streets, and a clear space of at least 17 feet above highways. The Public Works Department will notify, in writing or in person, any property owner whose trees will be pruned in accordance with this section, no later than 24 hours prior to pruning.
- d. Pruning of public trees shall be done in conformance with pruning standards published by the International Society of Arboriculture, or similar professional organization.

3. Public Tree Protection

All public trees shall be protected during construction activities in accordance with the following:

- a. A tree on any street or other publicly owned property whose crown is within five feet of any excavation or construction of any building, structure, or street work, shall be guarded with a substantial fence, frame, or box. The construction tree guard shall be not less than four feet high and at a distance in feet from the trunk equal to the diameter of the trunk at breast height (DBH) in inches. All building material, dirt, or other debris shall be kept outside the construction tree guard.
- b. Land-disturbing activities within five feet of a public tree shall incorporate protection for tree root areas in accordance with generally accepted best practices.

4. Prohibited activities

- a. Abuse of public trees:
  - i. No person shall intentionally damage, cut, carve, transplant, or remove any public tree.
  - ii. No person shall attach any rope, wire, nails, advertisements, posters, banners, or other contrivance to any public tree.
  - iii. No person shall knowingly allow any gaseous, liquid, or solid substance which is harmful to trees to contact public trees.
  - iv. No person shall set fire to public trees nor permit any fire to burn when such fire or the heat thereof will injure any portion of a public tree.
- b. Tree topping of public trees, per Section 8.2.J of this ordinance.

(Ord. No. 15-08, § 21, 12-5-08; Ord. No. 2016-28, § 2(Exh. B), 9-19-16; Ord. No. 2020-23, § 1(Exh. A), 10-19-20)