

PROPOSED

ORDINANCE NO. 2018-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO TREE MAINTENANCE AND LOCATION; AMENDING VARIOUS SECTIONS OF CHAPTERS 8½, 27, AND 39 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE"), ESTABLISHING REGULATIONS FOR THE PLANTING AND MAINTENANCE OF TREES NEAR POWER LINES; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by Commissioner Barbara Sharief)

WHEREAS, following Hurricane Irma, Broward County suffered widespread power outages including those caused by trees and plant growth interfering with and damaging power lines; and

WHEREAS, the loss of power causes harm to people and property; and

WHEREAS, Broward County seeks to regulate the planting and maintenance of trees in close proximity to power lines within the unincorporated areas of the County while respecting individuals' property rights and due process rights, NOW, THEREFORE,

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

Section 1. Section 8½-16 of the Broward County Code of Ordinances is hereby amended to read as follows:

Sec. 8½-16. Schedule of Civil Penalties.

...

(a) *Violations of Florida Building Code and Broward County Zoning Code:*

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

SCHEDULE OF CIVIL PENALTIES

Fine

Violation

First

Repeat

Violation

Violation

...

6	<u>(71)</u>	<u>Failure to relocate, replace, or remove</u>	<u>500.00</u>	<u>500.00</u>
7		<u>a tree not in conformity with the Right</u>		
8		<u>Tree, Right Place Guidelines, which tree</u>		
9		<u>was planted after the effective date of this</u>		
10		<u>Code provision (sec. 39-1381(b))</u>		
11	<u>(72)</u>	<u>Failure to maintain an existing tree in</u>	<u>500.00</u>	<u>500.00</u>
12		<u>conformity with the Code or failure to</u>		
13		<u>notify the electrical utility that a tree</u>		
14		<u>cannot be brought into conformity (sec.</u>		
15		<u>39-1381(c))</u>		

Section 2. Section 27-404 of the Broward County Code of Ordinances is hereby amended to read as follows:

Sec. 27-404. Definitions.

When a word, term, or phrase is not defined herein, the definitions set forth in Section 27-4 of the Code and publications recognized as authoritative in the scientific and engineering fields, as applicable, shall apply. Such publications shall include the publications incorporated by reference in Section 27-403 of this Article.

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

1 The following words, phrases, and terms when used in this article shall have the
2 indicated meanings:

3 . . .

4 *Person* means any natural person, individual, owner, operator, public or private
5 corporation, firm, association, joint venture, partnership, municipality, governmental
6 agency, political subdivision, public or private utilities, public officer, responsible party or
7 any other entity whatsoever, or combination thereof, of whatever kind.

8 *Power line or power lines* means a cable carrying electrical power that is supported
9 by poles or pylons.

10 . . .

11 *Remedial action* means a corrective action required to offset the impacts of Tree
12 Abuse, as defined herein.

13 *Remedial pruning* means the cutting and trimming of branches and foliage so as
14 to alleviate the danger of the tree damaging power lines, consulting with American Natural
15 Standards Institute ("ANSI") A300 (Part I)—2001 Pruning Standards, as amended, and
16 ANSI Z133.1-2000 Pruning, Repairing, Maintaining, and Removing Trees, and Cutting
17 Brush—Safety Requirements, as amended.

18 . . .

19 *Resource Management Plan* means a plan ~~which~~ that will enhance a preservation
20 area of a Natural Forest Community to compensate for the development of a portion of
21 the Natural Forest Community.

22 *Right Tree, Right Place Guidelines* shall mean those guidelines for planting trees
23 near power lines, published within Florida Power & Light Company's "Right Tree, Right
24 Place" brochure. These guidelines require that trees be placed as follows:

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underscored type are additions.

1 (a) Trees, including palms, less than twenty (20) feet in height at maturity may
2 not be planted under power lines.

3 (b) Trees, other than palms, twenty (20) feet to thirty (30) feet in height at
4 maturity shall be planted at least twenty (20) feet away from power lines.

5 (c) Trees, other than palms, greater than thirty (30) feet in height at maturity
6 shall be planted at least thirty (30) feet away from power lines.

7 (d) Palm trees greater than twenty (20) feet in height at maturity shall be
8 planted either twenty (20) feet or at one (1) maximum palm frond length plus
9 ten (10) feet away from power lines, whichever is greater.

10 ...

11

12 Section 3. Section 27-408 of the Broward County Code of Ordinances is hereby
13 amended to read as follows:

14 **Sec. 27-408. Tree removal license requirements and standards.**

15 (a) *License Requirements:*

16 ...

17 (3) Exemptions from Licensing: Unless otherwise prohibited by the Code, the
18 following activities are exempted from the licensing requirements of this
19 article provided that no nuisance or any condition which adversely affects
20 the environment or public health is created, and provided that the activity
21 does not violate any provisions of the Code, or federal, state, or local
22 government regulations:

23 ...

24

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 underscoring type are additions.

1 f. Removal of trees, except historical or specimen trees, by franchised
2 utility companies other than electrical utilities, provided that:

3 . . .

4 g. Removal of a tree by an electrical utility company if the tree is located
5 within the electrical utility company's right-of-way or utility easement
6 where power lines are located. The electrical utility company may
7 also remove a tree outside of its right-of-way or utility easement if the
8 tree does not comply with the Right Tree, Right Place Guidelines. In
9 the case of the removal of specimen trees or historical trees, the
10 electrical utility shall document by photographs or other evidence
11 that the tree does not comply with the Right Tree, Right Place
12 Guidelines prior to removal of the tree and must present such
13 documentation to EPGMD within forty-eight (48) hours after removal;

14 h. Removal of a tree on private property by the private property owner
15 if the tree does not comply with the Right Tree, Right Place
16 Guidelines. Except as provided for in this subsection, the owner of
17 the property must document by photographs or other evidence that
18 the tree is not in compliance with the Right Tree, Right Place
19 Guidelines prior to removal. In the case of Natural Forest
20 Communities, specimen trees, or historical trees, documentation of
21 the condition must be presented to EPGMD within forty-eight (48)
22 hours after removal. The collection and presentation of
23 documentation shall not be required if the private property owner has
24 received a notice of violation for the tree that has been issued

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1 pursuant to Section 39-1381 of the Code or a substantially similar
2 municipal ordinance; or

3 i. Removal of nuisance trees;
4 ...

5 (e) *Tree Relocation Requirements:* Any person conducting tree relocation
6 activities shall:

7 ...

8 (2) Relocate a tree so that it will not interfere with existing or proposed utilities,
9 either above or below ground. ~~A relocated tree which may reach a height~~
10 ~~of thirty (30) feet shall not be placed within twenty (20) feet of an overhead~~
11 ~~powerline or as outlined in *Selecting and Planting Trees for the South*~~
12 ~~*Florida Urban Forest*; Relocated trees shall be in compliance with the Right~~
13 ~~Tree, Right Place Guidelines.~~

14 ...

15 (i) *Tree Replacement Requirements:*

16 ...

17 (4) General Requirements for Replaced Trees: Any person conducting tree
18 replacement activities shall:

19 ...

20 d. Plant a replacement tree in an area ~~with adequate space for proper~~
21 ~~root and canopy development following Florida Power and Light's~~
22 ~~brochure *Right Tree In The Right Place* (South Florida version) in~~
23 ~~conformity with the Right Tree, Right Place Guidelines. Large~~
24 canopy trees from the Category 1 list (Live Oak, Mahogany, Black

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Olive, etc.) shall not be planted in parking lot islands less than ten (10) feet in width, or adjacent to buildings or in any small confined space with less than ten (10) feet of available rooting space or less than twenty (20) feet of available canopy space. Exceptions to this rule shall require EPGMD approval;

...

Section 4. Section 27-410 of the Broward County Code of Ordinances is hereby amended to read as follows:

Sec. 27-410. Tree abuse.

(a) *Exemptions from Tree Abuse:* The following are exempt from the prohibition of tree abuse as set forth in Chapter 27, Article XIV, Section 405(c):

...

(2) Tree abuse necessary to alleviate a dangerous condition posing an imminent threat to the public or property provided that the threat cannot be remedied by pruning that is not defined as tree abuse; ~~or~~

(3) Shaping of trees to protect property, such as buildings and infrastructure, in which there is adequate evidence accepted by EPGMD that shaping has occurred historically; or

(4) Remedial pruning.

...

Section 5. Section 27-413 of the Broward County Code of Ordinances is hereby amended to read as follows:

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1 **Sec. 27-413. Tree preservation trust fund.**

2 . . .

3 (g) Use of Funds for Remedial Pruning and Tree Removal:

4 (1) Notwithstanding anything to the contrary in this section, private property
5 owners in the unincorporated areas of the County may apply for funds within
6 the Broward County Tree Preservation Trust Fund to be used for remedial
7 pruning or tree removal that may be required by Section 39-1381 of the
8 Code.

9 (2) To receive funds pursuant to this subsection, a private property owner shall
10 meet the following requirements:

11 a. The property owner must submit an application to EPGMD that
12 certifies:

13 1. The private property owner is the owner of private, residential
14 property upon which the tree is located;

15 2. The tree does not comply with the Right Tree, Right Place
16 Guidelines; and

17 3. The private property owner will use the funds to bring the tree
18 into conformity with the Right Tree, Right Place Guidelines as
19 may be required by Section 39-1381, and will comply with all
20 requirements of that section including, but not limited to, the
21 use of a qualified tree trimmer;

22 b. EPGMD shall grant an application if EPGMD determines that the
23 remedial pruning or removal is required to bring the tree into
24 conformity with Section 39-1381; and

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1 c. Following the remedial pruning or removal of the tree, the private
2 property owner must submit:

3 1. Photographic documentation showing the tree was either
4 remedially pruned or removed so as to bring it into compliance
5 with Section 39-1381; and

6 2. Invoices or other forms of receipt(s) from a contractor with a
7 Class A Tree Trimmer License pursuant to Chapter 9,
8 Article XI, showing the cost of removal.

9 (3) The Director may approve expenditures up to One Thousand Dollars
10 (\$1,000) per tree or the cost of remedial pruning or removal of the tree,
11 whichever is less. The Director shall deny any funding request that does
12 not adhere to the requirements of this section, is determined to be
13 fraudulent or otherwise unlawful, or where there are insufficient funds in the
14 Tree Preservation Trust Fund.

15 (4) Section 27-413(g) shall sunset one (1) year after the effective date of this
16 ordinance.

17
18 Section 6. Section 39-131 of the Broward County Code of Ordinances is hereby
19 amended to read as follows:

20 **Sec. 39-131. Definitions.**

21 In addition to the terms defined in Article II of this chapter, the following words,
22 terms, and phrases, when used in this article, shall have the following meanings ~~ascribed~~
23 ~~to them in this section~~, except where the context clearly indicates a different meaning.

24 . . .

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 underscored type are additions.

1 *Overgrown groundcover:* Grass, weeds, and other low-growing plants, except
2 native vegetation that, by the nature of their own horizontal growth habits, cover the
3 ground, and which are not regularly cared for and maintained and grow in an uncontrolled
4 manner exceeding six (6) inches in height in developed areas, and exceeding eighteen
5 (18) inches in height in developed agricultural, estate, and rural areas.

6 *Power line or power lines:* A cable carrying electrical power that is supported by
7 poles or pylons.

8 *Premises:* A lot, plot, or parcel of land, including any structures thereon.

9 *Remedial pruning:* The cutting and trimming of branches and foliage so as to
10 alleviate the danger of the tree damaging power lines, consulting with American Natural
11 Standards Institute ("ANSI") A300 (Part I)—2001 Pruning Standards, as amended, and
12 ANSI Z133.1-2000 Pruning, Repairing, Maintaining, and Removing Trees, and Cutting
13 Brush—Safety Requirements, as amended.

14 *Repeat violation:* A violation of this article by a person or entity who has previously
15 been issued a notice of public nuisance and failed to comply, resulting in abatement of
16 the nuisance by the County, or has previously been found by the special magistrate to
17 have violated the same provision of this Code within five (5) years prior to the violation,
18 or has previously been issued a citation violation notice for the same provision of this
19 Code and that was uncontested pursuant to Chapter 8½ of the ~~Broward County Code of~~
20 ~~Ordinances.~~

21 *Right Tree, Right Place Guidelines:* Guidelines for planting trees near power lines,
22 published within Florida Power & Light Company's "Right Tree, Right Place" brochure.
23 These guidelines require that trees be placed as follows:

24

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 underscored type are additions.

1 (a) Trees, including palms, less than twenty (20) feet in height at maturity may
2 not be planted under power lines.

3 (b) Trees, other than palms, twenty (20) feet to thirty (30) feet in height at
4 maturity shall be planted twenty (20) feet away from power lines.

5 (c) Trees, other than palms, greater than thirty (30) feet in height at maturity
6 shall be planted thirty (30) feet away from power lines.

7 (d) Palm trees greater than twenty (20) feet in height at maturity shall be
8 planted either twenty (20) feet or at one (1) maximum palm frond length plus
9 ten (10) feet away from power lines, whichever is greater.

10 ...

11 *Trash:* Every waste accumulation of sweepings, dust, rags, cartons, or any other
12 such discarded material, except garbage, junk, and litter.

13 *Tree:* Any living, self-supporting, dicotyledonous or monocotyledonous woody
14 perennial plant which has a DBH of no less than three (3) inches and which normally
15 grows to an overall height of no less than ten (10) feet in Southeast Florida.

16 ...

17
18 Section 7. Section 39-134 of the Broward County Code of Ordinance is hereby
19 amended to read as follows:

20 **Sec. 39-134. Procedure for violations; notices.**

21 ...

22 (e) *Tree Maintenance Near Utilities.* Whenever a code enforcement officer
23 ascertains that a tree is not planted or maintained in compliance with this article, the
24 officer shall provide notice to the owner of the real property upon which the tree is located,

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1 as determined in accordance with the tax rolls of Broward County, unless the enforcement
2 officer has actual knowledge of a subsequent property owner.

3 (f) Notwithstanding the foregoing, if a repeat violation is found, the code
4 enforcement officer is not required to give the violator a reasonable time to correct the
5 violation. If the code enforcement officer has reason to believe that a violation or condition
6 causing the violation presents a serious threat to the health, safety, and welfare or is
7 irreparable or irreversible in nature, the code enforcement officer shall make a reasonable
8 effort to notify the violator and may immediately request a hearing before the hearing
9 officer.

10 (f) (g) Notice, as provided in this section, shall be in accordance with the notice
11 procedures specified in Chapter 162, Florida Statutes, as incorporated by Chapter 8½,
12 Article I, of the ~~Broward County Code of Ordinances~~. In addition to notice as provided by
13 subsections (a) through (d), notice may be provided by posting. Such notice, if provided,
14 shall be posted for at least ten (10) days in at least two (2) locations, one (1) of which
15 shall be the property upon which the violation is alleged to exist and the other shall be at
16 the front door of the courthouse or the main governmental center of Broward County.
17 Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall
18 include a copy of the notice posted and the date and places of its posting. Notice by
19 posting may run concurrently with, or may follow, an attempt or attempts to provide notice
20 by mail.

21
22 Section 8. Section 39-1381 of the Broward County Code of Ordinance is hereby
23 created to read as follows:

24 **Sec. 39-1381. Tree maintenance near utilities.**

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underscored type are additions.

1 (a) The intent of this section is to require property owners to maintain trees in
2 order to minimize damage to power lines.

3 (b) Any tree planted within unincorporated Broward County after the effective
4 date of this ordinance shall be planted in conformity with the Right Tree, Right Place
5 Guidelines. Upon receipt of a notice of violation, the property owner shall have
6 sixty (60) days to remedy the violation by removal of the offending tree, following those
7 procedures outlined in Chapter 27, Article XIV, of the Code.

8 (c) Any tree that is planted prior to the effective date of this ordinance and that
9 is not in conformity with the Right Tree, Right Place Guidelines shall be required to
10 undergo remedial pruning within one (1) year after the effective date of this ordinance.
11 The property owner shall be responsible for ensuring the tree thereafter remains in
12 compliance with this section. Upon receipt of a notice of violation, the property owner
13 shall have thirty (30) days to remedy the violation.

14 (1) All tree trimming or remedial pruning shall be conducted by a contractor with
15 a Class A Tree Trimmer License pursuant to Chapter 9, Article XI.

16 (2) If remedial pruning cannot be successfully performed without removing
17 more than twenty percent (20%) of the tree's canopy and the property owner
18 does not relocate, replace, or remove the offending tree after one (1) year,
19 the property owner shall remove twenty (20%) of the tree's canopy and must
20 notify the owner of the power line in writing that the tree does not conform
21 to this section and cannot be remedied through remedial pruning.
22 Successful performance of remedial pruning under this part shall mean
23 removal of any part of any tree within twenty (20) feet of any power line.
24

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1 (3) If an electrical utility company has performed trimming or pruning activity on
2 the property owner's property within the last six (6) months, then this fact
3 shall constitute a defense to any action taken against the property owner
4 for failure to comply with subsection (c) above.

5 (d) Any tree or other plant growth that is dead, severely diseased, or severely
6 damaged and that is in danger of damaging any power line or has damaged a power line
7 shall be cut down, destroyed, or removed by a contractor with a Class A Tree Trimmer
8 License. Upon receipt of a notice of violation, the property owner shall have ten (10) days
9 to remedy the violation. If after ten (10) days the violation has not been remedied, the
10 County may remove the offending tree and shall place a lien on the property in the amount
11 of the removal cost. The County shall have the authority to immediately remove any
12 dead, severely diseased, or damaged tree and shall place a lien on the property in the
13 amount of the removal cost if:

14 (1) The tree presents an imminent danger to safety, property, or utilities; and

15 (2) The County Administrator has suspended compliance with
16 Chapter 27, Article XIV, of the Code pursuant to Section 27-406 of the
17 Code.

18 (e) A property owner within a homeowners' association, as defined in
19 Section 720.301, Florida Statutes, or a unit owner of a condominium association, as
20 defined by Section 718.103, Florida Statutes, shall not be deemed to have violated any
21 part of this section where compliance would conflict with the Declaration of Restrictive
22 Covenants, by-laws, or regulations of the homeowners' association or condominium
23 association or where the homeowners' association or condominium association has
24 undertaken to maintain trees and other plant growth. The code enforcement officer or

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1 hearing officer, as applicable, shall dismiss any notice of violation upon the showing of
2 said conflict. Where the homeowners' association or condominium association has
3 undertaken to maintain trees and other plant growth, the homeowners' association or
4 condominium association, as applicable, shall be deemed the responsible party for
5 purposes of compliance with this section.

6 (f) Unless otherwise specified in this section, property owners subject to an
7 enforcement action shall receive a notice of violation in accordance with Section 39-134
8 prior to any action being taken against them and may appeal the decision pursuant to
9 Chapter 8½ of the Code prior to the time limit to remedy the violation.

10 (g) Any person who violates the requirements set forth in this section shall be
11 subject to fines as set forth in Section 8½-16(a) of the Code. Each incident involving each
12 tree shall be considered a separate violation of this article.

13
14 Section 9. SEVERABILITY.

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

21
22 Section 10. INCLUSION IN CODE.

23 It is the intention of the Board of County Commissioners that the provisions of this
24 Ordinance shall become and be made a part of the Broward County Code; and that the

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1 sections of this Ordinance may be renumbered or relettered and the word "ordinance"
2 may be changed to "section," "article," or such other appropriate word or phrase in order
3 to accomplish such intentions.

4
5 Section 11. EFFECTIVE DATE.

6 This Ordinance shall become effective as provided by law.

7
8 ENACTED

9 FILED WITH THE DEPARTMENT OF STATE

10 EFFECTIVE

PROPOSED

11
12 By /s/ Joseph K. Jarone 04/12/18
Joseph K. Jarone (date)
Assistant County Attorney

13
14 By /s/ Maite Azcoitia 04/12/18
Maite Azcoitia (date)
Deputy County Attorney

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23 04/12/18
Trees Near Power Lines OrdinanceSAGedits.doc
24 WS#41027.0003

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