

# PROPOSED

ORDINANCE NO. 2019-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO TREE MAINTENANCE; AMENDING CHAPTERS 8½, 27, AND 39 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE") TO DELETE VIOLATIONS RELATED TO TREE MAINTENANCE AND TO REPEAL SUNSETTED PROVISIONS; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by Commissioner Barbara Sharief)

WHEREAS, on May 8, 2018, the Board of County Commissioners of Broward County enacted Ordinance No. 2018-22 ("Ordinance");

WHEREAS, the Ordinance eliminated County restrictions on the removal of trees planted an unsafe distance from power lines; imposed penalties (effective upon enactment) for property owners in the County's unincorporated areas that plant trees an unsafe distance from power lines; imposed penalties (effective one (1) year after the Ordinance's effective date) for property owners in the County's unincorporated areas that fail to maintain previously existing trees that had been planted an unsafe distance from power lines; and established temporary, one (1) year County-run programs to decrease the burden on property owners that may be required to maintain previously existing trees; and

WHEREAS, as a result of further research showing it would be overburdensome for property owners to maintain existing trees and because the temporary programs established in the Ordinance have expired, the Board finds it is in the public interest to repeal both the penalties for failing to maintain trees and the provisions that have expired,

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

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

6 **Sec. 8½-16. Schedule of Civil Penalties.**

7 . . .

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

9 SCHEDULE OF CIVIL PENALTIES

	<i>Fine</i>	
<i>Violation</i>	<i>First</i>	<i>Repeat</i>
	<i>Violation</i>	<i>Violation</i>

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13 . . .

<del>(72) Failure to maintain an existing tree in</del>	150.00	
<del>conformity with the Code or failure to</del>		
<del>notify the electrical utility that a tree</del>		
<del>cannot be brought into conformity (sec.</del>		
<del>39-1381(c))</del>		
First repeat violation		250.00
Second and subsequent repeat violation		500.00

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21 Section 2. Section 27-413 of the Broward County Code of Ordinances is hereby  
22 amended to read as follows:

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

24 . . .

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

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

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

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

9           a. ~~The property owner must submit an application to EPGMD that~~  
10          ~~certifies:~~

11               1. ~~The private property owner is the owner of private, residential~~  
12               ~~property upon which the tree is located;~~

13               2. ~~The tree does not comply with the Right Tree, Right Place~~  
14               ~~Guidelines; and~~

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

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

23           c. ~~Following the remedial pruning or removal of the tree, the private~~  
24           ~~property owner must submit:~~

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

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

7           (3)     ~~The Director may approve expenditures up to One Thousand Dollars~~  
8                     ~~(\$1,000) per tree or the cost of remedial pruning or removal of the tree,~~  
9                     ~~whichever is less. The Director shall deny any funding request that does~~  
10                    ~~not adhere to the requirements of this section, is determined to be~~  
11                    ~~fraudulent or otherwise unlawful, or where there are insufficient funds in the~~  
12                    ~~Tree Preservation Trust Fund.~~

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

15           Section 3.     Section 39-131 of the Broward County Code of Ordinances is hereby  
16 amended to read as follows:

17 **Sec. 39-131. Definitions.**

18           In addition to the terms defined in Article II of this chapter, the following words,  
19 terms, and phases, when used in this article, shall have the following meanings, except  
20 where the context clearly indicates a different meaning.

21 . . .

22           ~~*Remedial pruning:* The cutting and trimming of branches and foliage so as to~~  
23 ~~alleviate the danger of the tree damaging power lines, consulting with American Natural~~  
24 ~~Standards Institute ("ANSI") A300 (Part I) 2001 Pruning Standards, as amended, and~~

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1 ANSI Z133.1-2000 Pruning, Repairing, Maintaining, and Removing Trees, and Cutting  
2 Brush—Safety Requirements, as amended.

3 . . .

4 Section 4. Section 39-134 of the Broward County Code of Ordinances is hereby  
5 amended to read as follows:

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

7 . . .

8 (e) *Trees Maintenance Near Utilities.* Whenever a code enforcement officer  
9 ascertains that a tree is not planted ~~or maintained~~ in compliance with this article, the  
10 officer shall provide notice to the owner of the real property upon which the tree is located,  
11 as determined in accordance with the tax rolls of Broward County, unless the enforcement  
12 officer has actual knowledge of a subsequent property owner.

13 . . .

14 Section 5. Section 39-138.1 of the Broward County Code of Ordinances is  
15 hereby amended to read as follows:

16 **Sec. 39-138.1 ~~Tree maintenance~~ Planting trees near utilities.**

17 (a) The intent of this section is to ~~require property owners to maintain trees~~  
18 prohibit property owners from planting trees an unsafe distance from power lines in order  
19 to minimize damage to power lines.

20 . . .

21 (c) ~~Any tree that is planted prior to the effective date of this ordinance and that~~  
22 ~~is not in conformity with the Right Tree, Right Place Guidelines shall be required to~~  
23 ~~undergo remedial pruning. The property owner shall be responsible for ensuring the tree~~

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1 ~~remains in compliance with this section. Upon receipt of a notice of violation, the property~~  
2 ~~owner shall have thirty (30) days to remedy the violation.~~

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

5 (2) ~~If remedial pruning cannot be successfully performed without removing~~  
6 ~~more than twenty percent (20%) of the tree's canopy and the property owner~~  
7 ~~does not relocate, replace, or remove the offending tree, the property owner~~  
8 ~~shall remove twenty (20%) of the tree's canopy and must notify the owner~~  
9 ~~of the power line in writing that the tree does not conform to this section and~~  
10 ~~cannot be remedied through remedial pruning. Successful performance of~~  
11 ~~remedial pruning under this part shall mean removal of any part of any tree~~  
12 ~~within twenty (20) feet of any power line.~~

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

17 (d) ~~Any tree or other plant growth that is dead, severely diseased, or severely~~  
18 ~~damaged and that is in danger of damaging any power line or has damaged a power line~~  
19 ~~shall be cut down, destroyed, or removed by a contractor with a Class A Tree Trimmer~~  
20 ~~License. Upon receipt of a notice of violation, the property owner shall have twenty (20)~~  
21 ~~days to remedy the violation. If after twenty (20) days the violation has not been~~  
22 ~~remedied, the County may remove the offending tree and shall place a lien on the property~~  
23 ~~in the amount of the removal cost. The County shall have the authority to immediately~~  
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1 ~~remove any dead, severely diseased, or damaged tree and shall place a lien on the~~  
2 ~~property in the amount of the removal cost if:~~

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

4       (2) ~~The County Administrator has suspended compliance with~~  
5             ~~Chapter 27, Article XIV, of the Code pursuant to Section 27-406 of the~~  
6             ~~Code.~~

7       (e) (c) A property owner within a homeowners' association, as defined in  
8 Section 720.301, Florida Statutes, or a unit owner of a condominium association, as  
9 defined ~~by~~ in Section 718.103, Florida Statutes, shall not be deemed to have violated any  
10 part of this section where compliance would conflict with the Declaration of Restrictive  
11 Covenants, by-laws, or regulations of the homeowners' association or condominium  
12 association or where the homeowners' association or condominium association has  
13 undertaken to ~~maintain~~ plant trees and other plant growth. The code enforcement officer  
14 or hearing officer, as applicable, shall dismiss any notice of violation upon the showing of  
15 said conflict. Where the homeowners' association or condominium association has  
16 undertaken to ~~maintain~~ plant trees and other plant growth, the homeowners' association  
17 or condominium association, as applicable, shall be deemed the responsible party for  
18 purposes of compliance with this section.

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

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

4           ~~(h)~~     ~~Except for subsection (b), which shall become immediately effective upon~~  
5 ~~enactment, the preceding sections shall become effective one (1) year after~~  
6 ~~enactment. Within one hundred and eighty (180) days after enactment of this ordinance,~~  
7 ~~the County shall complete a survey of the unincorporated areas to identify trees that are~~  
8 ~~not in compliance with this section. The location of noncompliant trees shall be~~  
9 ~~communicated to FP&L, which shall be given an opportunity to trim or remove the~~  
10 ~~offending trees consistent with applicable legal requirements. At ten (10) months~~  
11 ~~following the enactment of this ordinance, the County shall determine if additional pruning~~  
12 ~~or removal is required and may, with the property owner's permission, prune or remove~~  
13 ~~those trees identified in the survey as being noncompliant to bring those trees into~~  
14 ~~compliance with this section.~~

15           Section 6.     Severability.

16           If any portion of this Ordinance is determined by any court to be invalid, the invalid  
17 portion will be stricken, and such striking will not affect the validity of the remainder of this  
18 Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be  
19 legally applied to any individual, group, entity, property, or circumstance, such  
20 determination will not affect the applicability of this Ordinance to any other individual,  
21 group, entity, property, or circumstance.

22           Section 7.     Inclusion in the Broward County Code of Ordinances.

23           It is the intention of the Board of County Commissioners that the provisions of this  
24 Ordinance become part of the Broward County Code of Ordinances as of the effective

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

4 Section 8. Effective Date.

5 This Ordinance is effective as of the date provided by law.

6 **PROPOSED**

7 ENACTED

8 FILED WITH THE DEPARTMENT OF STATE

9 EFFECTIVE

10  
11 Approved as to form and legal sufficiency:  
12 Andrew J. Meyers, County Attorney

13 By /s/ Joseph K. Jarone 04/26/19  
14 Joseph K. Jarone (date)  
15 Assistant County Attorney

16 By /s/ Maite Azcoitia 04/26/19  
17 Maite Azcoitia (date)  
18 Deputy County Attorney

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21  
22 JKJ/gmb  
23 Amended Trees Near Power Lines Ordinance.doc  
24 04/26/19  
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