

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:*

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SCHEDULE OF CIVIL PENALTIES

Fine

Violation

First

Repeat

Violation

Violation

6	(71)	<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	(72)	<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.

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

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1 ...

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

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

8 ...

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

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

16 ...

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

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

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

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underscored type are additions.

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

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

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

8 ...
9 Section 3. Section 27-408 of the Broward County Code of Ordinances is hereby
10 amended to read as follows:

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

12 (a) *License Requirements:*

13 ...

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

20 ...

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

23 ...

24
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 underscored type are additions.

- 1 g. Removal of a tree by an electrical utility company if the tree is located
2 within the electrical utility company's right-of-way or utility easement
3 where power lines are located. The electrical utility company may
4 also remove a tree outside of its right-of-way or utility easement if the
5 tree does not comply with the Right Tree, Right Place Guidelines. In
6 the case of the removal of specimen trees or historical trees, the
7 electrical utility shall document by photographs or other evidence
8 that the tree does not comply with the Right Tree, Right Place
9 Guidelines prior to removal of the tree and must present such
10 documentation to EPGMD within forty-eight (48) hours after removal;
11 h. Removal of a tree on private property by the private property owner
12 if the tree does not comply with the Right Tree, Right Place
13 Guidelines. Except as provided for in this subsection, the owner of
14 the property must document by photographs or other evidence that
15 the tree is not in compliance with the Right Tree, Right Place
16 Guidelines prior to removal. In the case of Natural Forest
17 Communities, specimen trees, or historical trees, documentation of
18 the condition must be presented to EPGMD within forty-eight (48)
19 hours after removal. The collection and presentation of
20 documentation shall not be required if the private property owner has
21 received a notice of violation for the tree that has been issued
22 pursuant to Section 39-1381 of the Code or a substantially similar
23 municipal ordinance; or
24 i. Removal of nuisance trees;.

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1 ...

2 (e) *Tree Relocation Requirements:* Any person conducting tree relocation
3 activities shall:

4 ...

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

11 ...

12 (i) *Tree Replacement Requirements:*

13 ...

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

16 ...

17 d. Plant a replacement tree in an area ~~with adequate space for proper~~
18 ~~root and canopy development following Florida Power and Light's~~
19 ~~brochure *Right Tree In The Right Place (South Florida version)* in~~
20 ~~conformity with the Right Tree, Right Place Guidelines.~~ Large
21 canopy trees from the Category 1 list (Live Oak, Mahogany, Black
22 Olive, etc.) shall not be planted in parking lot islands less than
23 ten (10) feet in width, or adjacent to buildings or in any small confined
24 space with less than ten (10) feet of available rooting space or less

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1 than twenty (20) feet of available canopy space. Exceptions to this
2 rule shall require EPGMD approval;

3 ...
4 Section 4. Section 27-410 of the Broward County Code of Ordinances is hereby
5 amended to read as follows:

6 **Sec. 27-410. Tree abuse.**

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

9 ...
10 (2) Tree abuse necessary to alleviate a dangerous condition posing an
11 imminent threat to the public or property provided that the threat cannot be
12 remedied by pruning that is not defined as tree abuse; ~~or~~

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

16 (4) Remedial pruning.

17 ...
18 Section 5. Section 27-413 of the Broward County Code of Ordinances is hereby
19 amended to read as follows:

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

21 ...
22 (g) *Use of Funds for Remedial Pruning and Tree Removal:*

23 (1) Notwithstanding anything to the contrary in this section, private property
24 owners in the unincorporated areas of the County may apply for funds within

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1 the Broward County Tree Preservation Trust Fund to be used for remedial
2 pruning or tree removal that may be required by Section 39-1381 of the
3 Code.

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

6 a. The property owner must submit an application to EPGMD that
7 certifies:

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

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

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

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

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

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

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

4 (3) The Director may approve expenditures up to One Thousand Dollars
5 (\$1,000) per tree or the cost of remedial pruning or removal of the tree,
6 whichever is less. The Director shall deny any funding request that does
7 not adhere to the requirements of this section, is determined to be
8 fraudulent or otherwise unlawful, or where there are insufficient funds in the
9 Tree Preservation Trust Fund.

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

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

14 **Sec. 39-131. Definitions.**

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

18 . . .

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

24
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 underscored type are additions.

1 Power line or power lines: A cable carrying electrical power that is supported by
2 poles or pylons.

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

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

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

16 Right Tree, Right Place Guidelines: Guidelines for planting trees near power lines,
17 published within Florida Power & Light Company's "Right Tree, Right Place" brochure.

18 These guidelines require that trees be placed as follows:

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

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

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

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 underscored type are additions.

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

4 ...
5 *Trash:* Every waste accumulation of sweepings, dust, rags, cartons, or any other
6 such discarded material, except garbage, junk, and litter.

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

10 ...
11 Section 7. Section 39-134 of the Broward County Code of Ordinance is hereby
12 amended to read as follows:

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

14 ...
15 (e) *Tree Maintenance Near Utilities.* Whenever a code enforcement officer
16 ascertains that a tree is not planted or maintained in compliance with this article, the
17 officer shall provide notice to the owner of the real property upon which the tree is located,
18 as determined in accordance with the tax rolls of Broward County, unless the enforcement
19 officer has actual knowledge of a subsequent property owner.

20 (f) Notwithstanding the foregoing, if a repeat violation is found, the code
21 enforcement officer is not required to give the violator a reasonable time to correct the
22 violation. If the code enforcement officer has reason to believe that a violation or condition
23 causing the violation presents a serious threat to the health, safety, and welfare or is
24 irreparable or irreversible in nature, the code enforcement officer shall make a reasonable

1 effort to notify the violator and may immediately request a hearing before the hearing
2 officer.

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

14 Section 8. Section 39-1381 of the Broward County Code of Ordinance is hereby
15 created as follows:

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

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

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

24
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1 (c) Any tree that is planted prior to the effective date of this ordinance and that
2 is not in conformity with the Right Tree, Right Place Guidelines shall be required to
3 undergo remedial pruning within one (1) year after the effective date of this ordinance.
4 The property owner shall be responsible for ensuring the tree thereafter remains in
5 compliance with this section. Upon receipt of a notice of violation, the property owner
6 shall have thirty (30) days to remedy the violation.

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

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

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

21 (d) Any tree or other plant growth that is dead, severely diseased, or severely
22 damaged and that is in danger of damaging any power line or has damaged a power line
23 shall be cut down, destroyed, or removed by a contractor with a Class A Tree Trimmer
24 License. Upon receipt of a notice of violation, the property owner shall have ten (10) days

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1 to remedy the violation. If after ten (10) days the violation has not been remedied, the
2 County may remove the offending tree and shall place a lien on the property in the amount
3 of the removal cost. The County shall have the authority to immediately remove any
4 dead, severely diseased, or damaged tree and shall place a lien on the property in the
5 amount of the removal cost if:

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

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

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

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

17 Section 9. SEVERABILITY.

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

1 Section 10. INCLUSION IN CODE.

2 It is the intention of the Board of County Commissioners that the provisions of this
3 Ordinance shall become and be made a part of the Broward County Code; and that the
4 sections of this Ordinance may be renumbered or relettered and the word "ordinance"
5 may be changed to "section," "article," or such other appropriate word or phrase in order
6 to accomplish such intentions.

7 Section 11. EFFECTIVE DATE.

8 This Ordinance shall become effective as provided by law.

9
10 ENACTED

11 FILED WITH THE DEPARTMENT OF STATE

12 EFFECTIVE

PROPOSED

13
14 By /s/ Joseph K. Jarone 03/22/18
15 Joseph K. Jarone (date)
16 Assistant County Attorney

17 By /s/ Maite Azcoitia 03/22/18
18 Maite Azcoitia (date)
19 Deputy County Attorney

20
21
22 JKJ/gmb
23 03/22/18
24 Trees Near Power Lines Ordinance.doc
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