

ORDINANCE NO. 2010-_____

AN ORDINANCE AMENDING CHAPTER 94 ARTICLES II & III, SPECIFICALLY DELETING SECTIONS 94-48 AND 94-63 MAINTENANCE OF PROPERTY; CREATING ARTICLE II, DIVISION 7 PUBLIC NUISANCE; CREATING SECTION 94-119 MAINTENANCE OF PROPERTY IN ORDER TO ADD PURPOSE AND INTENT STATEMENT, TO ADD DEFINITIONS FOR: (ENCLOSED BUILDING, IMPROPER OUTDOOR STORAGE, LITTER TRASH JUNK OR DEBRIS, OUTSIDE AND OUTDOOR), TO ADD REQUIREMENTS TO MAINTAIN PROPERTY, AND TO ADD NOTICE PROCESS; AMENDING SECTION 94-183 PUBLIC LITTERING PROHIBITED; PUBLIC NUISANCE IN ORDER TO ADD ENVIRONMENTAL AND HURRICANE HAZARDS TO THE LIST OF ITEMS CONSIDERED A PUBLIC NUISANCE; AMENDING CHAPTER 114 ARTICLE II SPECIFICALLY AMENDING SECTION 114-26 DEFINITIONS IN ORDER TO ADD DEFINITIONS FOR: (CERTIFIED EXEMPT, EXCESSIVE OVERGROWTH, GRASS, IMPROVED LOT, NATIVE VEGETATION, NATIVE VEGETATION CONDITION, TREE, UNDESIRABLE PLANT, UNDERSTORY, UNDISTURBED LOT IN ITS NATIVE STATE, VACANT UNIMPROVED LOT, VEGETATION, VEGETATIVE HEIGHT AND VIABLE); AMENDING SECTION 114-28 DECLARED PUBLIC NUISANCE TO CLARIFY INTENT AND PROVIDE ADDITIONAL CRITERIA; AMENDING SECTION 114-29 NOTICE TO REMOVE AND APPEAL PROCESS; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA.

WHEREAS, the Board of County Commissioners has determined it is a public benefit to improve the clarity of the code for the general public's understanding of same; and

WHEREAS, the Board of County Commissioners has determined that code enforcement staff needs clearer standards in the enforcement proceedings of public nuisances; and

WHEREAS, the Board of County Commissioners has determined that additional criteria to regulate maintenance of property issues need to be implemented; and

WHEREAS, the Board of County Commissioners, on October 29, 2009 met in special session to discuss code enforcement issues and directed the preparation of an amendment to Brevard County Code as it relates to public nuisances and maintenance of property; and

WHEREAS, the Local Planning Agency, on _____, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Building & Construction Advisory Committee, on _____, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Board of County Commissioners has reviewed the recommendations of the Local Planning Agency and the Building & Construction Advisory Committee and has considered the comments of interested citizens in public hearing; and

WHEREAS, the Board of County Commissioners has determined that the proposed amendment serves the public health, safety and welfare of the citizens of Brevard County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Underline indicates additions.

~~Strike through indicates deletions.~~

SECTION 1. Chapter 94, Article II, Division 2, Section 94-48 Maintenance of property. Code of Ordinances of Brevard County, Florida, is hereby deleted in its entirety:

~~Sec. 94-48. Maintenance of property.~~

~~All owners, residents or occupants of property utilized or zoned for residential use located within the unincorporated area of the county, whether improved or unimproved, shall maintain their property in a litter free condition, including vacant areas, sidewalks, grass strips and contiguous alleys and curbs.~~

SECTION 2. Chapter 94, Article II, Division 3, Section 94-63 Maintenance of property. Code of Ordinances of Brevard County, Florida, is hereby deleted in its entirety:

~~Sec. 94-63. Maintenance of properties.~~

~~—— (a) —— *Maintenance of premises.* All owners, lessees, tenants and occupants of commercial establishments or property used or zoned for commercial or industrial use located within the unincorporated area of the county, whether improved or unimproved, shall maintain the property in a litter free condition, including vacant areas, sidewalks, parking lots, grass strips, contiguous alleys and curbs. Any solid waste or litter disposed of on such properties shall immediately be picked up by the owner, resident or occupant of the property and placed in a solid waste receptacle, commercial container or compactor box for collection by the collector or removed and disposed of at the county's solid waste management facilities by the owner, resident or occupant.~~

~~—— (b) —— *Containment of litter.* All commercial establishments shall store their solid waste in a controlled manner so as to eliminate wind-driven litter in and about their establishments. The owner or occupant of any commercial establishment shall provide adequate litter receptacles for litter and other loose solid waste where the potential of litter generation exists, such as loading or~~

~~unloading areas, parking lots or other areas used by the public.~~

SECTION 3. Chapter 94, Article II, Division 7, Public Nuisance. Code of Ordinances of Brevard County, Florida, is hereby created.

SECTION 4. Chapter 94, Article II, Division 7, Section 94-119 Maintenance of property. Code of Ordinances of Brevard County, Florida, is hereby created:

Sec. 94-119. Maintenance of property.

(a) Purpose & Intent.

It is hereby found that flies, mosquitoes, other harmful insects, vermin, blighted conditions, noxious odors, unsanitary conditions, conditions that adversely affect and impair the economic welfare of adjacent property, or create fire hazards, environmental hazards, potential hurricane hazards, and other such conditions caused by litter, trash, junk, and/or debris that pose a safety, health, and welfare concern for the citizens of the county as determined by a code officer given reasonable normal perception to be a public nuisance. Abatement of such conditions is necessary and hereby found and declared to be a public purpose.

(b) Definitions.

The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Improper Outdoor Storage means the excessive accumulation of material(s) or item(s) defined as litter trash junk or debris that are stored or placed outside unless such outdoor storage is on properties specifically zoned or permitted to store, accumulate or dispose of such items such as junk yards, automobile wrecking yards, metal salvage yards, or solid waste management facilities.

Litter Trash Junk or Debris for the purposes of this section expands upon the definition of "litter" as stated in section 94-1 to assist code enforcement staff in the determination of public nuisances and maintenance of property issues. Additional examples are: furniture (not designed/constructed to remain outdoors); yard trash, land clearing debris, dilapidated derelict or inoperable trailer(s), inoperable motor vehicle(s), motor vehicle part(s), dilapidated derelict or inoperable vessel(s), inoperable aircraft(s), inoperable farm machinery or equipment, any broken or inoperable abandoned or discarded items, solid waste, or hazardous material.

"*Outside*" or "*Outdoor*" means all areas not within a completely enclosed building. Enclosed buildings do not include tents or screened areas and does not include carports, pole barns, awnings, lean-tos, or other such structures where one or more sides is open to the outside or outdoors.

(c) Requirement to maintain property.

- (1) “Improper outdoor storage” of litter, trash, junk, or debris on any lot, tract, or parcel of land, either improved or unimproved, is hereby declared to be public nuisances and is prohibited, unless such storage is exempt as determined by this article. Improper outdoor storage is prohibited in vacant areas, sidewalks, grass strips and contiguous alleys and curbs.
- (2) It shall be the duty of the record property owner, lessees, tenants and occupants to maintain their property in a litter free condition and to eliminate all litter, trash, junk or debris that is improperly stored outside or outdoors.
- (3) Accumulation or storage of litter, trash, junk, or debris on property zoned and permitted for junk yards, automobile wrecking yards, or other permitted zoning classifications are exempt from the provisions of this section.
- (4) *Containment of litter.* All commercial establishments shall store their solid waste in a controlled manner so as to eliminate wind-driven litter in and about their property. The owner or occupant of any commercial establishment shall provide approved litter receptacles adequate to contain all litter and other loose solid waste, where the potential of litter generation exists, such as loading or unloading areas, parking lots or other areas used by the public.

SECTION 5. Chapter 94, Article III, Division 3, Section 94-183 (d) Public littering prohibited; public nuisance. Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

Sec. 94-183. Public littering prohibited; public nuisance.

(d) The accumulation of litter or clean debris, upon any lot, tract or parcel of land, improved or unimproved, within the unincorporated area of the county, to the extent and in the manner that such lot, tract or parcel of land is or may become infested or inhabited by rats, mice, other rodents, snakes, vermin, pests or wild animals, or may furnish a breeding place or harboring place for flies, mosquitoes or other harmful insects, or threatens or endangers the public health, safety or welfare, or may cause disease, environmental hazards, potential hurricane hazards, or adversely affects and impairs the economic welfare of adjacent property, is hereby declared to be a public nuisance and thereby prohibited.

SECTION 6. Chapter 114, Article II, Section 114-26 Definitions. Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

Sec. 114-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Certified Exempt means a lot that has been determined to be overgrowth exempt due to specialized landscaping and holds a two year letter or certificate of verification from IFAS (Institute of Food and Agricultural Science-University of Florida).

Excessive overgrowth means grass, undesirable plants, weeds, vines, understory, or other vegetation that is not cultivated or regularly tended and exceeds the maximum vegetative height standards set forth in subsection 114-28(b)(3).

Grass means any of the numerous plants of the family Gramineae.

Improved Lot means a lot that has been previously cleared or partially cleared of plant life by humans and has a structure or other improvements located thereon.

Native vegetation means those plant species indigenous to Florida as determined by the best available scientific and historical documentation and suitable for planting in Brevard County. The Atlas of Florida Vascular Plants maintained by the institute for Systemic Botany, University of South Florida shall be used as a reference.

Native Vegetative Condition means land containing predominantly native vegetation.

Tree means a perennial, woody plant that is generally characterized by having a self-supporting trunk with secondary branches.

Undesirable plant means the "Invasive: Not Recommended" or "Caution" species listed in the IFAS (Institute of Food and Agricultural Science-University of Florida) Plant List as may be amended. Plants shall be considered undesirable if not eligible for any use, limited use, or cautioned in any zone of Florida--North, central or south.

Understory means an underlying layer of low native vegetation usually associated with trees.

Undisturbed Lot in Its Native State means any lot that has not been previously cleared or removed of plant life, or has not had plant life previously maintained by humans.

Vacant Unimproved Lot means a lot that has been previously cleared of native plant life by humans but has no structure or other improvements.

Vegetation means any plant material, including but not limited to trees, shrubs, vines, herbs and grasses.

Vegetative Height means the vertical measurement from the sand/soil surface to the tallest portion of the plant.

Viable means plant material exhibiting a healthy and vigorous condition having live foliage out to the tips of branches and stems.

Weeds includes but is not limited to all rank vegetable growth that gives off obnoxious or unpleasant odors, or that constitutes a possible source of disease or distress to human beings, or such unattended vegetation that may conceal pools of water, trash or any other deposits which are detrimental to the health and safety of the public.

SECTION 7. Chapter 114, Article II, Section 114-28 Declared Public Nuisance. Code of Ordinances of Brevard County, Florida, is hereby amending the title and replacing text to read as follows:

Sec. 114-28. Declared public purpose; public nuisance (excessive overgrowth, dead standing trees, stagnant swimming pools).

~~———— (a) ——— It is hereby found that the abatement of flies, mosquitoes and other harmful insects within the unincorporated area of the county is advisable and necessary for the maintenance of the comfort, safety, health and welfare of the citizens of the county, and such abatement is hereby found and declared to be for a public purpose.~~

~~———— (b) ——— The existence of excessive accumulation or untended growth of weeds, undergrowth or other dead or living plant life, including trees, upon any lot, tract or parcel of land, improved or unimproved, within 100 feet of any improved property within the unincorporated area of the county, or within 100 feet of any federal, state or county highway, street, road or road right of way, to the extent and in the manner that such lot, tract or parcel of land is or may reasonably become infected or inhabited by rats, mice, other rodents, snakes, vermin, pests or wild animals, or may furnish a breeding place or harboring place for flies, mosquitoes or other harmful insects, or threatens or endangers the public health, safety or welfare, or may reasonably cause disease, or adversely affects and impairs the economic welfare of adjacent property or which tends to degrade the appearance of a neighborhood, is hereby declared a public nuisance and thereby prohibited. This section is not intended to apply to vegetation which has not been previously removed or maintained.~~

~~———— (c) ——— The existence of unsanitary, stagnant, wholly or partially manmade swimming pools which tend to produce disease vectors, biting insects or pests is declared a public nuisance.~~

~~_____ (d) It shall be the duty of the record property owner to reasonably manage and control excessive growths and accumulations and stagnant water as described above in subsections (b) and (c).~~

(a) Purpose & Intent.

It is hereby found that flies, mosquitoes, other harmful insects, vermin, blighted conditions, noxious odors, unsanitary conditions, conditions that adversely affect and impair the economic welfare of adjacent property, or create fire hazards, environmental hazards, potential hurricane hazards, and other such conditions caused by excessive overgrowth, dead or non-viable standing trees or other vegetation, unsanitary stagnant swimming pools are safety, health, and welfare concerns for the citizens of the county and have been determined to be a public nuisance. Abatement of such conditions is necessary and hereby found and declared to be for a public purpose.

(b) Excessive overgrowth prohibited.

- 1) The existence of excessive overgrowth upon any lot, tract or parcel of land, improved or unimproved, within 25 feet of any improved property within the unincorporated area of the county, or within 25 feet of any federal, state or county highway, street, road or road right-of-way is hereby declared a public nuisance and thereby prohibited. This section is not intended to apply to vegetation which has not been previously removed or maintained.
- 2) It shall be the responsibility of the property owner of record to cut, clear, and remove excessive overgrowth, unless such vegetation is exempt, as determined by this section.
- 3) The maximum vegetative height of grasses or weeds permitted on non-agriculture exempt lands shall be maintained so as not to exceed 10 inches in height except for undisturbed lots in its native state or other lands certified as exempt.
- 4) Exemptions:
 - a. A vacant unimproved lot that has reverted back to its native vegetative condition shall be exempt if that lot has not been cut in the past five years as determined by either a code officer given reasonable normal perception, or the Institute of Food and Agricultural Science-University of Florida (IFAS);
 - b. Vegetation within wetlands and storm water retention lake littoral zones;
 - c. Or shrubs, trees, palms or bushes (natural or cultivated) that extend or encroach beyond the perimeter of the owner's lot/parcel.

(c) Dead Standing Trees Prohibited.

(1) It shall be the duty of the record property owner to cut, clear and removal all dead or seriously damaged trees from their improved lot or vacant unimproved lot that pose immediate threat to the health, safety and welfare of the property owners or the general public. Prior to removal, immediate threat should be documented to include but not be limited to (1) photographs of the tree(s) including any areas that may be damaged, diseased, or infested (2) approximate measurements including tree height, spread, dbh, and (3) distance to structure(s) or other immovable target(s) if felled. The Natural Resources Management Office shall be consulted if removal would eliminate, destroy or damage existing native vegetation, wetland habitats, floodplains, required erosion control or stormwater management systems, or endangered or threatened species or their habitats.

(2) Where a dead standing tree is located on an undisturbed lot in its native state, it shall be the duty of the record property owner to cut, clear, and remove all dead standing trees within 25 feet of the common property line of an improved property or within 25 feet of any federal, state or county highway, street, road or road right-of-way when the tree is taller than the distance separating it/them from said abutting improved property or right-of-way.

(d) Unsanitary Stagnant Swimming Pools Prohibited.

Unsanitary stagnant swimming pools are hereby declared a public nuisance and it shall be the duty of the record property owner to maintain a swimming pool to prevent unsanitary stagnant conditions.

SECTION 8. Chapter 114, Article II, Section 114-29 (a) Notice to remove and appeal process. Code of Ordinances of Brevard County, Florida, is hereby amended to read as follows:

Whenever a code enforcement officer finds and determines that a public nuisance as described in this article exists, the officer shall notify the record owner of the subject property as set fourth in section 2-173, Code of Ordinances of Brevard County, Florida.

~~Sec. 114-29. Notice to remove and appeal process.~~

~~———— (a) ——— Whenever a code enforcement officer finds and determines that an overgrowth public nuisance as described in section 114-28 exists, he/she shall notify the record owner of the subject property and demand that the condition be remedied. The notice shall be given by both physical posting on the property upon which the public nuisance exists and by certified mail or personal delivery to the owner(s) as shown in the current tax records of the property appraiser's office.~~

- ~~(b) Notice required by subsection (a), above, shall include the following:~~
- ~~(1) Name(s) and address(es) of the owner(s) of the property, according to the tax records of the property appraiser's office.~~
 - ~~(2) Location of the property upon which the public nuisance exists.~~
 - ~~(3) A statement that a code enforcement officer has inspected the property and determined that a violation of section 114-28 exists and that said violation constitutes a public nuisance.~~
 - ~~(4) A description of the condition which causes the property to be in violation.~~
 - ~~(5) A requirement that the violation be remedied within 20 days from the date of the notice, failing which, the county will remedy the condition and assess against the record owner the costs thereof and an administrative charge.~~
 - ~~(6) That if the costs and administrative charge are not paid within 30 days of the invoice date, a special assessment lien will be imposed against the property.~~
 - ~~(7) A schedule of charges which may be assessed against the record owner in the event the county has to remedy the violation.~~
 - ~~(8) An estimate of the total cost, based on the schedule of charges, if the violation is remedied by the county. Such estimate is not to be construed as the final cost which may be assessed, but only as a good faith approximation of such cost. The final assessment may be greater or lesser than the estimate.~~
 - ~~(9) A statement that the record owner of the property may appeal the determination of public nuisance by submitting a written petition for a hearing before the code enforcement special master to show that the condition does not constitute a public nuisance. Such request shall be addressed to the secretary to the code enforcement special master and shall state the name of the property owner, the location of the subject property and the specific grounds upon which the owner relies in order to show that the condition does not constitute a public nuisance.~~
- ~~(c) Within 20 days from the date of the notice, the owner of the property may submit a written request for a hearing before the code enforcement special master to show that the condition does not constitute a public nuisance. Such request shall be addressed to the secretary to the code enforcement special master and shall state the name of the property owner, the location of the subject property and the specific grounds upon which the owner relies in order to show that the condition does not constitute a public nuisance.~~

SECTION 9. Conflicting Provisions. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

SECTION 10. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 11. Area Encompassed. This ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

SECTION 12. Effective Date. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This ordinance shall take effect upon adoption and filing as required by law.

SECTION 13. Inclusion in code. It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida; and that the sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

DONE, ORDERED AND ADOPTED, in regular session, this * day of *, 2010.

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

Mary Bolin, Chairperson
(as approved by the Board on *)

(S E A L)

Reviewed for legal form and content by: _____