Ordinance to Amend Article 7, Part IV, Sections 7-26 through 7-29 of the Unified Development Ordinance (UDO) of the City of Boiling Spring Lakes, North Carolina

THAT WHEREAS, the City has enacted a Unified Development Ordinance (UDO) to promote the orderly development of property within the City; and

WHEREAS, Article 7, Part IV of the UDO currently requires the City to serve as intermediary in the review process with the U.S. Fish & Wildlife Service (USFWS) and private property owners for properties where land clearing activities are proposed; and

WHEREAS, changes to the USFWS review and authorization process have substantially affected the City's ability to process timely permits; and

WHEREAS, the public health, safety, and welfare are best served by removing the City from the federal authorization process while continuing to preserve significant trees, prohibiting premature land clearing, and ensuring that land clearing associated with projects subject to development plan approval occurs only after such plans have been approved; and

WHEREAS, the Planning Board has reviewed and unanimously recommended approval of the proposed amendments; and

NOW, THEREFORE, BE IT ORDAINED by the City Board of Commissioners of the City of Boiling Spring Lakes that Article 7, Part IV of the Unified Development Ordinance be amended as follows:

Article 7, Part IV. - Landscaping, Buffers, and Tree Protection

Proposed language is identified by underlined text and language to be deleted is shown as strikethrough text.

~~**Sec. 7-26 - Objective**~~

~~The governing body and the advisory boards of the city of Boiling Spring Lakes recognize the importance of the contribution made to the community by the abundance of trees and vegetation. In fact, the present character of Boiling Spring Lakes is dependent largely upon the existing trees and plantings in both publicly and privately-owned properties. It is this vegetation that gives the city the aesthetic appeal that contributes to its growth and economic prosperity. As economic growth occurs, the removal of this valued vegetation sometimes results, contributing to a depletion of a most valuable resource. The city feels it is necessary to both conserve and restore those valuable assets and declares the objective of this ordinance to be as follows:~~

~~(A) To encourage the conservation of existing trees and vegetation, when practicable;~~
~~(B) To provide visual and spatial buffering between adjoining and competing uses;~~
~~(C) To enhance the beautification of the city;~~
~~(D) To enhance property values and protect public and private investment;~~
~~(E) To preserve the identity and environment of the city;~~
~~(F) To provide a habitat for living things that might not otherwise occur in an urban environment;~~
~~(G) To ensure that planting areas are distributed within developing sites in a manner which will provide buffer noise and filter glare;~~
~~(H) To comply with the requirements of the Red Cockaded Woodpecker habitat conservation plan.~~

Sec. 7-26 - Purpose

The purpose of this section is to preserve significant trees, maintain the City's natural character, protect environmental resources, minimize unnecessary land disturbance, and ensure that land clearing associated with development occurs only in conjunction with approved development plans. Preservation of existing Significant Trees is encouraged and shall take precedence over removal whenever reasonably practicable. Development shall be designed to preserve existing Significant Trees to the maximum extent feasible while accommodating the reasonable use of the property.

~~Sec. 7-27 – Applicability~~

~~(A) Tree preservation is required for all land, developed or undeveloped within the city of Boiling Spring Lakes as specified in section 7-29. No tree shall be removed, regardless of size, except for in compliance with this ordinance.~~
~~(B) Landscape plans and installation is required for all new development within the city of Boiling Spring Lakes except for the following:~~
~~1. Single-family and two-family dwellings~~
~~2. Accessory structures~~
~~3. Any enlargement of a principal building of less than twenty (20) percent of its existing size provided such enlargement will not result in parking improvements~~
~~4. A change in principal use where such change would not result in a change in lot coverage, parking, or other site characteristics~~
~~5. The following site areas are required to be addressed in accordance with the provisions of this section for all non-residential and multi-famiy uses:~~
~~a. Street yards~~
~~b. Foundation planting~~
~~c. Vehicular surface areas (parking lots)~~
~~d. Buffer yards~~
~~e. Screening for dumpsters and outdoor storage areas~~

Sec. 7-27 - Applicability

(A) Except as otherwise provided herein, no person shall remove, clear, grub, or otherwise disturb vegetation except in accordance with all applicable provisions of the Ordinance. The removal of Significant Trees shall be subject to the provisions of the Ordinance regardless of zoning district or land use.

(B) The following activities are exempt from the land clearing authorization requirements of the Ordinance, provided they otherwise comply with the Significant Tree mitigation requirements:

1. Construction of a single-family or two-family dwelling on an individual lot, excluding lots within a major subdivision.
2. Construction of accessory structures serving an existing single-family or two-family dwelling.
3. Enlargement of an existing principal building by less than twenty percent (20%) of the existing gross floor area.
4. A change in principal use where site plan approval is not otherwise required by this Ordinance.
5. Removal of dead, diseased, or hazardous trees.
6. Forestry activities conducted on forestland taxed on the basis of its present-use value pursuant to Article 12 of Chapter 105 of the North Carolina General Statutes.
7. Forestry activities conducted in accordance with a forest management plan prepared or approved by a forester registered pursuant to Chapter 89B of the North Carolina General Statutes.

Sec. 7-28 – General provisions

~~(A) Whenever the landscaping requirements of this ordinance are applicable, no site shall be cleared or graded for the purpose of pending construction until a landscape plan and/or tree removal permit has been submitted and approved by the city.~~ Except for activities exempted under 7-27(B), no land clearing, grubbing, tree removal, or other disturbance of existing vegetation shall occur unless authorized through an approved development application.

(B) The owners and their agents shall be responsible for protecting and maintaining all landscape materials in accordance with the landscape plan approved by the city.

(C) Provision for other uses. Up to fifteen (15) percent of the area to be landscaped may be covered with surfaces specifically intended to afford intensive use and enjoyment by employees or the public (such as walking paths, bench and table pads, etc.).

(D) It is encouraged that stormwater management systems be integrated into the landscape plan.

(E) The ~~following~~ approved landscaping list shall be used as a guide in identifying and categorizing approved landscaping. Although the list may be expanded, as approved by the UDO Administrator, and recommended by the NC Cooperative Extension, applicants must show that plant materials meet the standards of the ordinance and are appropriate for the area. In no case shall invasive plants be permitted. Minimum height and diameter at breast height (DBH=four and five tenths (4.5) feet above ground) at planting for the following planting categories/list shall be as follows:

1. Canopy trees. At the time of planting, the tree shall have a minimum three (3) inch DBH with a height of eight (8) to ten (10) feet. Canopy trees shall be of a species having an average minimum height of thirty (30) feet and a minimum mature crown spread of twenty (20) feet.
2. Understory trees. At the time of planting, the tree shall have a minimum two (2) inch DBH. Understory trees shall be of a species having an average minimum height of ten (10) feet and a minimum mature crown spread of twelve (12) feet.
3. Shrubs. Shrubs shall have a minimum mature height of twenty-four (24) inches and a minimum planting height of eighteen (18) inches.

(F) The city of Boiling Spring Lakes prefers to maintain existing trees in order to satisfy requirements and credit may be given for existing trees located between the proposed principal building and the street right-of-way. The retention of viable natural vegetation is encouraged when practicable. No credit shall be given for any tree which is unhealthy. Credit shall be given on a "tree-per-tree basis" or "one (1) to one (1) ratio."

(G) Notwithstanding the provisions of this section, nothing shall be planted adjacent to an approved driveway and street connection which would impede vision between a height of two and half (2 ½ and ten (10) feet in a triangular area formed by a diagonal line between a point on the driveway perimeter and the curb line or pavement edge of the street twenty-five (25) feet from where they intersect.

(H) Trees and shrubbery in or along streets and sidewalks.

1. Citizens may plant trees in front of their lots and along the sidewalks adjacent to their property under the supervision of the UDO Administrator, but no trees shall be planted in the streets, gutters, or ditches of the city. The UDO Administrator shall notify all persons having trees in front of their lots to have them properly trimmed either by a company engaged in the business of tree trimming or by the property owners themselves following acceptable pruning standards. During normal street right-of-way maintenance by the city, all city employees involved in trimming of trees shall operate under the direction of the UDO Administrator and in accordance with acceptable pruning standards. In addition, all other public service or utility companies shall also follow the guidelines for acceptable pruning standards and shall notify the city prior to maintenance within their jurisdiction.
2. The cutting, trimming, destruction, lopping of branches or mutilation in any manner of trees or shrubbery standing along, in or extending over the street

right-of-way of any municipal or state maintained street by any person is hereby prohibited, except when done under the supervision and according to the direction of the UDO Administrator.

(I) Nothing in this ordinance shall be construed to authorize any activity prohibited by federal, state, or local law. Property owners and other persons conducting tree removal or land-disturbing activities are solely responsible for complying with all applicable federal, state, and local laws, regulations, permits, and approvals, including, where applicable, the requirements of the Endangered Species Act and other laws protecting threatened or endangered species and their habitats.

(J) The absence of a permit or authorization requirement under this ordinance shall not be construed as authorization to remove trees or conduct land-disturbing activities in violation of any applicable federal, state, or local law.

~~**Sec. 7-29 Tree preservation**~~

~~(A) The purpose of this section is to protect, preserve, and enhance the forested character and natural resources of the city. The city finds that the presence of trees improves air quality, conserves energy, provides wildlife habitat, reduces soil erosion, enhances storm water retention and drainage, and preserves and enhances property values. The policy of the City is to balance the private property rights of landowners with the public health, safety, and welfare that is promoted by the existence and maintenance of all trees in the city.~~

~~(B) *U.S. Fish and Wildlife Service restrictions*. All applications for cutting or clearing will first be reviewed by the UDO administrator or his/her designee, to determine if the subject parcel includes any lands identified by USFWS as required habitat for the Red Cockaded Woodpecker. If the property does fall within the designated woodpecker area, the owner/applicant must contact USFWS to obtain authorization to cut any trees or to clear the property.~~

~~(C) No tree containing a Red Cockaded Woodpecker nest, regardless of diameter, may be cut without the express written consent of the U.S. Fish and Wildlife Service.~~

~~(D) For those properties not located in designated Red Cockaded Woodpecker habitat, and for properties within the woodpecker area that have secured written authorization from USFWS to proceed with tree removal, the following provisions of this section shall apply:~~

~~1. *Undeveloped parcels*. A parcel of land that does not contain a principal structure or dwelling. Any tree of up to and including 7.9 inches may be removed without a permit.~~

~~a. On parcels of twenty-five (25) acres or greater zoned C-1, where development is not yet subject to an approved site plan, a permit shall be issued for the removal of trees >7.9 inches DBH upon a finding of the following:~~

i. If significant trees are proposed to be removed, the applicant shall submit with the application, a survey indicating the species, size, and condition of the significant tree(s). Removal of significant trees shall be mitigated in accordance with section 7.29(E), unless the tree(s) is/are shown to be dead, dying, or severely damaged or diseased. Tree mitigation may occur at a future date, no later than twenty-four (24) months following issuance of a tree removal permit, and may be addressed and/or incorporated into a future site plan for the property to be submitted no less than twenty-four (24) months following issuance of a tree removal permit.

1. Tree protection for any retained tree(s) shall be in accordance with section 7.36.

ii. No trees proposed for removal are located within required street yards or required bufferyards, unless the property owner agrees to submit a site plan for development of the property within twenty-four (24) months.

3. *Significant trees*. Any tree at least twenty-four (24) inches in DBH, and dogwoods, live oaks, and American Hollies at least eight (8) inches DBH, anywhere on the site shall be considered protected, and must be preserved or their removal mitigated as in accordance with section 7-29(E), regardless of location on the site, unless the trees are shown to be dead, dying or severely damaged or diseased as a result of natural factors.

4. *New construction*.

a. Clearing, fill, grade, and driveway permits must be obtained from the UDO administrator before any land-disturbing activity commences.

b. Before a zoning permit is issued, an up-to-date tree survey, plot plan, or site plan must be submitted and approved by the UDO administrator or appropriate approval authority (planning board, board of adjustment, and/or board of commissioners). The plan must show the footprint for the principal structure, septic systems, detached buildings (sheds, garages) driveways, and all trees identified by species greater than eight (8) inches DBH. Any tree not being used as a Red Cockaded Woodpecker nest may be removed within fifteen (15) feet of the principal structure or the septic system and within five (5) feet of detached buildings (sheds, accessory structures, garages) and driveways subject to the provisions of this section. Significant trees, as defined herein, will require mitigation.

5. *Existing development*. A parcel of land containing a principal structure or dwelling. Any tree with a DBH of up to and including 7.9 inches may be removed without a permit.

a. Prior to issuance of a tree removal permit, a plot plan (hand sketched if necessary) must be submitted showing the footprint for the principal structure, septic system, detached buildings, pools, driveways, and trees proposed for removal. Any tree not being used as a Red Cockaded Woodpecker nest may be removed within fifteen (15) feet of principal structures septic systems, and pools and within five (5) feet of detached buildings and driveways subject to the provisions of this section. Significant trees, as defined herein, and trees removed within 5.1 feet and fifteen (15) feet of a pool will require mitigation.

i. On residential parcels with a principal structure, the UDO Administrator may approve the removal of trees outside of these parameters upon submittal of documentation from the applicant's insurance company that the tree(s) pose a risk to the structure, and the policy is in jeopardy of cancellation, and for usable open area upon a finding that a minimum of one (1) inch DBH per two hundred twenty (220) square feet of lot area will be preserved. Only trees 7.9 inches and larger shall be used in calculating the preserved DBH, and all trees 7.9 inches and larger located within the distance parameters in (D)(4)(a) shall not count towards the preserved DBH.

(E) *Mitigation*. The removal of any "significant tree" as defined by this ordinance must be mitigated in accordance with the following standards:

1. The total diameter at breast height (DBH) of all significant trees proposed for removal shall be totaled. The resultant number of DBH inches to be removed must be planted back on the site with an appropriate number of the significant tree species type removed to replace the DBH of those trees removed. Lots with one- and two-family dwellings (or proposed for such not as part of a major subdivision) shall only be required to mitigate twenty-five (25) percent of the total DBH of significant trees removed. A minimum of one (1) significant tree of the same species removed shall be installed through mitigation.

2. Any mitigation trees required as a result of the removal of significant tree(s) shall not be counted to meet the requirements of the street yard, buffers or interior parking requirements. These

~~trees must be provided in addition to any tree required by this ordinance.~~

~~3. In situations where site features make it impractical to plant trees back on the site, payment may be made to the tree management fund, upon approval of the UDO Administrator, in an amount sufficient to cover the cost of the required replanting.~~

~~(F) *Exceptions*. The requirement to obtain a clearing permit shall not apply to the activities listed below.~~

~~1. The removal of dead, severely damaged, or diseased trees, and trees which are injurious to sanitary sewers, electrical power lines, gas lines, water lines, streams or conveyance channels. The UDO Administrator may require determination be made by a certified arborist in cases of dead, damaged, and/or diseased trees.~~

~~2. Parcels with an approved site plan, provided such approval has not expired, and all clearing is done in strict accordance with the approved plan.~~

~~3. 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 General Statutes, or 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 General Statutes.~~

Sec. 7-29 Tree preservation

(A) Land clearing shall be authorized only through approval of one of the following, as applicable:

1. Minor Site Plan;
2. Major Site Plan;
3. Subdivision Plan;
4. Special Use Permit;
5. Planned Development; or
6. Any other development approval requiring site plan approval under this Ordinance.

(B) Applications for Minor Site Plans, Major Site Plans, Subdivision Plans, Special Use Permits, Planned Developments, and any other development requiring site plan approval shall include a Landscape Plan.

(C) Landscape Plans shall contain the information required in Appendix B – Submittal Requirements.

(D) Landscape Plans shall address, as applicable:

1. Street yards;
2. Foundation landscaping;
3. Vehicular surface areas, including parking lots;
4. Buffer yards;
5. Screening of dumpsters and outdoor storage areas.

(E) Authorization to clear shall be limited to those areas shown on the approved plans.

(F) No property shall be cleared in anticipation of future development prior to approval of the applicable development plan.

Sec. 7-29-1 Significant Trees

(A) Regardless of zoning district or land use, Significant Trees shall be preserved whenever reasonably practicable. When the removal of a Significant Tree cannot reasonably be avoided, the tree may be removed provided the mitigation requirements of the ordinance are satisfied.

(B) For purposes of this section, Significant Tree means:

1. Any Flowering Dogwood (*Cornus florida*) having a diameter at breast height (DBH) of eight (8) inches or greater;
2. Any American Holly (*Ilex opaca*) having a DBH of eight (8) inches or greater;
3. Any Live Oak (*Quercus virginiana*) having a DBH of eight (8) inches or greater; or
4. Any tree of any species having a DBH of twenty-four (24) inches or greater.

Sec. 7-29-2 Mitigation

(A) For construction of an individual single-family or two-family dwelling, and associated accessory structures, mitigation shall be required at twenty-five percent (25%) of the mitigation otherwise required by the ordinance. For the removal of all other Significant Trees, mitigation shall be provided at one hundred percent (100%) of the mitigation required by the ordinance.

(B) Where application of the twenty-five percent (25%) standard results in a fractional tree, the requirement shall be rounded up to the next whole tree.

(C) Mitigation shall be calculated individually for each Significant Tree removed and then totaled. For Mitigation shall be based upon the diameter at breast height (DBH) of each Significant Tree removed and shall comply with the following table:

DBH of Tree Removed	**Minimum Replacement Required**
8" to 12"	One (1) 3-inch caliper tree
Greater than 12" to 24"	Two (2) 3-inch caliper trees
Greater than 24" to 36"	Three (3) 3-inch caliper trees
Greater than 36" to 48"	Four (4) 3-inch caliper trees
Greater than 48"	Five (5) 3-inch caliper trees, plus one (1) additional 3-inch caliper tree for each additional twelve (12) inches, or fraction thereof

Sec. 7-29-3 Credit Toward Required Landscaping

(A) Trees planted to satisfy Significant Tree mitigation requirements shall not be credited toward the minimum landscaping requirements of this Ordinance, including, but not limited to:

1. Street yard landscaping;
2. Foundation landscaping;
3. Parking lot landscaping;
4. Buffer yards;
5. Screening requirements;
6. Any other required landscaping.

(B) Mitigation trees shall be provided in addition to all landscaping otherwise required by this Ordinance.

Sec. 7-29-4 Alternative Compliance

Where the UDO Administrator determines that site constraints, utilities, easements, environmental features, or other practical considerations make on-site replacement impractical, the applicant may satisfy all or a portion of the mitigation requirement through payment into the City's Tree Management Fund.

The payment amount shall be sufficient to cover the purchase, installation, and establishment of the required replacement trees.

The applicant shall submit a cost estimate prepared by one of the following:

1. An ISA Certified Arborist;
2. A North Carolina Registered Forester;
3. A North Carolina Licensed Landscape Architect; or
4. A qualified landscape contractor or nursery professional acceptable to the UDO Administrator.

Replacement trees shall be installed prior to the issuance of a Certificate of Occupancy unless an alternative installation schedule is approved by the UDO Administrator due to seasonal planting conditions or other practical considerations.

_____
Jeff Winecoff
Mayor

ATTEST:

_____
Tanya Shannon
City Clerk

DATE:

_____