

ORDINANCE # 2008-12

AN ORDINANCE TO AMEND CHAPTER 19, ARTICLE I, TREE PROTECTION, OF THE CODE OF ORDINANCES OF THE CITY OF WALTERBORO, SO AS TO IMPROVE THE PROCEDURES FOR TREE PROTECTION.

WHEREAS, the Tree Committee has studied improvement that strengthen the Tree Protection Ordinance; and,

WHEREAS, the Tree Committee recommends the following changes to the Code of Ordinances in order to clarify portions of the Ordinance.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the City of Walterboro, in Council Assembled, that the following amendments to the Code of Ordinances will become effective upon passage of this ordinance:

CHAPTER 19. WEEDS. TREES. VEGETATION, is hereby amended by removing Article I in its entirety and replacing it with:

ARTICLE I. TREE PROTECTION.

19.101. SHORT TITLE.

This article shall be known as and may be cited as the City of Walterboro Tree Protection Ordinance.

19.102. APPLICABILITY.

This article shall apply to all trees located within rights of way, parks, public places and private property located within the corporate limits of the City of Walterboro as amended.

19.103. EXEMPTIONS.

Utility companies, electric suppliers and governmental agencies in the course of constructing or maintaining easements for water, sewer, electricity, gas, drainage, telephone or television transmission or rights-of-way shall only be exempt from the provisions of this article if the applicable company, supplier or agency has executed an agreement with the city which, at a minimum: recognizes the need to minimize trimming of protected grand trees which do not substantially interfere with the intended purposes of construction and maintenance; follows ISA Best Management Practices for utility pruning; identifies the saving of grand trees as a factor to be considered in the design process; and allows for a consultation process with the city prior to the commencement of major construction or maintenance or the removal of grand trees. A breach of such agreement constitutes a violation of this article and a loss of the exemption provided for by this Section 19.103.

19.104. DEFINITIONS.

Clear-Cutting shall mean the removal of one-half or more of the protected trees on a lot or parcel. (APPROVED 12/09/08)

Commercial Nursery shall mean a place where young trees or plants are grown for sale. Commercial nurseries must be properly zoned and must meet all city business license regulations.

City Tree Fund shall mean the fund set up by the city into which is deposited or credited the funds collected under Sections 19.106.d. and 19.110.c. of this Tree Protection Ordinance and any other funds collected by the city and designed to go into the fund by the City Council or City

Manager; out of which payments shall only be made for the sole purpose of purchasing, planting, installing, maintaining or removing trees as necessary along streets, in public parks and other City owned or controlled public places, within the city limits of the City of Walterboro.

Commercial Timber Operation shall mean the process of removing timber for the purpose of sale of the resource for lumber, poles or forestry by-products. Commercial timber operations are limited to lots of two (2) acres or larger.

Diameter at Breast Height or DBH shall mean diameter of the main trunk of a tree at a height of fifty-four (54) inches above the normal ground height at the base of the tree.

Flowering Trees shall mean any tree species designated as such by City Council or the Tree Committee, and shall include, but not be limited to, the following:

AMERICAN TEA OLIVE	OSMANTHUS AMERICANUS
BLACK LOCUST	ROBINIA PSEUDOACACIA
CAROLINA SILVERBELL	HALESIA CAROLINA
CRABAPPLE	MALUS ANGUSTIFOLIA
DOGWOOD	CORNUS FLORIDA
GRANCY GRAYBEARD	CHIONANTHUS VIRGINICUS
HAWTHORN	CRATAEGUS SPP
LOBLOLLY-BAY	GORDONIA LASIANTHUS
PAWPAW	ASIMINA TRILOBA
PERSIMMON	DIOSPYROS VIRGINIANA
RED BAY	PERSEA BORBONIA
REDBUD	CERCIS CANADENSIS
SERVICEBERRY	AMELANCHIER ARBOREA
SOUTHERN CATALPA	CATALPA BIGNONIOIDES
SOUTHERN MAGNOLIA	MAGNOLIA GRANDIFLORA
SWEET BAY MAGNOLIA	MAGNOLIA VIRGINIANA
WILD PLUMS AND CHERRIES	PRUNUS SPP

NOTE: Some of these species attain diameters at breast height (DBH) in excess of 10 inches when mature.

Grand Tree shall mean any tree having a diameter breast height (DBH) of twenty-four (24) inches or larger.

Protected Tree shall mean any flowering tree two (2) inches in diameter at breast height (DBH) or larger, and all other trees with a DBH of ten (10) inches or larger. (See Section 19.104.a. for a list of flowering trees.)

Tree shall mean a member of a species of perennial woody plants which at maturity are generally 15 to 20 feet or more in height, with a single trunk, un-branched for at least three (3) feet above the ground, and having a more or less definite crown. (*The specifications apply to the species, not to every individual within the species.*)

19.105. TREE REMOVAL.

- a. It shall be unlawful for any person to fell, injure or destroy any living protected tree within the corporate limits of the City of Walterboro, except by permit as provided hereinafter.

- b. Permits may be issued by a City Code Enforcement Officer/Building Official and/or other designee(s) of the City Manager without consultation of the Tree Committee to a tree owner or his agent when one or more of the following conditions exist:
1. Tree(s) is/are dead.
 2. Tree(s) pose(s) an imminent safety hazard to nearby buildings, persons, utility lines or vehicular traffic.
 3. Trees are located in the footprint of a proposed building or drive which cannot be reasonably relocated.
 4. Trees are being cut as a commercial timber operation; provided a twenty-five (25) foot wide perimeter buffer of all existing trees is maintained in an undisturbed manner. All proposed commercial timber operations and all requests for tree removal permits for trees located in Walterboro's historic districts must be reviewed by the Tree Committee. The Tree Committee may apply restrictions to safeguard the integrity of the historic districts.
 5. Trees grown specifically for sale by commercial nurseries are exempt from the provisions of this article with respect to their removal from the commercial site upon which they are grown.
 6. Protected trees required to be removed to carry out a permitted wetland alteration and/or mitigation plan approved by the Army Corps of Engineers or SC Office of Coastal Resource Management are exempt from the provisions of this article.
 7. The topping or removal of trees which violate the provisions of Airport Zone Height Restrictions.
 8. Removal because of density or interference with the development of other trees.
 - 9. Removal of pine trees, unless permit is for multiple trees in which removal would constitute clear-cutting.**
 - 10. Trees identified by the South Carolina Exotic Pest Plant Council Non-Native Plant Species List. (APPROVED 12/09/08)**
- c. All tree permit applications for lot clearing and/or removal of multiple trees, for the development or redevelopment of property, except individual single family homes and single unit duplex construction projects, shall be accompanied by a tree survey. Surveys for non-residential and multi-family residential development shall be prepared by a SC licensed landscape architect, surveyor or civil engineer. The survey shall indicate the following:
1. the location, diameter at breast height (DBH) and species (common name) of all protected trees at the time of the survey.
 2. a clear designation of all protected trees proposed for removal.
 3. a mitigation plan showing the location, size and species (common name) to be planted, if required by § 19.106, this code.
- d. For individual single family homes and single unit duplex construction projects, a reasonably accurate survey showing the location, size and species (common name) of any protected trees proposed to be removed must be shown. This survey need not be prepared by a licensed professional.
- e. Reasonable measures must be taken during construction or development to protect remaining trees from damage or injury.

19.106. MITIGATION.

- a. The removal of any protected tree authorized by permit shall be mitigated by planting new trees from the South Carolina Urban Species Guide. The replacement trees shall have a minimum two (2) inch DBH; provided, however, for protected flowering trees replacement flowering trees of one (1) inch DBH minimum are acceptable. The number of trees required shall have a total DBH equal twenty-five (25) percent of the total diameter of the trees requiring mitigation, except for grand trees which shall require a minimum of twelve (12) inches DBH of mitigation per grand tree.
- b. All mitigation shall be carried out on the site from which the trees were removed, unless otherwise approved by the Tree Committee.
- c. The removal of any protected tree authorized by permit on lots containing owner-occupied single-family dwellings may be exempt from mitigation on a case-by-case basis as determined by the Tree Protection Committee. The Tree Protection Committee will take into account the reason(s) for the removal, impact on the tree population density of the neighborhood and the lot configuration, financial hardship for the property owner, and any other pertinent factors in its mitigation recommendation. In no circumstances will mitigation exceed the parameters outlined in this Section 19.106.
- d. In lieu of on-site mitigation, the property owner or developer may elect to contribute an amount equal to fifty dollars (\$50.00) times the total diameter in inches of the required mitigation trees. The funds generated by this mitigation provision shall be deposited in the City Tree Fund.
- e. Protected trees removed without a permit shall be mitigated at a rate of one hundred (100) percent of the diameter of the protected trees removed, unless otherwise approved by the Tree Committee. Illegally removed trees shall be mitigated on site unless otherwise approved by the Tree Committee.
- f. All trees planted as mitigation shall be properly maintained for a minimum period of twenty-four (24) months after planting. Any trees which fail to survive for twenty-four (24) months shall be replaced during this period, and all replacement mitigation tree(s) shall be properly maintained and replaced as required of mitigation trees by this subsection.
- g. Trees removed because they are dead do not require mitigation if the loss of the tree is of no fault of the owner/resident or any other person in order to circumvent the purpose of this ordinance.
- h. The removal of pine trees by permit does not require mitigation, unless multiple trees are removed so as to constitute clear-cutting. The mitigation for the permitted clear-cutting of pine trees may be reduced or exempted on a case-by-case basis as determined by the Tree Protection Committee. The Tree Protection Committee will take into account the reason(s) for the removal, impact on the tree population density of the neighborhood and the lot configuration, financial hardship for the property owner, and any other pertinent factors in its mitigation recommendation. In no circumstances will mitigation exceed the parameters outlined in this Section 19.106.**
- i. Trees identified by the South Carolina Exotic Pest Plant Council Non-Native Plant Species List do not require mitigation. (APPROVED 12/09/08)**

19.107. ADMINISTRATION.

- a. The City Code Enforcement Officer/Building Official and/or other designee(s) of the City Manager shall administer this article and shall consult with the City Manager, the City Public Works Director and persons knowledgeable about trees as needed.
- b. During the period of an emergency, such as during the recovery period following a tornado, hurricane, ice storm, flood or any other act of nature or disaster, the requirements of this article may be waived by the City Manager for a period not to exceed thirty (30) days. The waiver period may be extended for a longer period by the action of City Council. In such cases, the waiver shall apply only to felled or severely damaged trees which pose a safety hazard.

19.108. APPEALS.

- a. Any person aggrieved or affected by a staff or Tree Committee decision pursuant to this article may appeal the decision to City Council. All requests for appeal shall be filed with the City Manager within thirty (30) days of notification of denial of the permit request.
- b. All appeals of staff decisions shall be reviewed by the Tree Committee prior to an appeal hearing before City Council.

19.109. TREE COMMITTEE.

- a. City Council shall appoint a Tree Committee comprised of seven (7) city residents from the following fields or areas:

1. landscape design	5. at large
2. utility company	6. at large
3. forestry	7. at large
4. city historic district	

Should a city resident not be available to serve under any of the categories, City Council may appoint a non-city resident.

- b. Tree Committee members shall serve two (2) year staggered terms.
- c. The Tree Committee shall have the following duties:
 1. advise the city on needed Tree Protection Ordinance revisions.
 2. review and recommend disposition of permit requests not specifically authorized under § 19.105.b, this Tree Protection Ordinance.
 3. review permit requests and advise City Council on appeals filed pursuant to this article.

19.110. VIOLATIONS AND PENALTIES.

- a. Should a violation of this Article be detected in progress, the City Code Enforcement Officer/Building Official and/or other designee(s) of the City Manager shall be authorized to issue a stop work order requiring that all tree removal activities immediately cease. Failure to comply with the order shall subject the violator to arrest by an authorized law enforcement official. The stop work order will not be lifted until the violator submits an approved mitigation plan, prevails during an appeal hearing or is found not guilty in municipal court.

- b. Permits issued pursuant to this Article for the removal of trees shall be valid for a period of one hundred eighty (180) days from the date of issuance. All permits are non-transferable. Performing tree removal under an invalid or expired permit shall be a violation of this ordinance.
- c. Violation of this Article or failure to comply with the lawful orders of the Code Enforcement Official within the prescribed time frame shall be classified as a misdemeanor and punished as provided in Article III. In addition the violator shall be required to provide mitigation as required pursuant to § 19.106, this code.

DONE, this 9th day of **September, 2008**.

Charlie Sweat

Charles H. Sweat, Jr.
Mayor

ATTEST:

Betty J. Hudson

Betty J. Hudson
City Clerk

First Reading: August 26, 2008
Second Reading: September 9, 2008
Public Hearing: September 9, 2008

ARTICLE II. WEEDS AND VEGETATION

Editor's Note. This article derives from 1976 South Carolina Code of Laws, §5-7-80.

19.201. WEEDS, DEBRIS, UNDESIRABLE VEGETATION AND OTHER NUISANCES.

- a. *Prohibited.* It shall be unlawful for the owner, tenant, or person in possession of any real estate within the corporate limits of the city to permit or allow tall or unsightly weeds or undesirable vegetation of any kind to grow on such premises within a distance of one thousand feet (1000') of any building or structure used or maintained for the purposes of business or habitation. It shall also be unlawful for such person to allow dead trees or tree limbs to remain on said property if they are close enough to fall across public property.
- b. *Removal Required.* If any person allows such weeds or vegetation to grow upon such premises or dead trees or dead limbs to remain on such premises, it shall be the duty of the Code Enforcement Officer to notify such person to remove such weeds, vegetation, dead trees or dead tree limbs. It shall be unlawful for any person receiving such notice to fail or refuse to remove such weeds, vegetation, dead trees or dead tree limbs within the times specified in such notice which time shall not exceed fifteen (15) days.
- c. *Removal by City.* If any person, after receiving notice provided herein fails to properly act upon the notice and abate the nuisance as required within the designated period of time, the city may send its agents and/or employees upon said property for the purpose of abating the nuisance and bringing such property into compliance with the terms of this article. Upon doing so, the city may charge and assess the owner the cost and expense of correcting the violation. The cost shall include the hourly wages plus benefits of employees involved in the clean up plus the costs of fuel and equipment. The costs of abatement, if not promptly paid by the owner, shall be a lien on the property that shall be added to and collected in the same manner as property taxes.

ARTICLE III. PENALTIES

19.301. PENALTY.

- a. Any person, persons, firm, company, representative of any firm or company and otherwise violating the provisions of this chapter shall, upon conviction, be guilty of a misdemeanor.
- b. Each day during which a violation of the provisions of this chapter occurs, or each separate instance, shall be considered a separate offense punishable by a fine not exceeding five hundred dollars (\$500.00) or imprisonment not exceeding thirty (30) days or both.

(1976 SC Codes §14-25-65)

ORDINANCE # 2008-14

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF WALTERBORO, SO AS TO IMPROVE THE PROCEDURES FOR TREE PROTECTION AS THEY RELATE TO PINE AND NON-NATIVE INVASIVE TREES.

WHEREAS, the Walterboro City Council has studied improvements that strengthen the Tree Protection Ordinance; and,

WHEREAS, pine trees pose a greater danger due to wind damage; and,

WHEREAS, it has been determined that the intent of the Tree Protection Ordinance is to protect and maintain the heritage of the City; and,

WHEREAS, the City is known primarily for its beautiful hardwood trees; and,

WHEREAS, non-native invasive trees are known to pose a threat to natural areas.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the City of Walterboro, in Council Assembled, that the following amendments to the Code of Ordinances will become effective upon passage of this ordinance:

CHAPTER 19. WEEDS. TREES. VEGETATION, is hereby amended by adding:

A. 19.104. DEFINITIONS.

Clear-Cutting shall mean the removal of one-half or more of the protected trees on a lot or parcel.

B. 19.105. TREE REMOVAL (b).

9. Removal of pine trees, unless permit is for multiple trees in which removal would constitute clear-cutting.
10. Trees identified by the *South Carolina Exotic Pest Plant Council Non-Native Plant Species List*.

C. 19.106. MITIGATION.

h. The removal of pine trees by permit does not require mitigation, unless multiple trees are removed so as to constitute clear-cutting. The mitigation for the permitted clear-cutting of pine trees may be reduced or exempted on a case-by-case basis as determined by the Tree Protection Committee. The Tree Protection Committee will take into account the reason(s) for the removal, impact on the tree population density of the neighborhood and the lot configuration, financial hardship for the property owner, and any other pertinent factors in its mitigation recommendation. In no circumstances will mitigation exceed the parameters outlined in this Section 19.106.

i. Trees identified by the South Carolina Exotic Pest Plant Council Non-Native Plant Species List do not require mitigation.

DONE, this 9th day of December, 2008.

Charles H. Sweat, Jr.

Charles H. Sweat, Jr., Mayor

ATTEST:

Betty J. Hudson

Betty J. Hudson, Municipal Clerk