

**NORTH CHARLESTON CITY COUNCIL
AGENDA ITEM**

Meeting of March 26, 2009

DATE: March 23, 2009

ITEM TITLE: Ordinance – Final Reading
Adding Definitions to Section 3-2 and Amending Sections 6-14 (d)(3) and 6-16 of the City of North Charleston Zoning Regulations Relating to Tree Protection

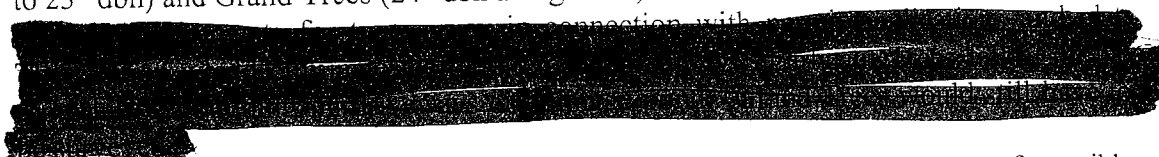
SUBMITTED BY: Planning and Zoning Department

CONTACT PERSON: Bill Gore, 740-2578

SUMMARY EXPLANATION

The proposed ordinance would amend the tree protection sections of the Zoning Regulations. First, definitions have been added for Diameter Breast Height, Grand Trees, Protected Trees, Tree Replacement, Tree Mitigation and Significant Trees. Second, the ordinance proposes amending Section 6-14 (d)(3) to require landscaping plans to identify all existing trees with a diameter breast height of 8 inches instead of the 10 inches now required. Finally, the ordinance proposes amending Section 6-16 to protect trees over 8 inches in diameter breast height, and amends tree mitigation.

Please find the attached file containing a proposed amendment to the City's tree protection ordinance. A table showing the standards of several other jurisdictions is also attached as information. The proposed amendment would:

1. Expand protection from 10" dbh to 8" dbh.
2. Lower the threshold for Grand Trees from 25" dbh to 24" dbh.
3. Introduce the terms Protected trees (any tree 8" dbh or greater), Significant Trees (8" dbh to 23" dbh) and Grand Trees (24" dbh and greater).
4. 
5. Specify requirements for tree replacement plan and call out various forms of possible replacement such as new planting, existing on-site mitigation trees, relocated trees, and tree bank contributions.
6. Specify requirements for tree protection plan detail as an element of the site plan submittal.
7. Addresses the cutting and replacement of Significant Trees and adds trees falling in the footprint of drainage ponds to list of types of cutting that do not require replacement for Significant Trees.
8. Address the cutting and replacement of Grand Trees, excludes Pine from definition of Grand Trees
9. Address the need for tree protection, specify minimum standards, and establish administrative authority to allow a drip-line encroachment equivalent to one quarter of

- the distance from the tree trunk to the drip-line contingent upon confirmation from an Arborist that the proposed encroachment would not adversely impact the tree.
10. Propose an administrative bonding procedure that would allow up to \$50,000 in landscaping improvements to be bonded. The funds or bond instruments would be handled by the Finance Director.
 11. Provides an exemption for cutting associated with Utility Company easement maintenance.
 12. Addresses cutting without a permit with inch for inch replacement and a potential fine per tree cut or up to 30 days in jail.

STAFF RECOMMENDATION:

Staff recommended approval.

BOARD, COMMISSION, COMMITTEE RECOMMENDATIONS:

On January 12, 2009, the Planning Commission voted to approve the Ordinance (5-0-0).

COUNCIL COMMITTEE RECOMMENDATION:

On March 19, 2009, the Committee of the Whole voted to recommend approval. (10-0-0)

COUNCIL ACTION:

On February 12, 2009, the City Council held a public hearing, approved the Ordinance for a first reading and referred it to the Committee of the Whole.

_____ Resolution XX _____ Ordinance _____ Contract _____ Minutes _____ Exhibits _____ Plan/Map _____ Transfer of Funds _____ Other

**AN ORDINANCE
ADDING DEFINITIONS TO SECTION 3-2 AND AMENDING SECTIONS
6-14 (d)(3) AND 6-16 OF THE CITY OF NORTH CHARLESTON ZONING
REGULATIONS RELATING TO TREE PROTECTION**

WHEREAS, the City of North Charleston strives to protect the health, safety and welfare of its Citizens; and

WHEREAS, pursuant to its authority, the City has enacted zoning regulations governing permissible land uses; and

WHEREAS, the City Council finds it necessary to amend the Zoning Regulations of the City of North Charleston relating to tree protection,

Now, therefore be it ordained by the Mayor and City Council, in Council assembled, that the following definitions are added to Section 3-2 and Sections 6-14 (d)(2) and 6-16 of the City of North Charleston Zoning Regulations are amended as follows:

Section 3.2. Definitions (add):

- Diameter Breast Height (DBH): Breast Height is reckoned to be 4'6" above the ground. In the case of two or more leaders emanating from a single trunk where the trunk is split below a height of 4.5 feet, the cumulative diameter of the various leaders measured at 4.5 feet is construed to be the D.B.H. of the tree.
- Tree, Grand: Excluding pine trees, any tree 24" or greater DBH
- Tree, Protected: any tree 8" DBH or greater, on-site mitigation trees greater than 2" DBH and smaller than 8" DBH, trees of 6" DBH and greater in the Upper Dorchester SC642 High Intensity Commercial Node front 40' buffer.
- Tree, Replacement: A tree of at least 2" DBH which is intended to replace a like number of tree inches cut as part of an approved tree cutting plan. Replacement trees shall be of the same species that was cut if native to the South Carolinian Lowcountry. If the species cut was not native, then a substitution may be approved by the Zoning Administrator on the affirmative recommendation of the City Horticulturist.
- Tree, Mitigation: A native tree greater than 2" DBH and less than 8" DBH found existing on the development site and which is offered as a replacement tree. Mitigation trees must be identified on the site survey protected during site disturbance.
- Tree, Significant: Pine trees at least 8" DBH and greater and all other trees of at least 8" DBH and less than 24" DBH.

Section 6-14. Landscaping:

(d) *Landscaping plan.*

- (3) Identify all existing trees eight (8) inches DBH (diameter breast high) in required setback (yard) areas.

Section 6-16. Tree Protection:

(a) *Purpose.* The purpose of this section is to preserve existing trees of 8" in diameter or greater at breast height and generally prevent the clear cutting of sites, a practice which destroys the balance of nature, leads to sedimentation and erosion, contributes to air and water pollution, and unnecessarily robs the community of valuable natural resources.

(b) *Existing protected trees.* Healthy trees greater than eight (8) inches DBH (diameter breast high) are a valuable natural resource, by virtue of their age, size and contribution to the environment. Such trees shall be protected. Protected trees include “Significant Trees”, replacement/mitigation trees, and “Grand Trees” (see section 6-16 (f)).

(c) *Tree Survey Required for Site Disturbance.* A tree survey showing all existing protected trees throughout the portion of any site proposed for disturbance and including any area counted as required open space area shall be submitted as part of any Site Plan for Zoning and Building permits or any Preliminary and final Subdivision Plats. If there are no Protected Trees on a site, this requirement may be satisfied by a note on the site plan, Preliminary or final plat to that effect. Tree surveys shall be prepared by a licensed landscape architect, surveyor or engineer registered in South Carolina and the location of each tree shall be shown within plus or minus three feet ($\pm 3'$). The survey shall be presumed accurate for two years beyond the survey date unless there is information to the contrary. The tree survey should be presented at the same scale as the proposed site plan or preliminary plat and shall show:

- (1) Significant Trees: The survey shall identify all Significant Trees by species and location, specify their estimated canopy spread, and specify the trunk Diameter at Breast Height (D.B.H.).
- (2) Grand Trees: The survey shall identify all Grand Trees by species and location, specify the actual canopy spread, and specify the trunk diameter at Breast Height (D.B.H.).
- (3) The canopies of trees which overhang the site, even if the trunk may be located on an adjacent parcel.
- (4) Any existing trees proposed as mitigation for tree cutting. Such trees shall be at least 2” DBH and of like kind to those cut if they are indigenous to the South Carolina Lowcountry. If the trees proposed to be cut are not an indigenous species, the Zoning Administrator and City Horticulturist may approve an indigenous replacement type. Replacement trees shall not be bunched together in a manner suggesting poor prospects for their long term survival, but shall be dispersed and well established. To help insure successful tree planting an evaluation of soil-species-combination before trees are proposed is recommended. Generally a minimum of 6 to 12 feet between trees is appropriate, however proper distance is determined by the species.
- (5) The location, type and size of any dead or diseased trees.
- (6) Location of all existing and proposed structures, improvements, rights-of-way, pavement, and easements on the property, and designation of all rights-of-way and other lands adjacent to the property.
- (7) The date of the survey.
- (8) The name, signature, seal and address of the site surveyor, landscape architect or engineer who shall be responsible for the accuracy of the information provided.

(d) *Tree Replacement Plan Required.* A site plan shall also include a Tree Protection/Replacement Plan (if applicable) which shall show:

- (1) Designations indicating whether each proposed tree is to be saved, relocated, or removed. Trees proposed for relocation should be marked with a bold letter "R", trees proposed to be saved shall be marked with a bold letter "S", and trees proposed for removal should be marked with a bold letter "X".
- (2) The species, size and new location of any trees which are proposed to be relocated within the site. An indication of whether the proposed replacement trees are of like kind to those proposed for cutting and whether they will be indigenous to the South Carolina Low-country.
- (3) The species, size and location of trees that are proposed to be planted as replacement for trees cut. Replacement trees must be a minimum of two inches DBH.
- (4) A summary table noting the total number of protected trees, the number of Significant Trees falling within the footprint of a proposed building or proposed driveway or drainage ponds, the number of trees falling outside of the footprint of proposed buildings and proposed driveways or drainage ponds, the number of trees representing 25% of those outside the footprints of buildings, driveways and drainage pond, the number of protected trees outside the footprint of buildings, driveways, and drainage ponds which are proposed for removal, and the number and cumulative DBH of the trees proposed to be removed in excess of the 25% figure above (if any).
- (5) The location of any existing trees between 2" DBH and 8" DBH which are proposed as on-site mitigation. Any such trees must be flagged and protected during site disturbance or construction.
- (6) Any proposed Tree Bank Replacement. After submitting a replacement plan exhausting all on-site replacement opportunities an applicant may, with the consent of the zoning administrator, pay into the Tree Bank Account an amount to be determined by the city horticulturist equal to the cost to acquire, install and maintain for a two-year period trees equivalent in their cumulative diameter at breast height otherwise required to be shown on a tree replacement plan.

(e) *Tree Protection Plan and Tree Protection Detail Required.* Site plans shall include a Tree Protection Plan showing where tree protection barricades are to be installed and a Tree Protection Detail illustration depicting the typical placement of tree protection at the drip-line of protected trees and relocation trees proposed for preservation. The tree protection shall be of the type specified in Section 6-16(i).

(f) *Cutting and Replacement of Protected Trees:*

- (1) No cutting of Replacement/Mitigation Trees shall be permitted.
- (2) Cutting of Significant Trees. On all sites, removal of existing Significant Trees shall be prohibited prior to securing a Zoning permit and, if applicable, a Building permit. Once a permit is issued, any Significant Tree between eight inches (8") DBH and twenty-four inches (24") DBH falling within the footprint of a proposed building, drainage pond, or driveway may be cut without any replacement requirement. No more than twenty-five (25) per cent of the existing Significant Trees outside the footprint of a building, drainage pond, or driveway shall be felled and removed, except by order of the Zoning

Administrator. Up to 50% of the trees outside the footprint of buildings, driveways or drainage ponds may be removed by order of the Zoning Administrator on the affirmative recommendation of the City Horticulturist owing to unique circumstances surrounding the development of property (example: exceptionally low terrain where significant cutting or filling might be needed to accomplish positive drainage). Except for pine trees, inch for inch replacement shall be required for all trees cut over and above the number representing 25% of those outside the footprint of buildings, driveways and drainage ponds. In such cases involving pine trees the replacement ratio will be half inch for inch cut.

- (3) Cutting and Replacement of any Grand Trees: Permits for the cutting of Grand Trees may be issued under the terms and conditions specified in this ordinance. Any healthy Grand Tree of twenty-four (24") inches DBH or greater, excluding pine trees, may be cut only after a finding by the Zoning Administrator and City Horticulturist that an applicant has demonstrated through an examination of various site designs that there is no practical alternative location of a building, drainage pond, driveway, or other building design that would leave the Grand tree in place and in good health. The approved cutting of any Grand Tree shall require inch for inch replacement regardless of where the tree is located. For example, inch for inch replacement of Grand Trees shall be required even if the Grand Tree falls in the footprint of proposed buildings, driveways or drainage ponds.
- (4) Where removal of a Protected Tree is necessitated by emergencies or death and disease due to natural causes as determined by the Zoning Administrator, or his designee, replacement will not be required.
- (5) Cutting, etc. of Protected Trees without a Permit Prohibited. No person shall cut down, top, remove, relocate, damage, destroy, or in any manner abuse any protected tree on any lot or public right-of-way in the city unless authorized by the terms of this section or unless approved by the zoning administrator.

Abuse includes alteration of the drip-line, storage of materials within the drip line; the deposit of any fill material within the drip line, excessive pruning; excessive thinning; paving with concrete, asphalt or other impervious material within such proximity as to be harmful to a protected tree; or any act of malicious damage to a tree. Improper or excessive pruning or thinning shall constitute abuse. For purposes of this ordinance "excessive pruning" shall be pruning or thinning of a protected tree that (a) exceeds more than 25 percent of the leaf surface on both the lateral branch and the overall foliage of a mature tree that is pruned within a growing season; and/or (b) pruning that does not leave remaining one-half of the foliage of a mature tree evenly distributed in the lower two thirds of the crown and individual limbs upon completion of any pruning; and /or (c) Pruning that is not performed by a qualified tree service according to the National Arborists Association, and the American National Standards Institute, ANSI; Pruning Standards for Shade Trees.

- (i) Penalty for Cutting without a Zoning Permit: Cutting down, topping, removing, relocating, damaging, destroying, or in any manner abusing any protected tree without a permit shall be punishable as set forth in Section 1-10 of the North Charleston Code of Ordinances. Each day that such violation continues shall constitute a separate offense.

(ii) Tree Replacement required for protected trees Cut, Damaged, or Abused without a Zoning Permit: The planting of replacement trees on an inch for inch cut basis is required on the site where the unlawful cutting occurred. If the replacement cannot be accomplished entirely on the development site, all or part of it shall be accomplished through the Tree Bank Account. Individual replacement trees should be of the largest reasonably transplantable DBH available, but in no event shall such replacements be smaller than two (2) inch DBH.

(g) *Tree Protection Required:* During development, a minimum protective zone, marked by barricades (as described herein) erected at the “drip line” shall be installed and maintained around all trees to be required by this section.

(1) Required Barricades: A protective barrier shall be erected at the drip-line of each protected tree to be preserved in accordance with the Tree Protection Plan and Tree Protection Detail. The protective barrier shall consist of orange safety fencing, not less than three (3) feet high and supported by wood/metal poles.

(2) A proposed encroachment (equivalent to one quarter of the distance from the tree trunk to the edge of the tree canopy and on one side only) into the drip-line of any Grand tree or any Significant tree designated for preservation may be approved by the Zoning Administrator on the affirmative recommendation of the City Horticulturist provided the applicant has supplied a letter from a certified Arborist or a landscape architect stating that the proposed encroachment will not adversely affect the subject tree. This letter should specify the recommended regimen of care for the tree for at least 12 months and should confirm that the Arborist has been retained to provide such care. Any proposed greater encroachment must be submitted to the Zoning Board of Appeals as a variance request. Whether the proposed encroachment is subject to administrative or Zoning Board of Appeals approval, the applicant must provide an exhibit from the Arborist showing the grading of the health of the tree for which the encroachment is proposed and this grading should be updated one year after the encroachment has been approved. If the second grading reveals any degradation in the health of the tree, the applicant shall (a) have the Arborist indicate any needed changes in care, and confirm that the applicant has retained the Arborist to provide that care and (b) repeat the tree health grading on the anniversary of the second grading, and if further degradation is detected, the application shall provide inch for inch replacement for the subject tree.

(3) Tree protection barricades must be inspected by the Zoning Department prior to Zoning Approval.

(h) *Bonding of Required Tree Replacement.* In the event that an immediate planting schedule would prevent the healthy development of new plants and trees, the Director of Finance on the affirmative recommendation of the Zoning Administrator may approve a bond, an irrevocable letter of credit, or other financial surety guarantee to certify the completion of the required replacement planting in an amount equal to one hundred twenty-five (125% percent) of the cost of acquisition, installation, and a 2-year replacement guarantee provided the total required bonded amount remains below \$50,000. Upon approval of the financial surety, a certificate of conditional zoning compliance shall be issued and the installation of replacement material must be completed within 24 months of that date. The applicant must provide the City permission to

enter their premises and complete the work described in the contract submitted with the Bond in the event that they have not done so within the time prescribed.

(i) *Exemptions.* The following shall be exempt from the tree protection provisions of this ordinance:

(1) Timber harvesting associated with Commercial timber operations subject to the following conditions:

(a) *Notification.* The property owner shall notify the zoning administrator prior to beginning any commercial timber harvesting or land clearing conducted as a commercial timber operation.

Commercial timbering conducted by the owner or with the owner's consent without advance notification to the Zoning Administrator shall result in the site being ineligible for further clearing, grading, cutting, development, or permitting for a 10 year period during which the regrowth shall be permitted to occur on the site.

(b) *Burden of proof* of legitimate commercial operation. It shall be the burden of the property owner to prove that any timber harvesting or land clearing is conducted as a commercial timber operation. Proof to establish the existence of a commercial timber operation on the site may consist of:

- (i) Documentation establishing that the trees on the site were planted for commercial harvest; or
- (ii) Documentation establishing a forestry plan featuring forest regeneration after harvest.

In the event of commercial timbering performed pursuant to a documented forestry plan as described above the site shall be ineligible for further clearing, grading, cutting, development, or permitting for a 2 year period during which the regrowth shall be permitted to occur on the site. Conducting a timber sale as the sole timber management activity does not constitute a "commercial timber operation."

(c) *Buffer and best management practices.* All timber harvesting shall comply with the buffer requirements and other voluntary protective measures known as "Best Management Practices" and published by the South Carolina Forestry Commission. This shall include an undisturbed buffer along the entire perimeter of the property, including road frontages, except for approved access crossings. Such buffer shall be 50 feet wide or equal to the required setback for the zoning district in which the property is located, whichever is greater.

(d) *Revegetation required.* If timber harvesting occurs, and the owner is unable to prove that the work is conducted as a commercial timber operation, or if non-commercial timber harvesting reduces the density factor for the site to less than 35 DBH per acre the owner shall be responsible for revegetation of the site. Revegetation shall provide 35 dbh per acre and shall be installed within 12 months of the notice of violation.

(2) Pruning or cutting of trees necessary to maintenance of Utility Company infrastructure, easements and right-of-ways.

(6) Nothing in this article shall be construed to prevent the ordinary trimming and maintenance of trees provided that such trimming is not so excessive so as to constitute an abuse previously described.


(j) *Construction of section.* The provisions of this section shall not supersede the provisions of any other ordinance of the city which provides greater protection for trees.


(k) *Ashley River Scenic District.* For properties located in the Ashley River Scenic District, refer to special provisions governing development in that district for additional regulations.

THE WITHIN ORDINANCE SHALL BECOME EFFECTIVE IMMEDIATELY UPON ITS RATIFICATION BY CITY COUNCIL.

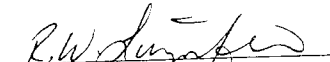
Ordained in City Council the 26th day of March, in the Year of Our Lord, 2009, and in the 233rd year of the Independence of the United States of America.

ATTEST:


ELLEN CLARK,
MUNICIPAL CLERK


R. KEITH SUMMEY, MAYOR

APPROVED AS TO FORM:


LEGAL COUNSEL