

## CHAPTER 16 – ENVIRONMENT

### ARTICLE III. – TREE PROTECTION

#### DIVISION 1 - GENERALLY

##### 16.101. SHORT TITLE.

This article shall be known as and may be cited as the Town of Moncks Corner Tree Protection Ordinance.

##### 16.102. AUTHORITY AND PURPOSE.

1. Pursuant to authority conferred by S.C. Code 1976, § 6-29-710, as amended, the citizens of Moncks Corner, having recognized the importance of preserving the natural landscape through the protection of existing trees, and to promote the public health, safety and general welfare, to lessen air pollution, to increase dust filtration, to reduce noise, heat, to prevent soil erosion, to improve surface drainage and minimize flooding, to insure that noise, glare and other distractions of movement in one area do not adversely affect activity within other adjacent areas, to beautify and enhance improved and undeveloped land, to preserve and protect both the natural and historic amenities within the town, to insure that excessive tree cutting does not reduce property values, and to minimize the cost of construction and maintenance of drainage systems necessitated by the increased flow and diversion of surface waters, the town council does hereby ordain and enact into law the following provisions of this article.
2. The intent of this article is to encourage the protection and replacement of trees consistent with the economic and healthful enjoyment of private property. The intent is not punitive, or to cause hardship to any individual, private firm, or public agency who uses every care and diligence to protect trees within the town.
3. Nothing included in the provisions of this article is intended to prohibit agriculture, silviculture, horticulture or nursery operations within the city.

##### 16.103. 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 Town of Moncks Corner as amended.

##### 16.104. 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 Town which, at a minimum: recognizes the need to minimize trimming of protected 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 Town 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 16.103.

**16.105. DEFINITIONS.**

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

*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 Town business license regulations.

*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.

*Diameter at Breast Height or DBH* shall mean diameter of the trunk of a tree at a height of fifty-four (54) inches above the normal ground height at the base of the tree. If a tree splits into multiple trunks below four and one-half feet, then each trunk is measured as a separate tree. A tree which splits into multiple trunks above four and one-half feet is measured as a single tree at four and one-half feet.

*Flowering Trees* shall mean any tree species designated as such by Town Council or the Planning Commission, and shall include, but not be limited to, the following:

American Tea Olive	<i>osmanthus americanus</i>
Black Locust	<i>robinia pseudoacacia</i>
Carolina Silverbell	<i>halesia carolina</i>
Crabapple	<i>malus angustifolia</i>
Dogwood	<i>cornus florida</i>
Grancy Graybeard	<i>chionanthus virginicus</i>
Hawthorn	<i>crataegus spp</i>
Loblolly-Bay	<i>gordonia lasianthus</i>
Pawpaw	<i>asimina triloba</i>
Persimmon	<i>diospyros virginiana</i>
Red Bay	<i>persea borbonia</i>
Redbud	<i>cercis canadensis</i>
Serviceberry	<i>amelanchier arborea</i>
Southern Catalpa	<i>catalpa bignonioides</i>
Southern Magnolia	<i>magnolia grandiflora</i>
Sweet Bay Magnolia	<i>magnolia virginiana</i>
Wild Plums & Cherries	<i>prunus spp</i>

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

*Forestry Activity* includes, but is not limited to, timber harvest, site preparation, controlled burning, tree planting, applications of fertilizers, herbicides, pesticides, weed control, animal damage control, fire control, insect and disease control, forest road construction, and any other generally accepted forestry practices.

*Grand Tree* shall mean any tree having a diameter at breast height (DBH) of twenty-four (24) inches or larger. Grand trees are also protected trees.

*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.

*Removal of tree* shall mean any intentional or negligent act which will cause a tree to decline and die, including but not limited to, cutting, damage inflicted upon the root system of a tree by application of toxic substances, the operation of machinery, the change of natural grade by excavation or filling about the root system or around the trunk of a tree, and damages from injury or fire inflicted on trees which result or permit pest infestation.

*Town Tree Fund* shall mean the fund set up by the Town into which is deposited or credited the funds collected under Sections 16.107.d. and 16.110.c. of this Tree Protection Ordinance and any other funds collected by the Town and designed to go into the fund by the Town Council or Town Administrator; 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 Town owned or controlled public places, within the Town limits of the Town of Moncks Corner.

*Tree* shall mean a member of a species of perennial woody plants. In general, trees are at least fifteen (15) feet in height at maturity, have a single trunk unbranched for at least three (3) feet above the ground, have a potential DBH of two (2) or more inches, and have a more or less definite crown. A tree may have more than one trunk. In any case, the Town Administrator or designee shall have the right to determine whether any specific woody plant shall be considered a tree. Such determination shall be final and not subject to appeal.

## **DIVISION 2 – TREE PROTECTION**

### **16.106. TREE REMOVAL.**

1. It shall be unlawful for any person to fell, injure or destroy any living protected tree within the corporate limits of the Town of Moncks Corner, except by permit as provided hereinafter.
2. Protected trees may be removed upon the issuance of a valid permit by the Town Administrator or his/her designee. Required mitigation will be determined by the Administrator or designee per Sec. 16-107, below.

3. Grand trees may be removed upon the issuance of a valid permit by the Town Administrator or his/her designee if, in the determination of Staff, the trees meet the conditions for removal without mitigation. The Town Administrator reserves the right to forward any grand tree removal permits to the Planning Commission for review and issuance.
4. Trees removed under these conditions do not require mitigation:
  - A. Tree(s) is/are dead.
  - B. Tree(s) which pose(s) an imminent safety hazard to nearby buildings, persons, utility lines or vehicular traffic.
  - C. Trees which are located in the footprint of a proposed building or drive which cannot be reasonably relocated.
  - D. Trees which are being cut as a commercial timber operation in accordance with the South Carolina Right to Practice Forestry Act. The Town requests but does not require that a 50-foot wide perimeter buffer of all existing trees be maintained in an undisturbed manner. 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.
  - E. 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 South Carolina Office of Coastal Resource Management are exempt from the provisions of this article.
  - F. Removal because of density or interference with the development of other trees.
  - G. Removal of pine trees, unless permit is for multiple trees in which removal would constitute clear-cutting.
  - H. Trees identified by the South Carolina Exotic Pest Plant Council Non-Native Plant Species List.
5. In the event that the removal permit is forwarded to the Planning Commission, Grand trees may only be removed when approved by action of a majority of the planning commission or, upon appeal, the town council.
6. 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 South Carolina licensed landscape architect, surveyor or civil engineer. The survey shall indicate the following:
  - A. The location, diameter at breast height (DBH) and species (common name) of all protected trees at the time of the survey.
  - B. A clear designation of all protected trees proposed for removal.
  - C. A mitigation plan showing the location, size and species (common name) to be planted, if required by section 16-107, of this code.

7. 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.
8. Reasonable measures must be taken during construction or development to protect remaining trees from damage or injury.

#### **16.107. COMMERCIAL TIMBER OPERATIONS.**

1. This ordinance seeks to act in accordance with the South Carolina Right to Practice Forestry Act (48-23-205).
2. Per the Right to Practice Forestry Act, forestry activities, including timber harvesting, are permitted on forest land that is
  - A. Taxed on the basis of its present use value as forest under Section 12-43-220(d);
  - B. Managed in accordance with a forest management plan;
  - C. Certified under the Sustainable Forestry Initiative, the Forest Stewardship Council, the American Forest Foundations Tree Farm Systems, or any other nationally recognized forest certification system;
  - D. Subject to a legally binding conservation easement under which the owner limits the right to develop or subdivide the land; or
  - E. Managed and harvested in accordance with the best management practices established by the State Commission of Forestry pursuant to Section 48-36-30.
3. Should any forestry activity take place on any land listed in subsection (b) above, there shall be a deferral period of one (1) year for the consideration of any application for a building permit, a site disturbance or a subdivision plan or any other approval for development that if implemented would result in a change from forest land to nonforest or nonagricultural use.
4. Should any forestry activity take place on any land not listed in subsection (b) above, or **in willful violation of any Town regulations**, there shall be a deferral period of five (5) years for the consideration of any application for a building permit, a site disturbance or a subdivision plan or any other approval for development that if implemented would result in a change from forest land to nonforest or nonagricultural use. **A willful violation includes, but is not limited to, timbering a property for which development was discussed during the previous year.** This five-year deferral period may be reduced upon approval of proper mitigation by the Town Administrator or his/her designee.

**16.108. MITIGATION.**

1. The Town reserves the right to recommend a professional assessment from an International Society of Arboriculture Certified Arborist for applications regarding the removal of certain species of grand trees, including but not limited to the following:

American Holly	<i>Ilex opaca</i>
Bald Cypress	<i>Taxodium distichum</i>
Blackgum, Tupelo	<i>Nyssa sylvatica</i>
Hickory	<i>Carya sp.</i>
Laurel Oak	<i>Quercus laurifolia</i>
Live Oak	<i>Quercus virginiana</i>
Nuttall Oak	<i>Quercus texana</i>
Overcup Oak	<i>Quercus lyrata</i>
Pecan	<i>Carya illinoensis</i>
Red Maple	<i>Acer rubrum</i>
Sawtooth Oak	<i>Quercus acutissima</i>
Southern Magnolia	<i>Magnolia grandiflora</i>
Southern Red Oak	<i>Quercus falcata</i>
Sweetbay	<i>Magnolia virginiana</i>
White Oak	<i>Quercus alba</i>
Willow Oak	<i>Quercus phellos</i>

This professional assessment, obtained at the applicant’s expense, will be used by Staff and the Planning Commission to determine whether a grand tree is dying, diseased, damaged, etc. and should be removed or if trimming is a viable option to retain the tree.

2. The removal of any protected tree authorized by permit from the Planning Commission or Town Council shall be mitigated by planting new trees from the South Carolina Urban Species Guide in the same size category as the tree to be removed. The number of trees required to be planted to mitigate the removal of existing trees is determined by the mitigation ratio. The total DBH of all protected trees being removed shall be calculated, and this sum is multiplied by the mitigation ratio to determine the total DBH of all mitigation trees that must be planted on the same lot.

For example, removing a total of 24” of protected flowering trees, 24” of other protected trees and 24” of grand trees would result in planting a total of 6” of 1” caliper minimum flowering trees, 6” of 2 ½” caliper minimum trees, and 12” of 3” caliper minimum trees.

<b>Each Existing Tree</b>	<b>Mitigation Ratio</b>	<b>Mitigation Tree Size (minimum)</b>
Protected Flowering Tree	25%	One (1) Inch DBH
Other Protected Tree	25%	Two-and-a-half (2 ½) Inch DBH
Grand Tree	50%	Three (3) Inch DBH

3. All mitigation shall be carried out on the site from which the trees were removed, unless otherwise approved by the Planning Commission.
4. Mitigation trees are separate from and in addition to any planting required by the Zoning Ordinance for purpose of buffer yards or parking lot planter islands.
5. To prevent a monoculture among plantings, the town shall require a diversity in the trees planted. Depending on the number of trees planted, there shall be a diversity of the plantings as follows:
  - A. 5 to 10 trees: minimum 2 types of trees to be planted;
  - B. 10 to 20 trees: minimum 4 types of trees to be planted;
  - C. 20 to 100 trees: minimum 7 types of trees to be planted;
  - D. Greater than 100 trees: minimum 10 types of trees to be planted.
6. In lieu of on-site mitigation, the property owner or developer may elect to contribute an amount set by Town Council multiplied by the total diameter in inches of the required mitigation trees. The funds generated by this mitigation provision shall be deposited in the Town Tree Fund. The owner may elect to directly mitigate or contribute in lieu of mitigation in any proportion.
  - A. In the event that the Town Tree Fund contribution would exceed \$10,000 per acre, the Town Administrator is authorized to set a maximum contribution of \$10,000 per acre. Should this mitigation contribution result from clear-cutting or the willful violation of any Town regulations, there shall be a deferral period of five (5) years for the consideration of any application for a building permit, a site disturbance or a subdivision plan or any other approval for development. A willful violation includes, but is not limited to, timbering a property for which development was discussed during the previous year.
7. The removal of any protected tree authorized by permit may be exempt from mitigation on a case-by-case basis as determined by the designee of the administrator or the Planning Commission. The decision making authority 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.
8. 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 Planning Commission. Illegally removed trees shall be mitigated on site unless otherwise

approved by the Planning Commission. The funds generated by this provision shall be deposited in the Town Tree Fund.

9. 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.
10. Trees removed because they are dead do not require mitigation if the loss of the trees is of no fault of the owner/resident or any other person in order to circumvent the purpose of this ordinance.

#### **16.109. ADMINISTRATION.**

1. The Town Administrator's designee(s) shall administer this article and shall consult with the Town Administrator, the Town Public Service Director and persons knowledgeable about trees as needed.
2. 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 Town Administrator for a period not to exceed thirty (30) days. The waiver period may be extended for a longer period by the action of Town Council. In such cases, the waiver shall apply only to felled or severely damaged trees which pose a safety hazard.

#### **16.110. APPEALS.**

1. Any person aggrieved or affected by a staff or Planning Commission decision pursuant to this article may appeal the decision to Town Council. All requests for appeal shall be filed with the Town Administrator within thirty (30) days of notification of denial of the permit request.
2. All appeals of staff decisions shall be reviewed by the Planning Commission prior to an appeal hearing before Town Council.

#### **16.111. VIOLATION AND PENALTIES.**

1. Should a violation of this Article be detected in progress, the Town Administrator's designee(s) 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.
2. Section 16.107.f of this ordinance holds the owner of the tree liable for removing a protected tree without a permit and requiring 100% mitigation. Any contractor that

removes a tree without a permit shall be warned against doing so again. If, within one year, the same contractor removes a tree without a permit a second time, the contractor's business license will be suspended for three (3) months insofar as tree removal is concerned. If, within one year of the second occurrence, the same contractor removes a protected tree without a permit, that contractor's business license will be revoked for one (1) year, prohibiting all tree removal services for that duration within the Town limits.

The Town reserves the right to exercise Sec. 1-9 of this Ordinance should any contractors or owners, tenants, lessees and/or occupants of any lot within the corporate limits of the town be determined to have removed any protected trees without a permit.

3. 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.
4. 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 punishable as provided in Article III. In addition the violator shall be required to provide mitigation as required pursuant to § 16.107 of this code.

**16.112. LEGALITY OF ARTICLE AND PARTS THEREOF.**

Should any section, clause or provision of this article be declared by the courts to be invalid, the same shall not affect the validity of the article as a whole, or parts thereof, other than the part so declared to be invalid.