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**ORDINANCE 2018-14**

**AN ORDINANCE REPEALING IN ITS ENTIRETY CHAPTER 20, "TREES", AND REPLACING IT WITH ATTACHED NEWLY REVISED CHAPTER 20, "TREES"**

**WHEREAS**, the Town of Port Royal takes great pride in its trees and wishes to preserve and protect this natural resource, and

**WHEREAS**, trees offer much beauty and protection, prevent land erosion, and provide homes for wildlife, and

**WHEREAS**, the Town of Port Royal wishes to provide means to ensure our trees are protected and replaced when necessary, and

**WHEREAS**, the Town Council finds it in the best interest of the Town and its citizens to make these changes to the Code of Ordinances.

**NOW, THEREFORE, BE IT ORDAINED**, by the Council of the Town of Port Royal, South Carolina, duly assembled and with authority of same, that Chapter 20 be replaced as follows:

**Article I. Tree Protection**

**Sec. 20-1. Tree Coverage Requirements**

- a) **Applicability and Standards:** In addition to the standards laid out in this section, land or property shall maintain a minimum baseline canopy coverage area based on the zoning district and lot size. This canopy can be comprised of existing trees, new trees or a combination of both, and shall be per the table below:

Zone	Minimum number/type of trees required based on zone and lot size
	1 broad-leaved overstory tree required
T3 Edge	Per 3,000 square feet of lot size
T3 Suburban Neighborhood	Per 3,000 square feet of lot size
T3 Neighborhood	Per 3,000 square feet of lot size
T4 Neighborhood Center	Per 6,000 square feet of lot size
T4 Urban	Per 6,000 square feet of lot size
T5 Main	No Minimum

- b) Approach to Meeting Requirements: This tree coverage requirement may be met through the retention of existing trees, supplemental plantings, or a combination of both. Removal of trees must be in accordance with Section 20-2 (Tree Removal). New trees planted to satisfy the tree canopy coverage requirement, as set forth above, must meet the standards found in Division 5.7.70 of The Port Royal Code. If lot size is smaller than listed above, tree planting shall be done if possible, but may not be required. If it is not possible to plant overstory trees, two understory trees may count as one overstory tree.
- c) Plan Requirements: Compliance with these tree coverage standards must be clearly shown on all submitted applications.

**Sec. 20-2. Tree Removal**

- a) A tree removal / pruning permit is required for the following tree modifications:
  - 1) Permit Required for Removal: A Permit shall be required for the removal or relocation of any tree 8" caliper or larger at DBH, or any tree designated as a specimen or landmark tree, as established in Section 20-3 (a) 3. g. An exception is granted in single family and 2- and 3-family building on existing lots of record wherein a permit is only required for the removal of Specimen or Landmark Trees.
  - 2) Permit Required for Pruning: A permit shall be required for the pruning of any tree designated as a landmark tree, as established in Section 20-3 (a) 3. g. Pruning must be done by, or under the guidance of, a certified arborist.
  - 3) Trees Designated for Retention: A permit shall be required for the removal, relocation, or pruning of any tree previously designated to be retained on an approved development plan.
- b) Criteria for Reviewing Applications for Tree Removal: The following criteria shall be considered by the Building Official or his designee in determining whether or not to issue a tree removal / pruning permit:
  - 1) Health: Whether or not the tree is in good health, according to a certified arborist report or staff evaluation
  - 2) Development Potential: Whether or not the tree constrains reasonable development of the specific site, considering lot size, applicable setbacks, context, building type and use, stormwater requirements and other relevant site development considerations
  - 3) Access: Whether or not the tree is a hazard to pedestrian, bicycle, or vehicular traffic
  - 4) Structural Interference: Whether or not the tree presents a hazard to buildings, structures, or utility lines
  - 5) Cost: Whether or not there are cost effective alternatives to tree removal
- c) Tree Removal in Conjunction with Development: If trees are to be removed in conjunction with the physical development of a site, submission of a tree retention/removal schedule is required to accompany the Site Plan. All trees, both to be saved and removed, shall also be noted on the landscaping plan. This schedule and plan must be reviewed and approved by the appropriate Design Review Body prior to the issuance of a Project Permit. No tree removal may commence without a Project Permit.
  - 1) Buffer Areas: Preserved trees in the buffer areas shall be counted toward the minimum tree conservation requirements of any required buffers. Recognizing that the perimeter buffers lie outside of the buildable area, the intent of this provision is to preserve as many of these trees

as possible while allowing for access, reasonable visibility, and other uses permitted in the buffer area that practicably are best located within the buffer.

- 2) In exceptional cases where the Building Official determines that the species of a tree or grouping of trees is on an official state or federal list of endangered species, then approval is specifically required for removal.
- d) Exceptions
- 1) **Waiver for Emergency:** In the event that a tree poses a threat to public safety due to death, disease or damage resulting from events including, but not limited to fires, floods, hurricanes, other natural disasters, intentional harm, or negligence, the Building Official may waive the requirements of Section 20-2. As soon as it is feasible after the waiver, the Building Official shall issue written findings outlining the threat to public safety that prompted the waiver. The Building Official may require that the owner of the site replace the tree when the findings conclude that the removal was necessitated by intentional harm or negligence.
  - 2) **Normal Tree Maintenance:** Nothing in this Code shall restrict normal tree maintenance by a property owner (including removal of dead wood and branches or limbs that endanger life or property) for any tree except landmark trees upon which any pruning must be done according to Section 20-2 (a) 2.

### Sec. 20-3. General Landscape Design

New plantings provided in accordance with this Division shall comply with the following standards:

#### a) General

- 1) **Plant Types.** Plantings are grouped into five types: overstory trees, understory trees, shrubs, grasses, and ground cover.
- 2) **Document Existing Vegetation.** Type, size, and limits of existing vegetation shall be identified on the landscape plan.
- 3) **Definitions.** The following definitions shall apply when determining both the size and number of plantings necessary to fulfill the requirements of this Division.
  - a. **American Standard for Nursery Stock (ASNS)** - In 2004 the American Nursery and Landscape Association established industry standards that provide buyers and sellers with a common terminology in order to facilitate transactions involving nursery stock. The standard defines terms and numerical relationships among tree parts.
  - b. **ACI or Aggregate Caliper Inches.** A measure of the total combined number of inches of existing and proposed trees used to meet landscaping requirements.
  - c. **Caliper.** Diameter of the trunk measured six inches above the ground for trees up to and including four-inch diameter, and measured 12 inches above the ground for larger trees. This measurement is used for proposed or nursery-grown trees.
  - d. **DBH or Diameter at Breast Height.** The diameter (in inches) of the trunk of a tree (or, for multiple trunk trees, the aggregate diameters of the multiple trunks measured 4 ½ feet from the existing grade at the base of the tree. This measurement is used for existing trees.
  - e. **Overstory Tree.** A tree that, when mature, reaches a height of at least 35 feet.
  - f. **Understory Tree.** A tree that, when mature, reaches a height of 12 to 35 feet.
  - g. **Landmark and Specimen Trees.** Certain trees, because of their species and size, are an asset to both the Town and individual property owners and are designated as "specimen" and "landmark" trees. Such trees shall be defined as those trees which meet the criteria in the following table:

SPECIES	COMMON NAME	SPECIMEN TREE (MIN. DBH)	LANDMARK TREE (MIN. DBH)
<i>Cornus florida</i>	Flower Dogwood	4 inches	18 inches
<i>Cercis Canadensis</i>	Redbud	4 inches	18 inches
<i>Magnolia grandiflora</i>	Southern Magnolia	4 inches	24 inches
<i>Ilex opaca</i>	American Holly	4 inches	14 inches
<i>Juniperus virginiana</i>	Eastern Red Cedar	12 inches	24 inches
<i>Quercus virginiana</i>	Live Oak	12 inches	24 inches
<i>Sabal palmetto</i>	Cabbage Palm	18 feet tall	36 feet tall
<i>Taxodium distichum</i>	Bald Cypress	16 inches	24 inches
<i>Quercus velutina</i>	Eastern Black Oak	16 inches	24 inches
<i>Nyssa sylvatica</i>	Tupelo/Black Gum	16 inches	24 inches
<i>Quercus alba</i>	White Oak	16 inches	36 inches
<i>Quercus falcate</i>	Southern Red Oak	16 inches	24 inches
<i>Acer rubrum</i>	Red Maple	16 inches	24 inches
<i>Ulmus Americana</i>	American Elm	16 inches	36 inches
<i>Pinus palustris</i>	Longleaf Pine	16 inches	36 inches
<i>Fagus grandifolia</i>	American Beech	16 inches	36 inches
All other species of overstory trees except for Laurel Oaks, Sweet Gum, Pecan and other species of Pines - those species are never considered specimen or landmark trees, regardless of their size		24 inches	36 inches

- b) **Existing Landscape Preservation.** Preservation of existing trees and vegetation is the preferred means of landscaping. Existing, healthy trees and vegetation shall count toward all planting and canopy requirements, and must be shown on the landscape plan.
- 1) **Preservation of Specimen and Landmark Trees:** Reasonable design alternatives shall be explored to preserve those trees to the extent practicable. A Certified Arborist Report shall be required when sites contain specimen trees that will be impacted by or removed due to development, unless the Building Official determines that the report would not change the outcome of the plan. A certified arborist report shall always be required for all Landmark Trees that will be impacted by or removed due to development. The Certified Arborist Report shall be incorporated into the project submission as part of the Site Plan.
  - 2) **Mitigation for Preserving Existing Trees:** To incentivize saving a variety of species and sizes of existing trees, credits shall be awarded for their preservation at a ration of 1:1. All trees, except for Laurel Oaks, Sweet Gums, and non-Longleaf Pines, may be used as mitigation credits for that same species. *Example: If a 12 inch magnolia tree is removed, but three, 3 inch magnolias are saved (9 total inches of magnolia), only 3 inches of magnolia trees would be included in the mitigation calculation.*

Article II. Mitigation

Sec. 20-4. Replacement Planting and Mitigation

- a) This section applies:
- 1) Where the Building Official approves removal of specimen and landmark trees for new development
  - 2) Where any vegetation, existing or proposed, used to comply with the requirement of this section, does not survive in a healthy condition
  - 3) When a specimen and/or landmark tree is removed from a property without permission from the Building Official, is significantly damaged during construction, or significantly declines and is recommended for removal by a certified arborist at the end of the two year maintenance guarantee period

- b) Additional Mitigation Options: Where a certified arborist determines that a site cannot sustainably support all, or a portion of, the required replacement, due to the size and shape and/or structures and/or viable site constraints, the following options are available to the applicant to fulfill the mitigation requirements:
1. Fee in Lieu of Planting On-Site: a fee based on the mitigation schedule in Section 20-4 (d) shall be paid to the Town for the purposes of tree planting and tree maintenance.
  2. Planting on an Alternative Site: trees may be planted on town-owned property, including parks or other property owned by the applicant; all property shall be in town limits. The alternative sites shall be approved by a certified arborist and shall be in accordance with previously approved plans, streetscapes, etc.
- c) Exceptions:
1. Mitigation for tree removal is not required for single-family and 2-3 family dwelling units if the required tree coverage requirements set out in Section 20-1 (a) are still met.
  2. A Specimen and/or Landmark tree that fails due to a natural catastrophe does not require mitigation.
- d) Replacement and Mitigation Schedule: Replacement plantings and fee in-lieu-of shall be according to the following chart:

<b>Replacement and Mitigation Schedule</b>				
Tree Type	Replacement % Caliper Inches		Mitigation Cost/Caliper Inch	
Landmark Tree*	50%*		\$100	
Specimen Tree	33%*		\$50	
All other trees 8-inch caliper or greater	24%		None	
*Any tree removed per Section 20-5 (a) shall require 100% replacement of caliper inches, and the fee in-lieu-of cost/caliper inches shall be doubled.				
EXAMPLES	Approved Removal	Approved Removal	Damage During Construction	Damage During Construction
	Specimen Tree - A 12-inch Live Oak in a transect zone needs to be removed to accommodate a building. The applicant may choose to either plant back (1) 4-inch Live Oak, or pay a fee in lieu of \$600 (12 inches x \$50/inch).	Landmark Tree - A 30-inch Live Oak in a transect zone needs to be removed to accommodate a building. The applicant may choose to either plant back (5) 3-inch Live Oaks, or pay a fee in lieu of \$3,000 (30 inches x \$100/inch).	Specimen Tree - A 12-inch Live Oak was damaged during construction in a Transect zone. It may either be replaced with 12 caliper inches of similar species, OR a fee-in-lieu of \$2,400 (12 inches x \$100/inch x 2) may be paid.	Landmark Tree - A 30-inch Live Oak intended to be preserved was damaged during construction in a Transect zone. It may either be replaced with 30 caliper inches of similar species, OR a fee-in-lieu of \$6,000 (30 inches x \$100/inch x 2) may be paid.
See Section 20-3 (b) 2 for possible mitigation credits for saving eligible Specimen and Landmark Trees				

**Sec. 20.5. Violations**

It shall be a violation of this Code to:

- a) Remove existing trees from a site or parcel of land without first obtaining the appropriate permits and

development approvals, and complying with their terms and conditions.

- 1) The clear cutting of trees by any developer for the sole purpose of clearing land or offering land for sale shall be prohibited. If an owner cuts all or any portion of his or her property under the claim of good faith forestry practice, and then seeks a development permit for any portion of the property within 2 years of the cut, a rebuttable presumption shall arise that the cut was done in anticipation of future development, and the permit shall be denied. This applies to properties that were cleared in another jurisdiction and then annexed into the town as well. Any person seeking to rebut the presumptions shall have the burden of proving their claim by clear and convincing evidence.