

## REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: November 3, 2008

Agenda Item:	Prepared By: Paul Blust J:/Issue 2008/ztx-08-02-Table, 2nd
Agenda Section: Business: Ordinance/First Reading	Date: October 28, 2008
Subject: Zoning Text Amendment – Tree Protection Regulations	Division: Planning & Development

### **Background:**

The City Tree Board recommended several changes to the Tree Preservation Regulations in the Zoning Ordinance. Staff met with the City Tree Board and decided that there were some good recommendations and proposed a Zoning text amendment to incorporate the recommendations. At the May 2008 workshop, City Council discussed proposed changes to the Zoning text and changes to the Public Tree Ordinance and Land Development Regulations.

The proposed Tree Preservation Regulations amendment was presented to the Planning Commission in August and Council subsequently discussed them at their September 15 meeting. At that time it was decided to table the discussion to the September workshop.

At the September 29<sup>th</sup> workshop, City Council was informed that the Planning Department will be proposing an amendment to the Land Development Regulations to add a new menu of approved street cross-sections, all of which will require sidewalks and street trees. If adopted these will render certain portions of the tree ordinances irrelevant. Thus it makes sense to delay consideration of the tree ordinances until final action is achieved on the street menu proposal.

At the October 27, 2008 workshop, City Council heard a staff presentation on “complete streets”. A menu of accepted street types was presented, each requiring sidewalks and street trees. Staff explained that adopting a “complete streets” initiative would lessen the need to trees in future rights-of-way, which is the primary focus of some of the proposed tree protection amendments. Council supported the “complete streets” idea and asked staff to proceed with it. Since the “complete streets” initiative is

integrally linked to the tree ordinance amendments, staff believes it is prudent to delay further consideration of the tree amendments until such time as the “complete streets” menu is adopted.

**Recommended Action**

Staff recommends that Council remove this item (and the other two tree preservation ordinances) from the agenda altogether, pending the outcome of the “complete streets” initiative discussed at the October 27<sup>th</sup> Council workshop. The ordinances can be reconsidered in early 2009, most likely in February.

Reviewed by Division Head

Reviewed by City  
Manager

Reviewed by City  
Attorney

Council Action:

Motion By \_\_\_\_\_ 2<sup>nd</sup> By \_\_\_\_\_

To \_\_\_\_\_

## **ZONING TEXT AMENDMENT ZTX-08-02:**

Using recommendations from the Tree City Board, Staff has initiated some amendments to the Zoning Ordinance text as it relates the Tree Preservation Regulations. There are a series of proposed amendments, all designed to strengthen tree preservation. Each is presented by a bullet point as follows:

- There is no definition provided in the ordinance for a tree survey. The proposed amendment would add a definition and also add “topographical” to the definition. This has been deemed important because a lot of trees are lost because of the existing topography having to be altered. Consequently, it is a benefit to know the topography of the lot when obtaining the tree survey. The following definition is proposed:

“Tree and topographical survey- A current tree and topographical survey shall be one that has been done within the last year showing all protected trees (by definition). The survey shall be signed and sealed by a licensed Surveyor, Civil Engineer, or Landscape Architect. The survey shall be at the same scale as the development plan and include the species, caliper inches, location of contour lines at one (1) foot intervals, unless the property is larger than one (1) acre, then the contour line intervals shall be at two (2) feet, and the location of waterways, wetlands, and existing or proposed buffers.’

A definition of wetlands will also be added to the ordinance that will generally read as follows or some other wording universally accepted:

“Those areas that are inundated or saturated by surface or ground water (hydrology) at a frequency and duration sufficient to support, and that under normal circumstance do support, a prevalence of vegetation (hydrophytes) typically adapted for life in saturated soil conditions (hydric soils). Wetlands generally include swamps, marshes, bogs, and similar areas.

- Currently the Zoning Administrator may waive the tree survey for single-family and duplex uses. The reason for this waiver is to save the property owner some money when there are few trees on the property that require protection. The proposed amendment to this section is to continue to allow the Zoning Administrator to waive the tree and topographical survey for single-family or duplex lots with fewer than five (5) protected trees on the property. If there are five (5) or more protected trees on the property, then a tree and topographical survey will be required for single-family and duplex uses.
- Currently there is no allowance for a reduction of required parking to save trees. Many cases that the Board of Zoning Appeals hears for variance to remove a protected tree have been because the tree is in the parking lot and with the tree protection zone required, enough parking spaces cannot be provided when saving

the tree. The proposed amendment will allow for a reduction of required parking spaces when protecting a tree as follows:

<u>Required parking stalls</u>	<u>Maximum reduction</u>
5 – 20	25%
21-50	20%
51-75	15%
76-150	10%
151 and above	8%

When using the above calculation, the number of parking space reduction shall only be allowed when the minimum number of parking spaces are planned to meet code. If there are more parking spaces shown on the plan than the code requires, those shall be removed first.

- Currently the Zoning Ordinance requires that all parking lots be paved with an all weather surface (asphalt, concrete, etc). Staff proposes an amendment that will allow parking spaces within the tree protection zone to be left unpaved (pervious) and improved with a dust free gravel surface. The stalls shall be delineated with landscape timbers or some other equivalent method with wheelstops to prevent hitting the tree.
- Pine trees are currently exempt. Staff proposes to include pine trees of 30 caliper inches and greater to be protected by the ordinance for all uses except single-family and duplex lots. The current definition of “protected tree” will be amended to reflect this addition.
- Staff proposes to permit some encroachment into the tree protection zone. The tree protection zone is an area that is defined in the ordinance as ½ foot for each one caliper inch of tree width. The example in the ordinance is an 18 inch tree that requires 9 feet for the tree protection area. This is a radius so the 9 feet is measured around the entire tree. Staff is proposing to allow up to 1/3 of the tree protection area to be encroached upon for construction, pavement or other improvement for each property that the tree protection zone may encumber. The primary reason for this encroachment is that many of the variance cases the Board of Zoning Appeals hears for tree removal is because some of the house or other improvement is going to infringe upon the tree protection zone and currently there is no accommodation for that infringement. An area equaling 1/3<sup>rd</sup> of the tree protection zone should not harm the health of the tree. Hopefully, this will save additional trees in the future.

## ORDINANCE

**AN ORDINANCE OF THE CITY OF NORTH MYRTLE BEACH PROVIDING THAT THE CODE OF ORDINANCES, CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA, BE AMENDED BY REVISING SECTION 23-2, 23-42, 23-43, 23-67.2, 23.67.3, 23-68, 23-68.3, 23-68.4 and 23-70.**

**BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA, IN COUNCIL DULY ASSEMBLED, THAT:**

### **Section 1:**

That Section 23-2 Definitions, be amended by adding the following definitions in alphabetical order:

Protected tree- A protected tree is any of the following:

(a) A tree located within and existing or future planned public right-of-way or on public lands, parks or other public facilities; that is:

- (1) Six (6) inches in caliper or larger if located east of the Atlantic Intracoastal Waterway;
- (2) Six (6) inches in caliper or larger if situated on property containing twenty-five (25) acres or less; or twelve (12) inches in caliper or larger if situated on property larger than twenty-five (25) acres, for all such properties west of the Atlantic Intracoastal Waterway;

(b) Any species of tree located on private property as follows:

- (1) Any non-Pine species six (6) inches in caliper or larger;
- (2) Any Longleaf Pine (Pinus palustris) fifteen (15) inches in caliper or larger;
- (3) Any other species of Pine tree thirty (30) inches in caliper or larger.

(c) Any tree planted on public or private property that is installed as a result of an approved tree mitigation and replacement plan in effect for the subject property.

Tree and topographical survey- A current tree and topographical survey shall be submitted showing all protected trees. The survey shall be one year old or newer, and shall show all protected trees as defined herein. The survey shall be prepared, signed and sealed by a licensed Surveyor, Civil Engineer, or Landscape Architect. The survey shall be at the same scale as the development plan, be superimposed over the proposed site development plan, and include the species, caliper inches, the location of waterways, wetlands, and buffers, and the location of contour line as follows, depending on the size of the parcel:

1. For properties ten (10) acres or less in size; Contour interval of one (1) foot.
2. For properties between ten (10) and twenty-five (25) acres in size: Contour intervals of two (2) feet.
3. For properties larger than twenty-five (25) acres in size: Contour intervals of five (5) feet.

Wetland- Those areas that are inundated or saturated by surface or ground water (hydrology) at a frequency and duration sufficient to support, and that under normal circumstance do support, a prevalence of vegetation (hydrophytes) typically adapted for life in saturated soil conditions (hydric soils). Wetlands generally include swamps, marshes, bogs, and similar areas.

## **Section 2:**

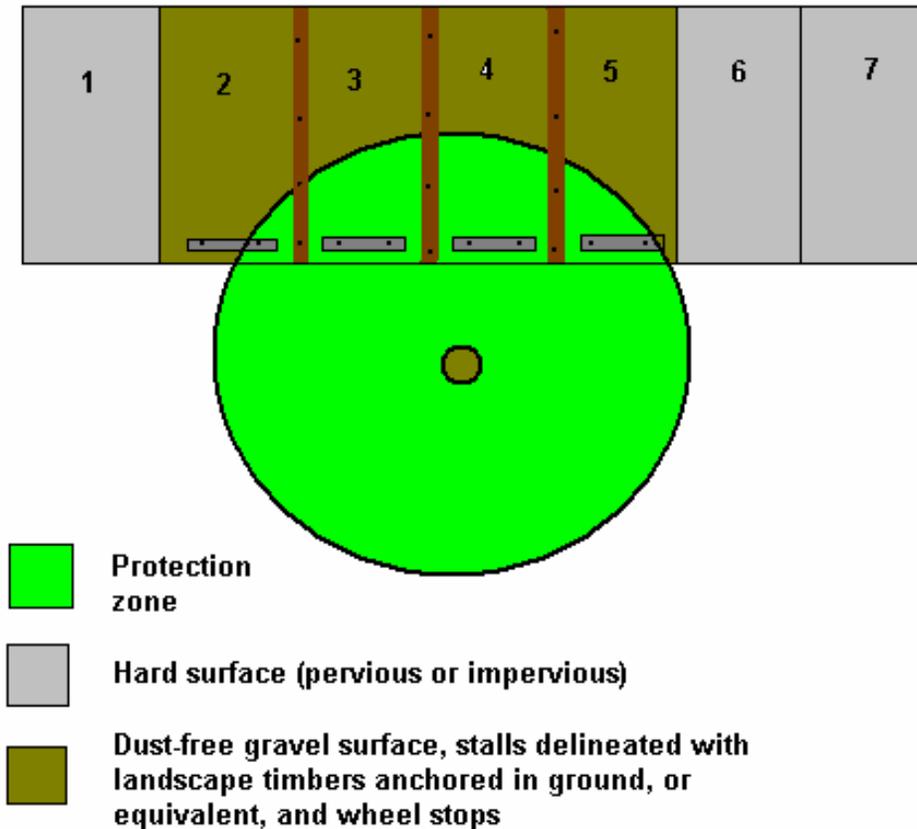
That Section 23-42(4)(a) be amended to read as follows:

### *(4) Paving Surfaces*

(a) Except when the parking area is within the tree protection zone of a protected tree, the paving surface on all on-site and off-site parking lot(s) shall be dustfree, allweather material, (i.e., concrete, asphalt). The paving surface shall have the necessary striping delineating the parking stalls and handicapped requirements. When the parking area is within the tree protection zone, the area shall be left unpaved, but shall be improved with a pervious dust free gravel surface. The stalls shall be delineated with landscape timbers or some other equivalent method, with wheelstops to prevent hitting the tree. No handicap parking shall be within the tree protection zone (see Figure 1)

Figure 1

Stalls encroaching into the tree protection zone shall be surfaced with uncompacted, dust-free matrix such as "crushed 57" gravel or equivalent. Soil disturbance or compaction within the tree protection zone is prohibited.



**Section 3:**

That Section 23-43 be amended to add the following below the *Land Use/Parking Requirements* chart to read as follows:

(1) The minimum number of parking spaces required for a use not specifically mentioned in this section shall be as required for the most similar use listed herein as determined by the zoning administrator, except where specifically stated otherwise.

(2) The total overall parking requirement for all uses may be reduced to save a protected tree, at the discretion of the zoning administrator. The chart below indicates the amount of required parking that may be reduced to save a protected tree.

Required parking stalls

Maximum reduction

5 - 20	25%
21 - 50	20%
51 - 75	15%
76 - 150	10%
151 and above	8%

**Section 4:**

That Section 23.67.2.(7) be amended to read as follows:

**Sec. 23-67.2. Applicability and exemptions.**

All properties shall comply with requirements of this article except as otherwise exempted below:

- (1) Utility construction- Companies and governmental agencies installing and maintaining utilities in easements and rights-of-way shall be exempt when acting in accordance with approved construction plans.
- (2) Wetlands mitigation- Wetlands mitigation shall be exempt when working from an approved plan of the US Army Corps of Engineers, South Carolina Department of Environmental Control (DHEC) or the Office of Ocean and Coastal Resource Management (OCRM).
- (3) Nursery- Trees grown specifically for sale, as a part of the commercial activity, shall be exempt.
- (4) Any situation involving trees, which is determined to be a threat to public health, safety or welfare, as determined by the city manager or his designate, shall be exempt.
- (5) *Reserved.*
- (6) Any tree determined to be severely damaged, in hazardous condition, disabled, or dead shall be granted a permit to be removed after receive written approval from the zoning administrator after the condition of the tree has been verified. A replacement tree shall be planted as approved by the zoning administrator. per the requirements of this section.
- (7) The following trees shall be exempt from the replacement requirement but shall still require a permit to remove:
  - (a) Longleaf pines greater than six (6) caliper inches, but less than fifteen (15) caliper inches and all other species of pine trees greater than six (6) caliper inches, but less than thirty (30) inches.
  - (b) All other pine species greater than six (6) caliper inches.

## **Section 5:**

That Section 23.67.3 be added to read as follows:

### **Section 23-67.3 Definitions**

*Protected tree-* A protected tree is any of the following:

(a) A tree located within and existing or future planned public right-of-way or on public lands, parks or other public facilities; that is:

(3) Six (6) inches in caliper or larger if located east of the Atlantic Intracoastal Waterway;

(4) Six (6) inches in caliper or larger if situated on property containing twenty-five (25) acres or less; or twelve (12) inches in caliper or larger if situated on property larger than twenty-five (25) acres, for all such properties west of the Atlantic Intracoastal Waterway;

(b) Any species of tree located on private property as follows:

(4) Any non-Pine species six (6) inches in caliper or larger;

(5) Any Longleaf Pine (Pinus palustris) fifteen (15) inches in caliper or larger;

(6) Any other species of Pine tree thirty (30) inches in caliper or larger.

(c) Any tree planted on public or private property that is installed as a result of an approved tree mitigation and replacement plan in effect for the subject property.

*Tree and topographical survey-* A current tree and topographical survey shall be submitted showing all protected trees. The survey shall be one year old or newer, and shall show all protected trees as defined herein. The survey shall be prepared, signed and sealed by a licensed Surveyor, Civil Engineer, or Landscape Architect. The survey shall be at the same scale as the development plan, be superimposed over the proposed site development plan, and include the species, caliper inches, the location of waterways, wetlands, and buffers, and the location of contour line as follows, depending on the size of the parcel:

4. For properties ten (10) acres or less in size; Contour interval of one (1) foot.

5. For properties between ten (10) and twenty-five (25) acres in size: Contour intervals of two (2) feet.

6. For properties larger than twenty-five (25) acres in size: Contour intervals of five (5) feet.

*Wetland-* Those areas that are inundated or saturated by surface or ground water (hydrology) at a frequency and duration sufficient to support, and that under normal circumstance do support, a prevalence of vegetation (hydrophytes) typically adapted for life in saturated soil conditions (hydric soils). Wetlands generally include swamps, marshes, bogs, and similar areas.

## **Section 6:**

That Section 23-68 (1)(a) and (d) be amended to read as follows:

### **Sec. 23-68. Tree preservation requirements.**

(1) All single-family and duplex residential lots (prior to and during construction) outside of the footprint of the house and swimming pool area shall conform to the following:

- (a) ~~A plan shall be submitted~~ A tree and topographical survey shall be submitted showing all trees over six (6) caliper inches (~~caliper measurement~~) for review and approval by the zoning administrator. Once approved, any tree up to sixteen (16) caliper inches (~~caliper measurement~~) may be ~~cut without a permit~~ removed with a permit.
- (b) Trees greater than sixteen (16) caliper inches (~~caliper measurement~~) within the footprint of a proposed single-family/duplex structure and swimming pool area may only be removed with the issuance of a ~~building~~ permit. To obtain a permit, an application with building plans, site plan, tree and topographical survey, and required fees must be submitted to and approved by the planning and development department. No replacement trees are required for trees removed within the footprint of a proposed single-family/duplex structure and swimming pool area.
- (c) Trees outside the footprint of a proposed single-family/duplex structure and swimming pool area between sixteen (16) and twenty-four (24) caliper inches (~~caliper measurement~~) may only be removed with a permit. To obtain a permit, a site plan, tree and topographical survey and tree replacement schedule must be approved by the zoning administrator. The replacement shall be one-half (1/2) caliper inch (~~caliper measurement~~) for every one (1) inch caliper removed.
- (d) The zoning administrator may waive the site plan and tree and topographical survey ~~requirements~~ when it is obvious there are fewer than five (5) protected trees on the property.
- (e) Trees greater than twenty-four (24) caliper inches (~~caliper measurement~~) may only be removed with permission from the board of zoning appeals. The board will establish a replacement schedule.

Tree replacement shall only be with trees defined as protected trees and shall include at least seventy-five (75) percent of the same types of trees removed.

## **Section 7:**

That Section 23-68 (2)(a) be amended to read as follows:

(2) All single-family subdivisions shall conform to the following:

- (a) ~~A tree and topographical survey showing all protected trees as defined by this chapter. Trees greater than sixteen (16) inches shall be designated on a tree survey submitted with the subdivision application.~~
- (b) A site plan, subdivision construction plans and a tree replacement schedule shall be submitted with the subdivision application. Tree replacement within the subdivision is the goal of this ordinance, however, if replacement is impractical in rights-of-way, funds shall be deposited in the tree mitigation bank pursuant to section 23-70.2 in lieu of planting the required tree(s).
- (c) The planning commission may authorize removal of any tree, including trees of greater than twenty-four (24) caliper inches (~~caliper measurement~~), if in their review they find that installation of infrastructure is not possible because of the tree. A replacement schedule of one-half (1/2) inch caliper for every one (1) inch caliper removed is required.

Tree replacement shall only be with trees defined as protected trees and shall include at least seventy-five (75) percent of the same type of trees removed.

### **Section 8:**

That Section 23-68(3)(a) and (b) be amended to read as follows:

(3) All other properties shall conform to the following:

- (a) ~~Excluding All~~ trees required by Article V, any protected tree as defined by this chapter up to twenty-four (24) caliper inches ~~up to ten (10) caliper inches (caliper measurement)~~ may be cut with a permit ~~at any time without a permit~~ except on vacant lots.
- (b) A tree and topographical survey showing all protected trees as defined by this chapter is required. ~~which will designate all trees on the property over eight (8) inches (caliper measurement).~~
- (c) Trees between ten (10) and twenty-four (24) caliper inches (~~caliper measurement~~) may only be removed with a permit after approval of a site plan, construction plans and a tree replacement schedule. The replacement schedule shall be one-half (1/2) caliper inch (~~caliper measurement~~) for every one (1) inch caliper removed.
- (d) The site shall retain or replace one hundred sixty (160) caliper inches per acre. The retention caliper may include pine trees otherwise exempt from this article.
- (e) Trees greater than twenty-four caliper inches (~~caliper measurement~~) may only be removed with permission from the board of zoning appeals. The board will establish a replacement schedule.

- (f) No tree that was required pursuant to the landscape article shall be removed except with approval of the zoning administrator and then only replaced with authorized landscape material of a comparable caliper.

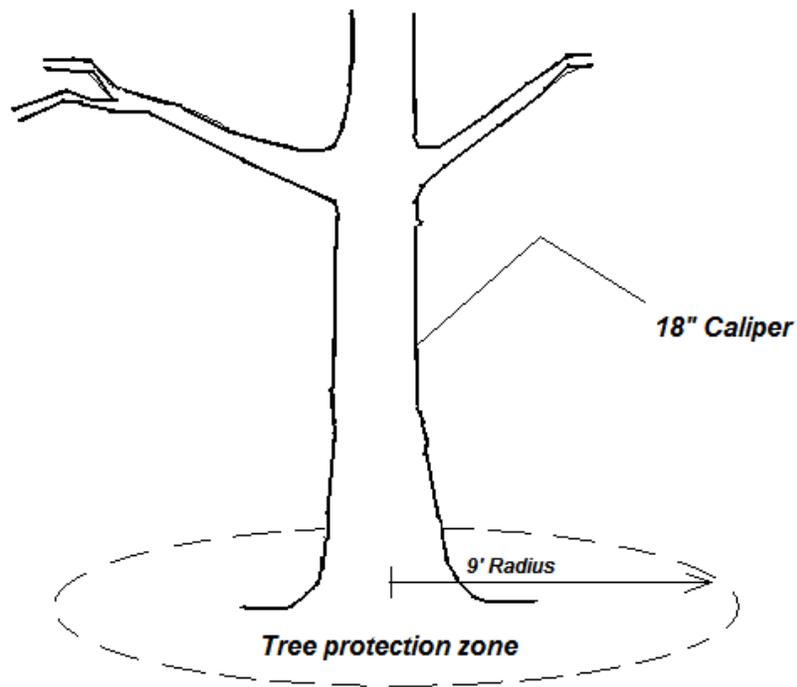
### **Section 9:**

That Section 23-68.3(1) be amended to read as follows:

#### **Sec 23-68.3. Tree protection during construction.**

- (a) A tree protection zone (see diagram below) shall be established and shown on construction drawings, site plans and subdivision plats (preliminary and final) equal to one-half (1/2) foot for each one (1) caliper inch (~~caliper measurement~~) of the retained tree. Protection zones may intersect or overlap. Except as described in Section 23-63.3 (3), the following shall apply within ~~Within~~ a tree protection zone, ~~the following shall apply:~~
- (b) No building material or other construction-related material shall be stored.
- (c) No dirt, rock, coquina, sand, or other natural material shall be stored during or after construction of any site improvements.
- (d) No impervious surface shall be allowed at any time; and
- (e) No disturbance of the original land within the protection zone, such as trenching, installation of utilities or building foundations, shall occur except with prior approval of the zoning administrator. Protective barriers shall be placed around the perimeter of the tree protection area before land disturbance and remain until completion of the site improvements.

**Diagram showing how to measure the tree protection zone.**



**Section 10:**

That Section 23-68.3 (3) be added to read as follows:

Section 23-68.3 (3) (1) is described in Section 9 of this ordinance above.

- (2) Modifications to the above construction protection standards may be authorized by the zoning administrator.
- (3) Certain improvements may be permitted within the tree protection zone covering up to 1/3<sup>rd</sup> of the required zone. Improvements within this area must be submitted to the Zoning Administrator for review and approval prior to any encroachment into the tree protection zone.

**Section 11:**

That the North Myrtle Beach Planning Commission has provided the required public notice of this request and has held the necessary public hearings in accordance with applicable State Statutes and City Ordinances.

DONE, RATIFIED AND PASSED, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

ATTEST:

\_\_\_\_\_  
Mayor Marilyn Hatley

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

FIRST READING: \_\_\_\_\_  
SECOND READING: \_\_\_\_\_

REVIEWED:

\_\_\_\_\_  
City Manager