

ARTICLE 11. - TREE ORDINANCE^[3]

Footnotes:

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Editor's note— Ord. No. [2012-019.4](#), adopted October 1, 2019, in effect, repealed art. 11, §§ 11.1—11.8 and enacted a new art. 11 as set out herein. Former art. 11 pertained to similar subject matter.

11.1. - PURPOSE AND SCOPE.

The purpose of this Article is to provide for the protection and continuance of the heavy tree canopy that currently exists within the City of Diamondhead by prohibiting the unnecessary removal of mature protected trees upon private property. The provisions of this Article shall apply to all protected trees having a caliper diameter of six (6) inches or more as measured at five (5) feet above adjacent grade and growing on privately owned property. Protected trees are defined as Live Oak Trees (*Quercus virginiana*), ~~and~~ Southern Magnolia Trees (*Magnolia grandiflora*), American Holly (*Ilex opaca*), Bald Cypress (*Taxodium distichum*), Black Gum (*Nyssa sylvatica*), Pond Cypress (*Taxodium ascendens*), Sweet Gum (*Liquidambar styraciflua*), and White Oak (*Quercus alba*). This list may be expanded upon recommendation of the Planning & Zoning Commission with approval by the City Council.

It is further the scope of this Article to provide certain planting limitations to protect trees and the like from unnecessary trimming and to protect utility systems from damage and/or destruction due to tree growth.

(Ord. No. [2012-019.4](#), 10-1-2019)

11.2. - RESIDUAL TREE DENSITY.

11.2.1 *Number of Trees Based on Lot Size:*

| SITE AREA (NET SQUARE FEET) | REQUIRED TREES |
|---|--|
| 0 to 10,000 (approx. ¼ acre) | 1 tree/1,000 sq. ft. |
| 10,000 to 110,000 (approx. ¼—2.6 acres) | 10 trees for first 10,000 sq. ft., plus 1 tree/2,500 sq. ft. over 10,000 sq. ft. |
| Over 110,000 | 50 trees for first 110,000 sq. ft., plus 1 tree/5,000 sq. ft. over 110,000 sq. ft. |

11.2.2 *Tree Relocation or Replacement.* As a condition to the granting of a tree removal permit, the applicant may be required to:

1. Relocate those protected trees which would otherwise be destroyed to another location upon the site; or
2. Replace those protected trees which will be destroyed with suitable replacement trees elsewhere within the site; or

3. Replace those protected trees which will be destroyed with suitable replacement trees within a City right-of-way, easement, or public property, upon approval by the City Manager ~~and City Council~~.

(Ord. No. [2012-019.4](#), 10-1-2019)

11.3. - PERMIT REQUIRED PRIOR TO TREE DESTRUCTION.

Except as provided and permitted herein, it shall be unlawful to cut down, remove, deface, burn, poison or take any other action that results ultimately in the destruction of any protected tree designated in this Article on private property which has a trunk diameter of at least six inches (6") when measured at a point five feet (5') above ground level from the base of such tree unless a proper permit is issued under the provisions of this Article.

(Ord. No. [2012-019.4](#), 10-1-2019)

11.4. - PERMIT PROCESS.

Any person, firm, partnership, corporation, or other entity seeking permission to take any action which may result in the removal or destruction of a protected tree, as defined in this Article, shall first make application to the Zoning Administrator. An administrative fee of \$25.00 will be assessed to the applicant. If the Zoning Administrator determines a City Arborist is needed, the applicant must pay the City Arborist fee prior to the issuance of a permit to remove any protected tree.

(Ord. No. [2012-019.4](#), 10-1-2019)

11.5. - PERMIT APPLICATION CONTENTS.

Any person, firm, partnership, corporation or other legal entity seeking permission to cut down, remove, deface, burn, poison, or take any other action that results ultimately in the destruction of any protected tree designated in this Article shall first make written application to the Zoning Administrator which shall contain the following information:

- A. The plat map describing the property on which the protected tree or trees are located naming streets adjacent to the property and showing the location of the protected tree or trees on said plat. The map may be prepared by the petitioner (compass direction shall be shown on the map). The map shall be legible.
- B. Protected trees to be affected shall be so denoted on the map by a circle and numbered in sequence so that they may be identified by the same code with any written material accompanying the map. Protected trees must be listed by species.
- C. An explanation or description of the work or alteration to be performed on each protected tree and the reasons therefore.
- D. The name, legal residence, mailing address, email address, and phone number of the property owner making the request and the same information of the person or firm doing the work.

(Ord. No. [2012-019.4](#), 10-1-2019)

11.6. - APPLICATION REVIEW.

11.6.1 *Standard of Review.* The Zoning Administrator shall review the application and, in his discretion, may consult with the City Arborist in reaching the decision of whether to grant or deny the application. In reviewing the application, the following criteria shall be taken into consideration:

- A. The health of the protected tree or trees, if proposed to be removed for health reasons.
- B. The location of any buildings or appurtenances existing or proposed upon a piece of property, and whether or not a more suitable design or location is available to avoid removing a protected tree.
- C. The effects an existing protected tree is having or is expected to have upon buildings or appurtenances existing on the property.
- D. The species of the tree.
- E. Other conditions that may be unique to the situation revealed in the application, including the economic hardship that would be imposed upon the applicant were the permit denied.

11.6.2 *Appeals Process.* The Zoning Administrator shall receive and review applications for any work proposed to be done which may result in destruction of any protected tree or trees covered by this Article. An applicant may appeal the Zoning Administrator's decision within ten days to the Planning and Zoning Commission. The Planning and Zoning Commission's finding shall be final.

(Ord. No. [2012-019.4](#), 10-1-2019)

11.7. - VARIANCE PROCEDURE.

See City of Diamondhead Code of Ordinances Section 2.6.1—2.6.7—Variance Procedures

Section 11.7 shall be known as the Variance Procedure. This procedure is intended to provide relief from the terms of the Tree Ordinance when, because of special circumstances applicable to the property, the strict application of the Tree Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification, and to ensure that any adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the district in which such property is situated.

(Ord. No. [2012-019.4](#), 10-1-2019)

11.8. - TREES ON PUBLIC PROPERTY.

All trees of any kind, regardless of size, located on public property belonging to the City of Diamondhead shall not be removed, cut down or destroyed by any means except upon action of the City Manager. The City Manager shall report the removal or destruction of protected trees on public property in his/her City Manager's Report to the City Council.

(Ord. No. [2012-019.4](#), 10-1-2019)

11.9. - EXEMPTION FOR PUBLIC UTILITIES.

Any public utility operating within the City of Diamondhead may, upon order of the City Manager, be exempt from the provisions of this Ordinance, upon a finding that the services provided by them are necessary for the general health, safety and welfare of the citizens of the City of Diamondhead, but such cutting, removal, defacing, burning, poisoning or taking of any other action that would ultimately result in the destruction of any protected tree designated in this Ordinance shall be limited to the amount necessary in order to provide such utility.

(Ord. No. [2012-019.4](#), 10-1-2019)

11.10. - PLANTINGS NOT TO INTERFERE WITH UTILITIES.

It shall be unlawful for any tree or shrub to be planted in close proximity to an overhead utility such that said planting will come into conflict with and potentially damage or destroy said utility.

It is the intent of this Section that plantings occur in such a location that they achieve mature height without the necessity of trimming or pruning to avoid overhead utility lines, thus destroying the symmetry of the planting.

(Ord. No. [2012-019.4](#), 10-1-2019)

11.11. - PROHIBITED ACTS.

It shall be unlawful to "clear cut," or remove all trees, regardless of size or species, from a parcel of property. Any person, firm, partnership, corporation or other entity that clear cuts a parcel of property shall be subject to the penalties listed in Section 11.12 of this Ordinance.

11.11.1. – TREE PROTECTION. Trees identified on an approved landscaping plan, subdivision plat, or site plan to be retained shall utilize the following protection methods:

11.11.1.1 Install four-foot high perimeter fencing at the extreme outer edge of the dripline.

11.11.1.2. Perimeter fencing located within 50 feet of any building footprint, unless approved by the Building Official, shall be constructed of materials equivalent to those used for silt fencing.

11.11.1.3. There shall be no activity of any kind inside the perimeter other than hand-brush clearing.

11.11.1.4. No land clearing or building permits shall be issued until the perimeter of all protected trees and tree groves have been properly fenced.

11.11.1.5. Grates or other pervious surfaces shall be utilized within the dripline of existing trees to allow water and air to reach the tree roots.

11.11.1.6. Fill (other than soil disturbance) shall be prohibited, as well as any vehicle traffic or material storage in areas under the dripline of trees to be protected.

11.11.1.7. Drastic changes in drainage patterns which may negatively affect existing trees shall be avoided.

11.11.1.8. Any person who intentionally damages a protected tree shall be in violation of this article and subject to the penalties prescribed herein below in Section 11.12.

11.11.1.9. The removal of the protected fencing, or encroachment into the area, without explicit approval of the property owner or his designated agent, shall be punishable by a fine up to the replacement value of the tree(s) involved. Replacement value shall be determined by a method approved by the International Society of Arboriculture (ISA). This applies to any person or entity, public or private.

(Ord. No. [2012-019.4](#), 10-1-2019)

11.12. - PENALTIES.

Any person, partnership, firm or corporation violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to the maximum fine allowed by law and the cost of prosecution or in default of the payment thereof, shall be punished by imprisonment for a period not to exceed thirty (30) days for each offense, or by both such fine and imprisonment in the discretion of the Court, together with the cost of such prosecution (Sec. 1-14.—General Penalty).

11.12.1. – PRIOR TREE REMOVAL.

11.12.1.1. Prior removal of protected trees. If a site is cleared or protected trees removed prior to obtaining subdivision or site plan approval, or if done without a tree survey or permit, then any development application for the site shall be denied for up to 24 months except as authorized below:

- a. A request for site plan approval within the 24 month time frame may, however, be considered if the proposed site plan incorporates a reforestation plan that results in a future canopy coverage of 40 percent of the site and pays a fine of \$500.00 per acre of trees cleared and \$1,000.00 per each protected tree removed.
- b. The square foot percentage of canopy area required for reforestation shall be based on the total area of the property less the square footage dedicated to any building footprints, streets, driveways, sidewalks, pathways, or utility easements.

(Ord. No. [2012-019.4](#), 10-1-2019)

11.13. - CONFLICT WITH OTHER LAWS.

Whenever the requirements of this Article are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the higher standards shall govern.

This Ordinance, having been unanimously adopted shall become effective 30 days upon the adoption thereof, with a single publication of the ordinance prior to becoming effective and being recorded and published in the ordinance book in the same manner as required by State Law of other ordinances.

(Ord. No. [2012-019.4](#), 10-1-2019)