

ORDINANCE NO. 2408

AN ORDINANCE TO AMEND THE GATLINBURG MUNICIPAL CODE BY ADDING AN ADDITIONAL CHAPTER THERETO, BEING CHAPTER FOUR OF TITLE 14, AND FURTHER BEING THE ADOPTION OF A TREE PROTECTION ORDINANCE

WHEREAS, the City of Gatlinburg, along with other cities and the county, commissioned a study by Saratoga Associates, Inc. to make recommendations with regard to hillside and ridge view matters; and

WHEREAS, the City of Gatlinburg duly created a Hillside and Ridges Task Force for the study and recommendation of changes to implement recommendations made by Saratoga Associates, Inc. to change and improve the manner in which tree preservation could take place within the City and that said Task Force met and deliberated on numerous occasions; and

WHEREAS, joint workshops took place between the Board of Commissioners, the Gatlinburg Municipal Planning Commission, and the Hillside and Ridges Task Force to direct implementation of ordinances to carry out recommendations from the Task Force and Saratoga Associates, Inc.; and

WHEREAS, the Gatlinburg Municipal Planning Commission has reviewed and recommended to the Board of Commissioners that certain ordinance changes be adopted; and

WHEREAS, implementation of these additional requirements will improve environmental and water quality standards in Gatlinburg as well as improve construction safety and will otherwise be in the best interests of the citizens and residents of the City of Gatlinburg.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF GATLINBURG, TENNESSEE:

Section 1. The Gatlinburg Municipal Code is hereby amended by adding an additional Chapter thereto, being Chapter Four of Title 14, as follows:

"CHAPTER 4

TREE PROTECTION ORDINANCE

SECTION

- 14-401. Purpose and intent.
- 14-402. Definitions.
- 14-403. Applicability.
- 14-404. Trees protected.
- 14-405. Review process and application requirements.
- 14-406. Approval/denial of application.
- 14-407. Appeal.
- 14-408. Tree replacement provision.
- 14-409. Tree credit provision.
- 14-410. Tree conservation and landscaping requirements.
- 14-411. Tree replacement for non-construction activities.
- 14-412. Standards for crediting existing trees.
- 14-413. Tree protective measures.
- 14-414. Permit issuance.
- 14-415. Administration and enforcement.
- 14-416. Penalties.

14-401. Purpose and intent. The purpose and intent of this chapter is to promote the health, safety, and public welfare of the inhabitants of the City of Gatlinburg and, consistent with forestry policy and practice as promulgated by the Department of Agriculture, Division of Forestry of the State of Tennessee, to promote and encourage the protection of existing trees and root systems; to regulate the preservation, replacement, and indiscriminate removal of trees; and to establish procedures and practices and minimum design standards for fulfilling these purposes.

The standards established herein are intended to: promote air quality; reduce noise, heat and glare; lessen soil erosion and minimize flooding; ensure that development activities in one area do not adversely affect activities within adjacent areas; minimize the unnecessary removal of trees during development; stress the importance of trees as a visual screen; promote the development of open space corridors for wildlife and recreational activities; beautify and enhance improved and unimproved land; promote the preservation of the city's historical "rural community" heritage; and, minimize the cost of construction and maintenance of drainage systems necessitated by increased flow and diversion of surface waters.

14-402. Definitions. (1) For the purpose of this chapter, words used in the present tense include the future tense; words in the singular number include the plural number, and words in the plural number include the singular number; the word "shall" is mandatory and not directory; the word "may" is permissive. Any word or term not defined within this section of the municipal code or in Article III, Definitions, in the Gatlinburg Zoning Ordinance shall be construed to be used in this chapter as defined by the latest edition of Webster's Unabridged Dictionary. Any word or term not defined in the city's

ordinance or the latest edition of Webster's Unabridged Dictionary shall have the meaning customarily assigned to it.

(2) The following words and terms are defined as follows:

(a) "Area of disturbance." Any developed or undeveloped area of land that by any operation or occurrence by which the existing site surfaces and elevations are changed by cutting, filling, borrowing, stockpiling, stripping, trenching, clearing, or where any ground cover, natural or man-made, is removed, or any buildings or other structures are removed, or any watercourses or body of water, either natural or man-made, is relocated thereby creating unprotected areas.

(b) "Caliper." The diameter of the stem of a tree as measured six (6) inches above the ground for trees up to four (4) inches in diameter and twelve (12) inches above the ground for larger diameter trees. Caliper is used as a measurement standard for relatively small trees.

(c) "Certified arborist." A practicing arborist certified by the National Arborist Association.

(d) "Commercial logging and timber harvesting." The cutting and removal of trees from a site for commercial purposes, leaving the stump and root mass intact.

(e) "Construction activity." Any activity which requires a site plan and/or a preliminary plat to be reviewed by the Gatlinburg Municipal Planning Commission. Such activities might include, but not be limited to, the following: the construction of new buildings or expansions to existing buildings and the development of new roadways and other improvements.

(f) "Diameter-at-breast-height (DBH)." The diameter, in inches, of a tree trunk as measured four and one-half (4½) feet above the ground. If the tree splits into multiple trunks below four and one-half feet, the trunk is measured at its most narrow point beneath the split. Diameter-at-breast-height is used as a measurement standard for relatively large trees.

(g) "Dripline." A verticle line extending from the outermost portion of the tree canopy to the ground.

(h) "Ephemeral stream." A wet weather stream which flows in a diffuse manner and not within a well-defined channel. Such streams are created in response to a heavy rainstorm and continue only for a short period after rainfall ceases.

(i) "Environmentally sensitive areas." Areas where tree removal could create adverse impacts on storm water runoff, erosion control and/or water quality. Such areas include, but are not necessarily limited to, mapped floodplains and wetlands, sinkholes, streamside management zones, areas adjacent to perennial, intermittent, and/or ephemeral streams, and/or steep slopes.

(j) "Hazardous tree." A diseased, dead, structurally unsound, or otherwise unsafe tree that is likely to endanger the public, an adjoining property owner, and/or other trees. Hazardous trees shall not include trees which are otherwise healthy but which are made hazardous as a result of proposed construction or non-construction-related activities. Where a tree is questionable as to whether it is hazardous, a written determination shall be made by the town administrator or his/her designee in consultation with a certified arborist or forestry professional.

(k) "Intermittent stream." A stream which contains water within a well-defined channel that only flows temporarily

following a major rainstorm or as long as the water table is elevated.

(l) "Invasive exotic pest tree." Any tree which is included on the "Invasive Exotic Pest Plants in Tennessee" list which is maintained by the Research Committee of the Tennessee Exotic Pest Council.

(m) "Land disturbance permit." A permit issued for a proposed activity which would lead to the removal or disturbance of existing tree cover, including clearing and grubbing operations, but would not involve the alteration of the prevailing topography.

(n) "Licensed landscape architect." A current Tennessee licensed landscape architect, as defined by the Tennessee Board of Architecture and Engineering Examiners.

(o) "Natural regeneration." The natural establishment of trees and other vegetation with at least 400 woody, free-to-grow seedlings per acre, which are capable of reaching a height of at least twenty (20) feet at maturity.

(p) "Non-construction activity." Any alteration of the natural environment which would involve the removal or destruction of any tree protected in this chapter but which is not in association with a site plan and/or preliminary plat required to be reviewed by the Gatlinburg Municipal Planning Commission.

(q) "Perennial stream." A stream which contains water within a well-defined channel the majority of the year.

(r) "Public tree." A tree growing on land owned by a unit of government (federal, state, county, town, or any agency thereof).

(s) "Replacement tree." Any tree planted on a site to replace a protected tree which has been removed or destroyed as a result of construction and/or non-construction activities.

(t) "Specimen tree." A particularly impressive or unusual example of a species due to its size, shade, shape, age, or any other trait that, in the opinion of the professional responsible for preparing the tree preservation/removal plan, epitomizes the character of the species. This would include, but not necessarily be limited to, the following:

(i) Any non-hazardous tree which has a particularly uncommon or widely valued characteristic and which has a DBH of more than twenty-four (24) inches;

(ii) Any non-hazardous tree which has been declared as rare or endangered by an agency of the state or federal government and which is protected by the laws of the State of Tennessee or the laws of the United States; and/or

(iii) Any tree which is associated with a historic event or historic structure or is otherwise commonly recognized within the community to have historical significance.

Where a tree is questionable as to whether it is a specimen, a written determination shall be made by the town administrator or his/her designee in consultation with a certified arborist or forestry professional.

(u) "Tree." Any self-supporting woody plant which is capable of growing to a height of twenty (20) feet or more and which usually provides one main trunk and produces a more or less distinct and elevated head with many branches.

(v) "Tree cover." The area directly beneath the crown and within the dripline of a tree.

(w) "Tree farming." Includes nursery stock trees for resale in commercial nurseries or garden centers and trees specifically grown to be harvested as Christmas trees.

(x) "Tree regeneration." The act of re-creating a stand or entire forest by replacing older trees with new trees.

14-403. Applicability. The following activities shall be considered exempt from the requirements of this ordinance:

(1) Provisions for utilities and vehicular and pedestrian ways within platted easements and rights-of-way;

(2) Removal of hazardous trees;

(3) Removal of invasive exotic pest trees;

(4) Tree farming.

14-404. Trees protected. The following protected tree groups shall not be removed or otherwise destroyed without first obtaining approval of a tree preservation/removal plan from the Gatlinburg Municipal Planning Commission (GMPC) or, where applicable, the Building Official or his/her designee:

(1) Any hardwood tree which has a DBH of ten (10) inches or greater, any evergreen tree which has a DBH of fifteen (15) inches or greater, except as provided for elsewhere in this ordinance;

(2) Any specimen tree;

(3) Any public tree;

(4) Any grouping of trees which are significant by virtue of their size, species, location, appearance, or other distinguishing feature, characteristic, or function; and/or

(5) Any trees located within environmentally sensitive areas.

14-405. Review process and application requirements. (1) Tree preservation/removal plan. When an activity requires the submission of a preliminary plat or a site plan, as required by the Gatlinburg Zoning Ordinance or subdivision regulations, to be reviewed by the GMPC, a tree preservation/removal plan shall be provided and shall, at a minimum, include the following:

1. The name and location of the project;

2. A north arrow and a written and graphic scale;

3. The name, address, telephone number, and seal or statement of professional qualifications of the professional responsible for the preparation of the plan;

4. An indication of proposed improvements and the proposed area of disturbance;

5. The general location and approximate square footage and acreage of all covered areas;

6. The approximate density, predominant species, general distribution of predominant species, and predominant level of maturity of trees within all tree covered areas. Maturity levels shall be classified as follows: "Young Stands" would be used where the predominant tree cover is from trees that are less than 6 inches at DBH; "Intermediate Stands" would be used where the predominant tree cover is from trees that are 6-10 inches at DBH; and "Mature Stands" would be used where the predominant tree cover is from trees that are greater than 10 inches at DBH;

7. The species, exact location, as determined by a licensed surveyor, and size of any hardwood tree which has a DBH of ten (10) inches or greater, any evergreen tree which has

a DBH of fifteen (15) inches or greater. Such trees shall be shown only if they are within and/or twenty-five (25) feet beyond the proposed area of disturbance. In association with a preliminary plat, however, such trees, unless they are classified as specimen trees, shall not be required to be individually identified.

8. The species, exact location, as determined by a licensed surveyor, and size of any specimen tree which is within and/or twenty-five (25) feet beyond the proposed area of disturbance;

9. An indication of whether an identified tree is proposed to be saved or is proposed for removal;

10. An indication of those trees which are considered to be hazardous;

11. The location of any environmentally sensitive areas;

12. The location of any required buffer strips;

13. A detail and an indication of the location, height, and material used for tree protective fencing;

14. An indication, including, where applicable, a detail of any other tree protective measures, such as dry wells, retaining walls, mulched aisle ways, etc.;

15. Proposed location for temporary construction activities such as equipment or worker parking, materials storage, burn holes, and equipment wash down areas; and

16. A written indication of any treatments, pruning, or other measures which may be needed to promote the preservation of an existing tree.

In all cases, the tree preservation/removal plan shall be consistent with other subdivision and site development elements, such as stormwater and erosion control measures, proposed grading, and utility provisions which are included as part of the preliminary plat or site plan. Where such consistency is in question, the applicant may be required to overlay these other site development elements onto the tree preservation/removal plan.

The tree preservation/removal plan shall be prepared by either a licensed landscape architect, a certified arborist, or any other person with proven equivalent qualifications based on the nature and scale of the proposed project.

(2) Landscape plan. In addition, where a landscape plan is required per the Gatlinburg Zoning Ordinance, the number, species, size, and location of any replacement trees and/or existing trees to be saved must be included as part of the landscape plan. In all cases, in terms of the trees shown to be either removed or saved, the information shown on the landscape plan shall be consistent with the approved tree preservation/removal plan. A tree replacement/credit summary, as provided for in this chapter, shall be included on both plans.

(3) Administrative review. Where the removal of protected trees is not associated with a construction related activity, such removal shall only be permitted if a tree preservation/removal plan is approved by the Building Official or his/her designee. If the scale of the proposed removal is deemed to be significant, the Building Official or his/her designee may require the plan to be reviewed by the GMPC. In all cases, the applicable information noted in this chapter shall be provided on the plan.

14-406. Approval/denial of application. (1) Approval. A tree preservation/removal plan may be approved if it can be determined that:

(a) The plan is consistent with stormwater, erosion, and sedimentation control measures which are in accordance with the City of Gatlinburg's Stormwater Ordinance;

(b) Where commercial logging and timber harvesting are involved, the plan is, at a minimum, in accordance with Tennessee Department of Agriculture, Division of Forestry Best Management Practices (BMP's);

(c) The plan addresses the preservation of existing trees;

(d) The plan provides for sufficient and timely replanting of trees, where required, to compensate for the removal of trees and other vegetation; and

(e) The applicant intends to complete the proposed activity within a reasonable time frame, determined by the size of the development, and will take steps to prevent any negative impacts resulting from the work proposed.

(2) Denial. A tree preservation/removal plan may be denied where:

(a) In association with a site plan, less than fifteen (15) percent of the existing tree cover, not counting any buffer strips required per the Gatlinburg Zoning Ordinance, would remain;

(b) In association with a preliminary plat, tree removal is proposed beyond the area reasonably necessary for cut and fill associated with provisions for on-site public improvements and/or the installation of utilities;

(c) For non-construction related activities, the removal of over twenty-five (25) percent of a site's protected trees, not counting any required buffer strips, is proposed;

(d) A specimen tree which could reasonably be saved is proposed for removal;

(e) Obvious problems related to storm water runoff, erosion, and siltation would result;

(f) Tree removal is proposed in environmentally sensitive areas;

(g) Where commercial logging and timber harvesting are involved, proposed tree removal is not in accordance with established Tennessee Department of Agriculture, Division of Forestry Best Management Practices (BMP's);

(h) The extent of clearing would result in obvious damage to the property of others;

(i) The proposed activity could be reasonably conducted in a manner which would better preserve existing trees and/or further promote the intent of this ordinance; and/or

(j) Tree removal activities are otherwise inconsistent with the purpose and intent of this ordinance.

(3) Upon initial presentation, the GMPC, Building Official and/or his/her designee shall have forty-five (45) days to grant, deny, approve, or approve with conditions, restrictions, limitations, or alterations such tree preservation/removal plans in conjunction with the preliminary plat, site plan, or landscape plan. In the event that an application is denied, the specific reasons for denial shall be set forth in writing and a copy of same shall be forwarded to the applicant.

14-407. Appeal. Any applicant or aggrieved party with legal standing may appeal any decision or action of the GMPC or Building Official to the Board of Zoning Appeals. Such appeal, however, must be submitted in writing to the City Planner within thirty (30) days of the decision or action in question. Upon receipt of an appeal, the

Board shall have forty-five (45) days to affirm, reverse, or modify a decision of the GMPC, Building Official or his/her designee.

14-408. Tree replacement provision. Where the GMPC or the Building Official or his/her designee has approved the removal of an existing healthy, nonhazardous hardwood tree with a DBH of ten (10) inches or greater and/or an existing healthy, nonhazardous evergreen tree with a DBH of fifteen (15) inches or greater, a replacement tree(s) shall be provided based on the following schedule:

Tree Replacement Schedule

<u>Size of Tree Proposed for Removal Required</u>	<u>Number of New Trees</u>
10" - 15" DBH	2
between 15" and 20" DBH	3 for a hardwood tree removed; 1 for an evergreen tree removed
>20" DBH	4 for a hardwood tree removed; 2 for an evergreen tree removed

All replacement trees shall be at least 1.5 inches DBH and from the following list:

- | | | |
|-----------------------|-----------------------------------|---------------|
| Alder | Fir | Oak |
| Ash | Franklinia | Pagodatree |
| Bald Cypress | Fringe Tree | Paw Paw |
| Basswood | Ginkgo | Persimmon |
| Beech | Golden Chain Tree | Pine |
| Birch | Golden Rain Tree | Plum |
| Black Gum | Hackberry | Redbud |
| Buckeye | Hawthorn | Sassafras |
| Cedar | Hemlock | Service Berry |
| Cherry, Flowering | Hickory | Silverbell |
| Chestnut | Holly | Sourwood |
| Chinkapin | Honey Locust (thornless) | Spruce |
| Coffeetree, Kentucky | Horn Beam | Stewartia |
| Crab Apple, Flowering | Ironwood | Sweetgum |
| Crape Myrtle | Katsura Tree | Sycamore |
| Cypress | Linden | Tulip Tree |
| Dawn Redwood | Locust | Walnut |
| Dogwood | Magnolia | Willow |
| Elm | Maple | Yellowwood |
| False Cypress | Mulberry, Red
(fruitless male) | Zelkova |

Where replacement trees cannot be reasonably accommodated on the subject property, as certified by a licensed landscape architect, the developer shall be required to dedicate the excess required replacement trees to a public property approved by the Gatlinburg Tree Board.

14-409. Tree credit provision. An existing healthy, nonhazardous tree to be saved and which has a DBH of ten (10) inches or greater and is located within an approved area of disturbance may be credited toward fulfilling a portion of the landscape requirements specified in the Gatlinburg Zoning Ordinance. Tree credits shall be based on the following schedule:

Tree Credit Schedule

<u>Size of Existing Tree to be Saved</u> <u>Trees</u>	<u>Credited Number of New</u>
10" - 15" DBH	4 for a hardwood tree saved; 2 for an evergreen tree saved
between 16" and 20" DBH	6 for a hardwood tree saved; 3 for an evergreen tree saved
>20" DBH	8 for a hardwood tree saved; 4 for an evergreen tree saved

The preservation of clusters of healthy, non hazardous hardwood trees, which are less than ten (10) inches at DBH but more than four (4) inches in caliper and are located within an approved area of disturbance may also be credited toward fulfilling a portion of the landscaping requirements. For every five (5) caliper inches preserved, a credit may be given toward the planting of one (1) new tree. Where the resultant number of credited trees contains a fraction, any fraction less than one-half may be dropped and any fraction one-half or more shall be counted as one (1) credited tree. In all cases, trees proposed for credit must comply with all applicable provisions specified in this chapter and the landscaping requirements in the Gatlinburg Zoning Ordinance.

14-410. Tree conservation and landscaping requirements. Should the number of required replacement trees exceed the number of credited trees, the difference shall be planted as an addition to the number required per the landscaping requirements specified in the Gatlinburg Zoning Ordinance. All required replacement trees shall meet the minimum size requirements, as specified in the landscaping requirements. Such species and their proposed location(s) shall be shown on the landscape plan.

Any tree which is to be saved and which does not survive a two (2) year time frame shall be replaced based on the requirements specified in this chapter.

14-411. Tree replacement for non-construction activities. For non-construction activities, a plan for tree replacement shall be presented to the Building Official or his/her designee. Replacement trees shall be provided per the requirements specified in this chapter and the minimum landscape requirements of the Gatlinburg Zoning Ordinance.

Where land is to be reused for commercial logging and timber harvesting, an alternate plan involving natural or other forms of tree regeneration may be considered if such a plan is prepared and recommended by a licensed landscape architect. At a minimum, the plan shall clearly promote the purpose and intent of this chapter and shall be in accordance with Tennessee Department of Agriculture, Division of Forestry Best Management Practices.

14-412. Standards for crediting existing trees. Existing trees will only be credited as fulfilling landscaping requirements where such trees meet the following minimum specifications:

(1) They are healthy, safe, and meet the size, location, and other applicable provisions of the landscaping requirements;

(2) They are comparable, in terms of species classification and general characteristics, to new trees that would be permitted in the proposed location per the landscaping requirements specified in this chapter and the Gatlinburg Zoning Ordinance; and

(3) They do not and are not likely to interfere with existing or planned utilities or vision clearance standards.

14-413. Tree protective measures. Where any tree and/or grouping of trees are to be saved, the following minimum preservation measures shall apply:

(1) Protective fencing shall be located to correspond to the existing drip line of the individual tree or clusters of trees to be protected;

(2) Protective fencing shall be at least three (3) feet high, upright and highly visible, and shall be constructed of a durable material that will last until construction is completed. Throughout the construction process, the tree fencing shall remain undisturbed and no activity or storage of any materials or vehicles shall be permitted within the fenced area; and

(3) Where trees are to be removed, such trees shall be flagged and shall be felled away from, rather than into areas with existing trees to be preserved.

14-414. Permit issuance. (1) Grading permit. A grading permit shall be required as set out in Gatlinburg Municipal Code 12-602.

(2) Land disturbance permit. A land disturbance permit shall be required as set out in Gatlinburg Municipal Code 18-403.

14-415. Administration and enforcement. The provisions of this chapter shall be administered and enforced by the Building Official.

14-416. Penalties. At a minimum, where any protected tree is removed without first obtaining the required permission, such tree shall be replaced with a tree or trees approved by the city staff. The required minimum number of replacement trees shall be equal to, in caliper inches, the caliper inches of the tree or trees removed.

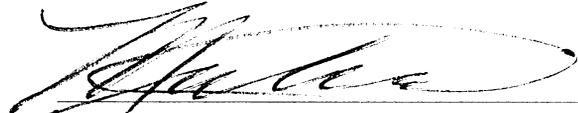
In addition, any person, firm, partnership or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not to exceed fifty dollars (\$50). Each day a violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

The foregoing provisions relative to replacement trees and fines shall not in any way prevent the City of Gatlinburg from also issuing stop work orders, withholding inspections, cashing bonds or letters of credit, or seeking injunctive relief against a violator of this chapter."

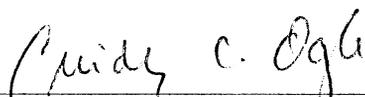
Section 2. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held

invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 3. This ordinance shall take effect fifteen days from and after its passage, the public welfare requiring it.


MAYOR

ATTEST:


CITY RECORDER

Approved by the Gatlinburg
Planning Commission 1-29-09

Passed first reading 3-3-09

Passed second reading 4/7/09

APPROVED AS TO FORM:


RONALD E. SHARP, CITY ATTORNEY