

1.1000 Introduction

The preservation of trees and natural vegetation is deeply rooted in the history of Conway and is a critical public concern. Few communities can actually boast that they build streets around trees as Conway does. Few communities attach names and historical significance to particular trees as Conway does. The Live Oak trees, which line many streets within the City, are probably the City's most prized and most protected natural resource. Local legend has it that when the large oaks along Main Street were threatened by the construction of the railroad in 1887, Mrs. Mary Beaty, who lived near the Wade Hampton Oak, appeared with a loaded shotgun and demanded that the construction workers "touch not a single bough." The actions of Mary Beaty have inspired the citizens of Conway to actively protect the Live Oak trees as well as certain other native tree species. It is felt that Mrs. Beaty's actions that day were the genesis of tree protection, not only in Conway, but in the State of South Carolina.

1.1005 Intent

The intent of the City of Conway Tree Protection Ordinance is to accomplish the following:

- 1 To provide for the protection, preservation, proper maintenance, and use of trees and woodlands.
- 2 To minimize disturbance and prevent damage from erosion and destruction of the natural habitat without denying the reasonable use and enjoyment of the property within the city.
- 3 To protect trees and woodlands (including other forms of vegetation) for their economic support of local property values and for their natural beauty, wilderness character, or geological, ecological or historical significance.
- 4 To address the public concern for these valued natural resources in the interest of health, safety, and general welfare of the residents of the City of Conway.
- 5 To encourage the beautification, air-cooling and purification, noise abatement, property value enhancement and the other attributes of trees within a city.
- 6 To naturally control flooding and erosion, moderate noise pollution, dust, and other airborne pollutants, moderate the city climate and shelter and feed wildlife.
- 7 To enable citizens to prevent and control the spread of diseases, to preserve trees in the path of development, and to avoid the unnecessary cost associated with sewer clogging, sidewalk replacement and tree related accidents.

1.1010 Applicability

This Ordinance shall apply to all trees of any type located on public or private property inside the city limits of the City of Conway, South Carolina. Please refer to Section 1.1040, Tree Permits Required for the applicability of each type of permit.

1.1015 Jurisdiction

The City Arborist shall be responsible for the administration of all provisions of this article and for public tree management. The City Arborist shall be assisted in his/her administration of these regulations by the Conway Tree Board, established below.

1.1020 Conway Tree Board

The Conway City Council hereby establishes a board of appointed citizens as The Conway Tree Board. The members of this Board serve concurrently as appointed members of the Community Appearance Board (CAB), already established. Any duties described in the appointment of the CAB that relate to tree issues hereby convey to the Conway Tree Board, as do any present appointment of members and scheduling of board meetings. The Conway Tree Board is one and the same as the CAB, with duties and responsibilities as described in its charter. All current appointments remain in effect until each respective member's normal expiration of term. Future appointments to the Community Appearance Board will include appointment to the Conway Tree Board. Any reference to the Tree Board in this Ordinance also refers to the current Community Appearance Board.

1.1025 Definitions

All words in these standards have their customary dictionary definition except as specifically defined herein. The words "shall" and "must" are mandatory, and the words "may" and "should" are permissive. Technical terms used are defined as follows:

- 1 Area: The area of a tree, as defined in this Ordinance, shall be arrived at by multiplying pi (3.14, a constant) times the square of the radius of the tree (where the radius equals 1/2 times the diameter breast high) or the standard area formula: $A = \pi \times r^2$.
- 2 ANSI (Current Edition): American National Standards Institute. The ANSI A300 standards represent the industry consensus on performing tree care operations.
- 3 Caliper: A caliper measurement shall be measured six inches (6") above the soil line, or across the stump, in the event the tree has been severed at less than 12 inches above the soil line.

- 4 Critical Root Zone: That area of tree roots under the canopy measured to be no less than 1.5 feet in radius for every inch of trunk diameter measured 4.5 feet above the ground.
- 5 Diameter Breast Height (d.b.h.): The diameter measurement of a tree is measured at 4.5 feet above ground level and is referred to as diameter, breast high, commonly abbreviated as d.b.h. Trees consisting of two or more stems in which the fork is below d.b.h. are considered as separate trees and the diameter is measured for each stem separately. If a fork occurs exactly at d.b.h., the diameter measurement is taken immediately below the enlargement caused by the fork. Measurements shall be made by use of an arborist diameter tape or arborist tree calipers.
- 6 Drip Line: An imaginary vertical line extending downward from the outermost tips of the tree branches to ground level.
- 7 Grubbing: The removal of understory vegetation which does not remove any trees with a d.b.h. of four inches (4" d.b.h.) or greater.
- 8 Hazard Tree: A tree, or tree part that may be dangerous and is likely to fail and cause damage or injury, and the likelihood of failure exceeds an acceptable level of risk. The City Arborist shall make such determination with the Mayor's approval.
- 9 Pruning: The cutting or removing of any part of the branching structure of a tree in the crown, trunk or root areas.
- 10 Public Nuisance (Trees that have become): Any tree with an untreatable disease or insect pest problem; dead trees or trees in irreversible decline; a tree or limb(s) that obstruct street lights, traffic signs, the free passage of pedestrians or vehicles; a tree that poses a threat to public safety or property.
- 11 Silviculture: The art and science of controlling the establishment, growth, competition, health, and quality of forests and woodlands to meet the diverse needs and values of landowners and society on a sustainable basis
- 12 Tree: Any self-supporting woody plant growing upon the earth that provides single or multiple trunks with potential d.b.h. of two (2) inches and grows to an overall height of fifteen (15) feet or more.
- 13 Tree Removal: The cutting or removal of fifty percent (50%) or more of the crown, trunk, or root system of a tree, or causing the death of a tree through damaging, poisoning, or other direct or indirect action.

- 14 Tree Survey: A survey plan prepared by a surveyor, registered forester or certified arborist indicating an accurate location, size, and species, and/or other desired measurements or information on trees on a property or given location.

1.1030 Licensing

It shall be unlawful for any person who is being paid a fee for the business of planting, cutting, trimming, pruning, removing, or otherwise modifying trees within the city limits of the City of Conway to conduct such business without first signing an affidavit stating that he or she has received and read the City of Conway Tree Protection Ordinance and 2001 ANSI A300 Standards or any current revision of these documents. Such affidavit shall be completed and submitted when making application for, or renewing, a City of Conway business license.

1.1035 Tree Preservation

The removal or destruction of any tree as referenced below within the City limits of Conway without the necessary tree removal permit shall be prohibited. No person shall intentionally damage, cut, carve, transplant, or remove any tree, attach any signs with rope, wire, nails, or other contrivance to any tree, allow any substance which is harmful to such trees to come in contact with them or be placed within their dripline over pervious areas; or intentionally set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree listed below. Any such actions shall be subject to the penalties established in Section 1.1065. All trees required for preservation shall be in addition to any landscaping required by the Conway Zoning Ordinance as part of the overall development of the site.

A. Protected Trees: The following trees shall be considered Protected Trees and shall not be removed from any lot in the City limits of Conway without a Protected Tree Removal Permit:

1	Flowering Dogwood	<i>Cornus florida</i>	4" d.b.h. or greater
2	Crape Myrtle	<i>Lagerstroemia indica</i>	4" d.b.h. or greater
3	Redbud	<i>Cercis Canadensis</i>	4" d.b.h. or greater
4	American Holly	<i>Ilex opaca</i>	8" d.b.h. or greater
5	Live Oak	<i>Quercus virginiana</i>	8" d.b.h. or greater
6	Southern Magnolia	<i>Magnolia grandiflora</i>	8" d.b.h. or greater
7	Red maple	<i>Acer rubrum</i>	8" d.b.h. or greater
8	Bald cypress	<i>Taxodium distichum</i>	8" d.b.h. or greater
9	River Birch	<i>Betula nigra</i>	8" d.b.h. or greater
10	Sycamore	<i>Plantanus occidentalis</i>	8" d.b.h. or greater
11	All Oak Species	<i>Quercus</i>	14" d.b.h. or greater

The proposed removal of any tree listed above may be subject to Mitigation of Trees Approved for Removal, Section 1.1045.

B. Landmark Trees: The following trees shall be considered Landmark Trees and shall not be removed from any lot in the City limits of Conway without a Landmark Tree Removal Permit:

1. All Live Oak trees designated on the map entitled "The Oaks of Conway, South Carolina," researched and prepared by Evelyn Snider, Joseph N. Pinson, Jr., and Eugene Holbert.
2. Any Live Oak tree equal to or in excess of thirty inches (30") d.b.h.
3. Any tree that City Council designates as a Landmark Tree.

The proposed removal of any tree listed above shall be subject to Mitigation of Trees Approved for Removal, Section 1.1045.

C. Required Landscaping: Any tree planted or retained to meet the City of Conway Landscape Regulations of the Zoning Ordinance may not be removed without a Tree Cutting Permit. The proposed removal of any tree listed above shall be subject to Mitigation of Trees Approved for Removal, Section 1.1045.

D. Setback Area: For all non-residentially zoned lots, all proposed or approved major residential development sites (more than five (5) lots or units or the creation of a new street proposed for dedication) and for all residentially zoned lots two (2) acres or greater, all trees equal to or greater than eight (8) inches d.b.h. may not be removed from the exterior setback area without a Tree Cutting Permit. Exceptions shall be made for ingress/egress to the parcel.

E. Interior of a Lot: In addition to the trees preserved in the setback area, all non-residentially zoned lots, all proposed or approved major residential development sites (more than five (5) lots or units or the creation of a new street proposed for dedication) and for all residentially zoned sites two (2) acres or greater, a minimum of 10 trees (minimum 6 inch d.b.h.) or 60 inches of d.b.h. must be retained per actual acre. If the site is less than an acre in size, the fractional requirement (rounded up to the nearest whole number) shall prevail. If there are protected and landmark trees on site that are required for preservation under Sections A and B above, those trees may be counted to meet the minimum interior lot tree preservation. Where possible, efforts should be made to retain groupings of trees rather than isolated individual trees. No tree removal of any kind may occur without a Tree Cutting Permit. Properties unable to, due site constraints, topography, or absence of trees on the site, preserve the minimum amount of trees listed above shall be subject to Mitigation of Trees Approved for Removal, Section 1.1045.

1.1040 Tree Permits Required

A. Protected Tree Removal Permit

This permit is necessary to remove any protected tree on any lot within the City of Conway. Requests to remove Protected Trees shall be reviewed on a case-by-case

basis by the City Arborist. Prior to the issuance of a tree removal permit for a Protected Tree, the City Arborist shall determine that one or more of the following conditions exist:

1. The tree is considered hazardous per the definition in paragraph 1.1035.H;
2. The tree is dead or in irreversible decline as determined by the City Arborist;
3. The tree has an untreatable disease or insect pest problem as certified by a registered forester, certified arborist, or by the City Arborist.
4. The tree or its root system is causing visible damage to structures, and/or areas used for pedestrian and vehicular traffic;
5. The tree or its root system is causing damage to structures or underground utilities, as certified by a structural engineer;
6. Trees within power line easements that cannot be properly pruned by the local utility company;
7. Trees, after proper pruning, which remain classed as Hazard Trees;
8. The tree is located in the footprint of a proposed addition or expansion, and there are no practical alternative locations on the lot for the addition or expansion or practical means to build around the tree.

The City Arborist's recommendation will be forwarded to the Mayor for review and approval. Once approved by the Mayor, Protected Tree Removal Permit shall be issued. All Protected Tree Removal Permits are valid for six (6) months from the date of issue.

A condition of the Protected Tree Removal Permit may be mitigation as defined in Section 1.1045.

B. Landmark Tree Removal Permit

This permit is necessary to remove any landmark tree on any lot within the City of Conway. Requests to remove Landmark Trees shall be reviewed on a case-by-case basis by the City Arborist, then by the Conway Tree Board. The Conway Tree Board may authorize the City Arborist to issue a Landmark Tree Removal Permit for the removal of a Landmark Tree provided the Board determines one or more of the following:

1. The tree is classed as a Hazard Tree, is in irreversible decline, and cannot be properly pruned to alleviate such condition;

2. The tree is diseased or infectious as certified by a registered forester or certified arborist or the City Arborist and cannot be properly treated or pruned to alleviate such condition;
3. The tree is located on an undeveloped lot in such position that the lot cannot be developed in a reasonable and prudent manner. In this instance, the Conway Tree Board shall consider a request for a variance from a particular zoning requirement if it would alleviate the need to remove such Landmark Tree; and if so determined, initiate such request with the Board of Zoning Appeals. In this instance, if no alternative to the removal of the Landmark Tree can be obtained, the Conway Tree Board may attach any conditions to the permit the Tree Board deems necessary to ensure compliance with the intent of this Ordinance.
4. The tree is causing visible structural damage to a building and no feasible alternative other than removal of such tree exists, as certified by a structural engineer.

All Landmark Tree Removal Permits are valid for six (6) months from the date of issue.

A condition of the Landmark Tree Removal Permit shall be mitigation as defined in Section 1.1045.

C. Tree Cutting Permit

This permit is necessary to remove any tree from any non-residentially zoned lot in the City limits of Conway, any proposed or approved major residential development sites (more than five (5) lots or units or the creation of a new street proposed for dedication) or any residentially zoned lot two (2) acres or greater. All developments should strive to minimize the removal of existing trees. The following items shall be submitted to the City Arborist when requesting a tree cutting permit and may be submitted on the same map:

1. A tree survey depicting all protected and landmark trees, all waterways, wetlands and setback areas.
2. A tree preservation plan prepared in accordance with Section 1.1035. This plan shall show the location, size and species of all trees proposed for protection.
3. A tree mitigation plan prepared in accordance with Section 1.1045. This plan shall show the location, size and species of all trees proposed for planting.

All trees proposed for protection or preservation must be clearly identified in the field prior to the issuance of a Tree Cutting Permit by the City. All Tree Cutting Permits are valid for two (2) years from the date of issue.

1.1045 Mitigation of Trees Approved for Removal

In cases where any type of tree removal permit is issued, mitigation planting may be required to compensate for the loss of the removed tree(s). The species of replacement trees shall be selected from one of the following sources:

1. Shade trees or ornamental trees listed in the Recommended Plant List of the Conway Zoning Ordinance (Section 11.1115);
2. Trees listed as Protected Trees in Section 1.1035 A of this Ordinance;
3. Other trees as approved by the City Arborist.

All mitigation tree selections shall be reviewed and approved by the City Arborist or the Conway Tree Board. An effort should be made to include a diversity of species when planting mitigation trees.

Where the City Arborist determines that a site cannot sustainably support the required replacement, due to the size and shape and/or structures and/or viable site constraints, a fee based on the current nursery market value plus installation costs shall be paid to the City of Conway Tree City USA account. All trees planted to satisfy the mitigation requirements shall be healthy living trees. The owner, occupant, tenant or agent shall be jointly and severally responsible for the maintenance of all trees. Any dead or damaged tree shall be promptly replaced with a tree of a similar size and type. All trees required for mitigation shall be in addition to any landscaping required by the Conway Zoning Ordinance as part of the overall development of the site.

A. Mitigation for Trees Removed with any approved Protected or Landmark Tree Removal Permit

The following table shall be used to calculate mitigation tree requirements for Protected and Landmark trees removed with a permit.

Table 1.

Diameter of Tree Removed (d.b.h.) Rounded Up	Number of Replacement	Minimum caliper of Replacement	Alternate Fee
4" through 6"	Equal to number of d.b.h. inches removed	2"	Current nursery market value for required replacement plus associated installation costs
7" or greater	Equal to number of d.b.h. inches removed	4"	Same as above

All required mitigation trees must be planted within 12 months of the issuance of the removal permit. All violations of the required tree planting shall be subject to the penalties outlined in Section 1.1065, Table 2.

B. Mitigation for Property unable to retain the required number of trees with any approved Tree Cutting Permit.

1. If a property owner obtains a Tree Cutting Permit to remove any tree planted or retained to meet the City of Conway Landscape Requirements from the Zoning Ordinance, he/she shall be required to replant the minimum landscape requirements for the use as stated in the Conway Zoning Ordinance.
2. If a property owner/applicant cannot preserve or if there is less than a minimum of 10 trees (minimum 6 inch d.b.h.) or 60 inches of d.b.h. per actual acre, the property owner/applicant shall re-establish the number of three (3) inch d.b.h. replacement trees necessary to meet the 60 d.b.h. per acre requirement. If the site is less than an acre in size, the fractional requirement (rounded up to the nearest whole number) shall prevail.
3. A property owner may apply to the Tree Board for relief from the tree mitigation requirements. The Tree Board may waive the tree mitigation requirements if the applicant illustrates that there are unique topographic conditions that prevent the planting of the replacement trees. In this case, the Tree Board may require that payment of a fine in the amount equal to the current nursery market value for the required replacement trees plus associated costs of installation for as many three (3) inch d.b.h. trees necessary to meet the total required d.b.h. inches of the site.
4. All mitigation trees required as a condition of a Tree Cutting Permit must be installed prior to the issuance of a Certificate of Occupancy of any commercial building or residential home or the recording of a final plat on any proposed major development. The property owner or developer may post a financial guarantee for mitigation trees in accordance to the standards of Section 11.1105 of the Landscape Requirements of the Conway Zoning Ordinance.

1.1050 Tree Protection During Construction

During any type of development or construction, the following measures shall be utilized to protect any on-site tree that is not designated for removal:

1. It shall be the responsibility of the person in charge of the erection, repair, alteration or removal of any building or structure to place a guard or protector around any tree or shrub on subject lot or in the public rights-of-way so as to prevent injury to such tree or shrub arising out of such erection, repair, alteration or removal.

2. Protective barriers, such as silt fences, bollards, roping or other such devices as approved by the City Arborist shall be placed by the person requesting construction permits around each tree at the drip line of the canopy of each tree to prevent any type of encroachment under the drip line, or six (6) times the diameter at breast height (d.b.h.) whichever is greater.
3. Trenching shall be no closer than six (6) times the diameter at breast height to the affected tree, nor disrupt more than thirty percent (30%) of the drip line root area.
4. No other types of disturbance, equipment or material storage, or construction shall be allowed under the drip line of any tree without prior approval of the City Arborist.
5. The City Arborist may make an on-site inspection at any time in order to verify compliance with the above and may place a stop work order on the work site for infractions or violations of this section of the Ordinance.
6. It shall be unlawful for any person to willfully fell, cut down, prune, undermine, burn or otherwise damage or destroy any tree or shrub in or upon any public area or right-of-way.
7. No soil disturbance, trenching, grading, paving or storage of equipment/materials shall take place within the critical root zone of any protected or landmark tree.
8. When save trees are damaged or the critical root zone is disturbed, the property owner shall be subject to the requirements in Section 1.1065.
9. Unnecessary cutting, breaking or skinning of roots, skinning and bruising of bark, smothering trees by stockpiling construction or excavation materials within the drip line is prohibited. Also prohibited is excessive foot or vehicular traffic and parking of vehicles within the pervious area within the drip line.

1.1055 Tree Pruning

Tree pruning shall be accomplished in accordance with the procedures set forth in the 2001 American National Standards Institute (ANSI) A300 Tree Care Operations standards or its revision/replacement.

The use of unnatural pruning techniques shall be considered an unauthorized removal of a tree unless the tree is designated on an approved landscape plan to be shaped or formed in an unnatural pattern or to be maintained at a certain height. Examples of unnatural pruning are topping, stubbing, dehorning, lion-tailing, or lopping. These practices are detrimental to tree health and are specifically prohibited.

Any tree on any public street or highway right-of-way or easement, owned or maintained by the City of Conway or any tree on private property defined as a Hazard Tree or Public Nuisance Tree in Section 1.1025 may be pruned based upon the recommendation of the City Arborist.

City Arborist may have Hazard trees or Public Nuisance Trees on public or private property pruned in the interest of public safety. A notification in the form of a door hanger will be used, which serves to alert the owners that crews will be in the area within a three-day period. Contact information will be provided on the door hanger including name and telephone number for the City's Beatification Department.

Any property owner requesting the pruning of a landmark tree must obtain a Tree Pruning Permit. Property owners shall apply directly to the City Arborist for this permit.

1.1060 Exemptions from this Ordinance

1. If any tree is determined by the City Arborist to be diseased, injured or located in a manner that endangers the public health, safety or welfare of City residents, the City Arborist may authorize its immediate removal.
2. In case of emergencies such as windstorms, ice storms, hurricanes, tornadoes, drought or other disasters, the City Arborist may waive the requirements of this ordinance during the emergency period so that the requirements of this ordinance would in no way hamper private or public work to restore order to the City of Conway.
3. The removal of live trees in conjunction with tree farms, agricultural practices, or commercial nurseries.
4. Silviculture so long as the following conditions are met:
 - A. Property must contain at least 5 acres
 - B. Activities occurring on the tract must be devoted of the production of marketable forest products.
 - C. No trees may be removed within 50 feet of the entire perimeter of the lot.
 - D. No protected or landmark trees may be removed.
 - E. The silviculture activity shall be in compliance with the latest South Carolina Best Management Practices Manual for Forestry.
 - F. A Silviculture Permit is obtained from the City Arborist. The application for such permits must include a boundary survey of the area to be harvested, depiction of the buffer area, location, size and species of any protected or landmark tree on the site and tree protection and silt fencing devices for preservation of trees in the buffer area, protected trees and landmark trees. Also, the permit application must include a narrative detailing proposed reforestation method.
 - G. No development may take place on a parcel that has been issued a silviculture permit with three (3) years of the cutting unless the property

owner meets the replacement standards detailed in Section 1.1065, Violations.

H. All Silviculture Permits are valid for two (2) years from the date of issue.

1.1065 Violations and Enforcement

The City Arborist shall have the authority to inspect property for compliance with this ordinance and issue stop work orders on any actions found in violation of this ordinance.

A. Protected and Landmark Tree Violations

Protected and Landmark Trees cut, removed, or pruned in violation of this Ordinance are subject to the following penalties: Plant replacement trees on site; and/or; pay a fine to the City of Conway Tree City account. The Conway Tree Board shall make the final determination of any penalty for the removal of a protected or landmark tree without a permit. The following table may be used by the Conway Tree Board as a guide for penalties of violations.

Table 2. Penalties – Removal of Protected or Landmark Trees without a Permit

Diameter of Tree Removed (d.b.h.) Rounded Up	Number of Replacement	Minimum Caliper of Replacement	Alternate Fee
4" through 6"	Double the total d.b.h. of the removed tree	2"	Current nursery market value for required replacement plus associated costs of installation
7" though 12"	Double the total d.b.h. of the removed tree	4"	Same as above
13" or greater	Triple the total d.b.h. of the removed tree	4"	Same as above

B. All Other Violations

Trees removed from any non-residentially zoned lots, proposed or approved major residential development sites (more than five (5) lots/units or the creation of a new street proposed for dedication) or residentially zoned lots two (2) acres or greater in violation of this ordinance are subject to the following:

1. If the City Arborist cannot determine the d.b.h. of the removed trees, said individual, organization, or corporation shall be subject to a fine equal to \$.10 (ten cents) per square foot of cleared property

2. If the City Arborist can determine the d.b.h. of the removed trees, said individual, organization, or corporation shall be subject to the penalties listed in Table 2, above.

The Conway Tree Board shall make the final determination of any penalty for trees removed without a permit in violation of this ordinance.

1.1070 Appeals

A. Denial of Protected Tree Removal Permit, Tree Cutting Permit, Silviculture Permit or Tree Pruning Permit

Any person denied a tree removal permit by the City Arborist may appeal to the Conway Tree Board. An appeal must be filed in writing within ten (10) working days of the denial of the permit to the City Arborist.

B. Denial of Landmark Tree Removal Permit

Any person denied a landmark tree removal permit by the Conway Tree Board may appeal to the Conway City Council. An appeal must be filed in writing within ten (10) working days of the denial of the permit to the City Arborist.

C. Appeal of Violation Penalty

Any person assessed a penalty for the violation of this ordinance by the Conway Tree Board may appeal to the Conway City Council. An appeal must be filed in writing within ten (10) working days of the denial of the permit to the City Arborist.