ARTICLE I. IN GENERAL

Secs. 82-1—82-30. Reserved.

ARTICLE II. LIVE OAKS, MAGNOLIA TREES

Sec. 82-31. Scope.

The provisions of this article shall apply to live oak and magnolia trees within the city limits on all privately and publicly owned property.
(Ord. No. 492, § I, 6-7-1989)

Sec. 82-32. Destruction limited.

Except as provided and permitted in this article, it shall be unlawful to cut down, remove, deface, burn, poison or take any other action that results ultimately in the destruction of any tree designated in this article which has a trunk circumference of at least 25 inches when measured at a point four feet above ground level from the base of such tree unless a proper permit is issued under the provisions of this article.
(Ord. No. 492, § II, 6-7-1989)

Sec. 82-33. Tree board.

(a) *Created; terms of members; plan:*

(1) Any person seeking permission to take any action which may result in the removal or destruction of a tree shall first make application to the city tree board, which shall consist of five members, citizens and residents of this city, who shall be appointed by the mayor with the approval of the board of aldermen.

(2) The term of the five persons to be appointed by the mayor shall be three years, except that the term of two of the members of the first board shall be for two years. If a vacancy shall occur during the term of any member, his successor shall be appointed for the unexpired portion of the term. Members of the board shall serve without compensation.

(3) It shall be the responsibility of the board to study, investigate, counsel and develop and/or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented annually to the board of aldermen and upon their acceptance and approval shall constitute the official comprehensive tree plan for the city. The board, when requested by the board of aldermen, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work.

(b) *Review of applications.* The city tree board shall receive and review applications for any work proposed to be done concerning the trees covered by this article and shall make recommendation to the mayor and board of aldermen as they deem to be in the best interest of the city.

(c) *Appeal to board of aldermen.*

(1) Upon referral and recommendation from the city tree board, and written appeal for a decision, the mayor and board of aldermen shall make a final decision as to the disposition of the trees in question.

(2) The board of aldermen shall have the right to review the conduct, acts and decisions of the city tree board. Any person may appeal from any ruling or order of the city tree board to the board of aldermen, who may hear the matter and make final decisions.

(d) *Appeal to circuit court.* Any interested person being aggrieved by the decision of the mayor and board of aldermen may appeal their decision to the circuit court of the county, First Judicial District, in the time and manner provided by law.
(Ord. No. 492, § III, 6-7-1989)

Sec. 82-34. Contents of application.

Any person seeking permission to cut down, remove, deface, burn, poison or take any other action that results ultimately in the destruction of any tree designated in this article, shall first make written application to the city tree board in triplicate, which shall contain the following information:

(1) A plat or map, with a scale of not less than one-quarter inch equaling one foot, describing the property on which the trees are located, naming streets adjacent to the property, and showing the location of the trees on the plat or map. The plat or map may be prepared by the petitioner. Compass directions will be shown on the map.

(2) Trees to be affected shall be so coded on the map that they may be identified by the same code from any written material accompanying the map.

(3) Trees shall be identified as to species, age or estimated age, height, circumference and location as to public or private property.

(4) An explanation or description of the work or alteration to be performed on the trees.

(5) The name, legal residence, mailing address and phone number of the person making the request.

(Ord. No. 492, § IV, 6-7-1989)

Sec. 82-35. Tree board recommendation.

(a) The city tree board shall, in reaching its decision for recommendation, weigh the loss created by the removal of the tree against the economic hardship that would be imposed upon the applicant if the permit were denied.

(b) The city tree board shall have the right to recommend to the mayor and board of aldermen of the city the removal of any dead or diseased trees on private or public property within the city when such trees constitute a hazard to life and property or harbor insects or disease which constitute a potential threat to other trees within the city, or which are deemed to be injurious to utilities of every kind and nature.
(Ord. No. 492, § V, 6-7-1989)

Sec. 82-36. Action of mayor and board of aldermen.

All trees of any kind, regardless of size or location, on public property belonging to the city shall not be removed, cut down nor destroyed except upon action of the mayor and board of aldermen or upon action of the mayor when he determines that an emergency situation justifies such removal or destruction; however, any tree removed under authority of the mayor shall nonetheless be reported to the board of aldermen by the mayor, stating his reasons for such action.
(Ord. No. 492, § VI, 6-7-1989)

Sec. 82-37. Exemption for public utilities.

Any public utility operating within the city may, upon order of the mayor and board of aldermen, be exempted from the provisions of this article, upon finding that the services provided by them are necessary for the general health, safety and welfare of the citizens of the city; but such cutting, removal, defacing, burning, poisoning or taking of any other action that would ultimately result in the destruction of any tree designated in this article shall be limited to the amount necessary in order to provide or maintain such utility service. Trees severely damaged by storms or other causes may be exempted from this article at the determination of the city tree board.
(Ord. No. 492, § VII, 6-7-1989)

Sec. 82-38. Planting of replacement trees.

Persons removing trees covered by this article shall plant new trees of the same species and number from nursery stock in such location as shall be designated by the city tree board.
(Ord. No. 492, § VIII, 6-7-1989)

1.5.3 A Warrant is a ruling that would permit a practice that is not consistent with a specific provision of this Code but is justified by its Intent (Section 1.2). The Planning Commission and the Zoning Board of Adjustments shall have the authority to administratively to approve or disapprove a request for a Warrant subject to the explicit requirements of this Code. The Planning Commission and the Zoning Board of Adjustments have seven days to rule on a Warrant issued via email by the Planning Office, after which the recommendation is heard by the Mayor and Board of Aldermen for the final ruling. The Planning Commission and the Zoning Board of Adjustments may also request that the Warrant be brought to the next regularly scheduled meeting for further discussion before a final ruling is issued by the Mayor and Board of Aldermen. The Mayor and Board of Aldermen may establish guidelines for the issuance of Warrants under this Code.

1.5.4 A Variance is any ruling on a deviation other than a Warrant. Variances shall be granted by the Planning Commission or Zoning Board of Adjustments in accordance with Section 1.4.4.

1.5.5 The request for a Variance shall not subject the entire application to public hearing, but only that portion necessary to rule on the issue under consideration.

1.5.6 Standards for Planning Commission Approval:

a. That the proposed use or development of the land will not materially endanger the public health and safety;
b. That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community of the region;
c. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;
d. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;
e. That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City;
f. That the proposed use is appropriately located with respect to tranporation facilities, water supply, fire and police protection, waste disposal and similar facilities;
g. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

1.5.7 The following standards and requirements shall not be available for Warrants or Variances:

a. The allocation ratios of each Transect Zone.
b. The maximum dimensions of traffic lanes.
c. The required provision of Alleys and Rear Lanes.
d. The minimum Residential Densities.
e. The permission to build ancillary apartments.
f. The requirements of parking location.

1.6 SPECIAL TREE PROVISIONS

This Code requires tree protection measures additional to those of the City of Pass Christian Tree Protection Ordinance ("Tree Ordinance"), and applies to any plan subject to this Code. The provisions of this section shall not amend or repeal any portion, part, or provision of the Tree Ordinance. IN the event of conflict between the provisions of this section and the Tree Ordinance, the stricter shall apply.

a. No tree protected by the Pass Christian Tree Ordinance that measures over 25" circumference, when measured 4' from the ground, shall be removed or damaged in connection with any building, development, construction, addition or other activity, provided, however, that trees in a building footprint or other construction zone may be removed with the prior written approval of the Planning Office, if each tree so removed shall be replaced elsewhere on the lot by three (3) trees of the same species, each having a minimum of ten-inch (10-inch) circumference when measured four (4) feet from the ground. Each plan submitted under this Code shall include a site plan showing and describing in detail by species and size all existing trees,

including any trees proposed to be removed and all proposed trees, shrubs and other landscape components. All of the foregoing shall be subject to the approval of the Tree Protection Board.

b. With the exception of trees of invasive or otherwise problematic species on a list maintained by the Tree Protection Board, no tree, of any species, which measure over thirty-eight-inch (38") circumference, when measured four (4) feet from the ground, shall be removed or damaged in connection with any building, development, construction, addition or other activity except by written approval of the Planning Office and replacement elsewhere on the lot by two trees from a list of species approved as acceptable by the Tree Protection Board as substitutes for the removed species. Each such replacement tree shall have a minimum of eight-inch (8") circumference when measured four (4) feet from the ground. The replacement species and sizes may be adjusted by Warrant under the advisement of the Tree Protection Board if suitable replacement trees are otherwise unavailable.

c. Replacement trees required as above may be contributed for use in Civic Space or for street tree use within any Community Planning Area within the City of Pass Christian rather than planted on the original lot if approved by Warrant.

d. When the Standards of Article 5 is in conflict with the Pass Christian Tree Ordinance and the Special Tree Provisions, a Warrant may be issued to the appropriate entity, either the Planning Commission or the Zoning Board of Adjustments to accommodate the Tree Ordinance and Provision. When a Warrant is issued to the Zoning Board of Adjustments the Agreement of Affected Property Owners is required.

1.7 SPECIAL PROVISION REGARDING POST-EMERGENCY CONDITIONS

When a Disaster Area which includes all or part of the City of Pass Christian has been declared by the Governor of the State of Mississippi or by the President of the United States of America, the Mayor and Board of Aldermen may, upon adopting a finding that a disaster has been declared may, by a resolution duly made, adopted, and spread upon the minutes of a regularly scheduled or duly called special meeting of that body, invoke either or both of the following subsections of this section for a period of nine (9) months from the date of the adoption of the authorizing resolution. At the expiration of the disaster period set by the resolution, the Mayor and Board of Aldermen shall reconsider the continuing need for the disaster period at a duly constituted meeting. If the Mayor and Board of Aldermen does not, by appropriate findings and resolution, extend the disaster period for another period of nine (9) months, or less, all existing disaster rebuilding rights will expire at the end of the period previously set.

1.7.1 Not withstanding anything to the contrary contained or Implied herein, an owner may repair or rebuild a building, structure or other improvement damaged or destroyed by the declared disaster to the extent it legally existed prior to the disaster. To qualify, the building, structure, or other improvement prior to the causative event; neither the lot, use, building, improvement, structure, nor condition shall be added to or altered in any way, except to remedy the effects of such damage or destruction, unless such additions or alterations cause the lot, use, building, improvement, structure, or condition to conform more closely with the provision of this Code; and permits for repair or replacement of such buildings, structures, or improvements shall have been issued before the expiration of the declared disaster period.

1.7.2 Upon a finding that the disaster has caused an urgent need for shelter and that the temporary use of manufactured buildings under a DISASTER TEMPORARY USE PERMIT would relieve the existent situation and contribute to ending the Disaster emergency the Zoning Officer, or such other city officials as may be designated, may be authorized to issue DISASTER TEMPORARY USE PERMITs. Such DISASTER TEMPORARY USE PERMITs will be used to allow manufactured buildings to be moved into and used in all areas of the city included in the Disaster Declaration notwithstanding existing Zoning Requirements for such period covered in the authorizing resolution. Each DISASTER TEMPORARY USE PERMIT will be issued in the form of a contract between the applicant and the City of Pass Christian, signed by the applicant and the Zoning Officer or other authorized city Official and will be in the form approved in November 2005 following Katrina.
Any temporary building moved onto any parcel of land under this section shall comply with all structural requirements of the adopted building code.

1.8 PRE-EXISTING CONDITIONS

1.8.1 Generally

a. Definition: A nonconformity as used in the Code is an existing Use, Structure, Lot or site improvement that is in compliance with the zoning regulations that were applicable to it when it was established, and for which all required permits were issued, but which does not conform in whole or in part to the regulations of this Code. Such nonconformity is legal and may continue except as regulated by this section.