

**TITLE 14**

**ZONING AND LAND USE CONTROL<sup>1</sup>**

**CHAPTER**

1. MUNICIPAL PLANNING COMMISSION.
2. ZONING ORDINANCE.
3. FLOOD DAMAGE PREVENTION ORDINANCE.
4. TREE PROTECTION ORDINANCE.

**CHAPTER 1**

**MUNICIPAL PLANNING COMMISSION**

**SECTION**

- 14-101. Membership.  
14-102. Organization, rules, staff and finances.  
14-103. Powers and duties.

**14-101. Membership.** The municipal planning commission shall consist of nine (9) members. One (1) of the members shall be the Mayor of Gatlinburg or his designee, one (1) shall be a member of the board of commissioners selected by the said board and the seven (7) remaining members shall be citizens, appointed by the mayor. The terms of the seven (7) appointive members shall be for five (5) years. Any vacancy in the appointed membership shall be filled for the unexpired term by the mayor who shall have the authority to remove any appointive member at his pleasure. The term of the member selected from the board of commissioners shall run concurrently with his membership on the board. All members shall serve without compensation. (1976 Code, § 11-101, modified, as replaced by Ord. #2434, Aug. 2011)

**14-102. Organization, rules, staff and finances.** The municipal planning commission shall elect its chairman from amongst its appointive members. The term of chairman shall be one year with eligibility for re-election. The commission shall adopt rules for the transactions, findings and determinations, which record shall be a public record. The commission may appoint such employees and staff as it may deem necessary for its work and may contract with city planners and other consultants for such services as it may require. The expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by the board of commissioners. (1976 Code, § 11-102)

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<sup>1</sup>Municipal code reference

Environmental design review board: title 2, chapter 3.

**14-103. Powers and duties.** The municipal planning commission shall have all of the powers, duties and responsibilities set forth in Tennessee Code Annotated, § 13-4-103, relating to duties and powers of municipal planning commissions. (1976 Code, § 11-103)

**CHAPTER 2**

**ZONING ORDINANCE**

**SECTION**

14-201. Land use to be governed by zoning ordinance.

**14-201. Land use to be governed by zoning ordinance.** Land use within the City of Gatlinburg shall be governed by Ordinance #830, titled "Zoning Ordinance, Gatlinburg, Tennessee," and any amendments thereto.<sup>1</sup>

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<sup>1</sup>Ordinance #830, and any amendments thereto, are published as separate documents and are of record in the office of the city recorder.

## CHAPTER 3

### FLOOD DAMAGE PREVENTION ORDINANCE

#### SECTION

- 14-301. Findings of fact.
- 14-302. Statement of purpose.
- 14-303. Objectives.
- 14-304. Definitions.
- 14-305. General provisions.
- 14-306. Administration.
- 14-307. Provisions for flood hazard reduction.
- 14-308. Variance procedures.

**14-301. Findings of fact.** (1) The city board of commission wishes to maintain eligibility in the National Flood Insurance Program (NFIP) and in order to do so must meet the NFIP regulations found in title 44 of the Code of Federal Regulations (CFR), ch. 1, section 60.3.

(2) Areas of the City of Gatlinburg, Tennessee are subject to periodic inundation which could result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(3) Flood losses are caused by the cumulative effect of obstructions in floodplains, causing increases in flood heights and velocities; by uses in flood hazard areas which are vulnerable to floods; or construction which is inadequately elevated, floodproofed, or otherwise unprotected from flood damages. (as added by Ord. #2404, April 2009, and replaced by Ord. #2427, Dec. 2010)

**4-302. Statement of purpose.** It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas. This ordinance is designed to:

(1) Restrict or prohibit uses which are vulnerable to flooding or erosion hazards, or which result in damaging increases in erosion, flood heights, or velocities;

(2) Require that uses vulnerable to floods, including community facilities, be protected against flood damage at the time of initial construction;

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;

(4) Control filling, grading, dredging and other development which may increase flood damage or erosion;

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands. (as added by Ord. #2404, April 2009, and replaced by Ord. #2427, Dec. 2010)

**14-303. Objectives.** The objectives of this ordinance are:

- (1) To protect human life, health, safety and property;
- (2) To minimize expenditure of public funds for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodprone areas;
- (6) To help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize blight in flood areas;
- (7) To ensure that potential homebuyers are notified that property is in a floodprone area; and
- (8) To maintain eligibility for participation in the NFIP. (as added by Ord. #2404, April 2009, and replaced by Ord. #2427, Dec. 2010)

**14-304. Definitions.** Unless specifically defined below, words or phrases used in this ordinance shall be interpreted as to give them the meaning they have in common usage and to give this ordinance its most reasonable application given its stated purpose and objectives.

- (1) "Accessory structure" means a subordinate structure to the principal structure located on the same lot and, for the purpose of this ordinance, shall conform to the following:
  - (a) Accessory structures shall only be used for parking of vehicles and storage.
  - (b) Accessory structures shall be designed to have low flood damage potential.
  - (c) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.
  - (d) Accessory structures shall be firmly anchored to prevent flotation, collapse, and lateral movement, which otherwise may result in damage to other structures.
  - (e) Utilities and service facilities such as electrical and heating equipment shall be elevated or otherwise protected from intrusion of floodwaters.

(2) "Act" means the statutes authorizing the national flood insurance program that are incorporated in 42 USC 4001-4128.

(3) "Addition (to an existing building)" means any walled and roofed expansion to the perimeter or height of a building.

(4) "Appeal" means a request for a review of the local enforcement officer's interpretation of any provision of this ordinance or a request for a variance.

(5) "Area of shallow flooding" means a designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with one percent (1%) or greater annual chance of flooding to an average depth of one to three feet (1' – 3') where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate; and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

(6) "Area of special flood-related erosion hazard" is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

(7) "Area of special flood hazard" see "special flood hazard area."

(8) "Base flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any given year. This term is also referred to as the 100-year flood or the one percent (1%) annual chance flood.

(9) "Basement" means any portion of a building having its floor subgrade (below ground level) on all sides.

(10) "Building" see "structure."

(11) "Development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of equipment or materials.

(12) "Elevated building" means a non-basement building built to have the lowest floor of the lowest enclosed area elevated above the ground level by means of solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwater, pilings, columns, piers, or shear walls adequately anchored so as not to impair the structural integrity of the building during a base flood event; or where applicable under this ordinance during the 500-year flood event.

(13) "Emergency flood insurance program" or "emergency program" means the program as implemented on an emergency basis in accordance with section 1336 of the Act. It is intended as a program to provide a first layer amount of insurance on all insurable structures before the effective date of the initial FIRM.

(14) "Erosion" means the process of the gradual wearing away of land masses. This peril is not "per se" covered under the program.

(15) "Exception" means a waiver from the provisions of this ordinance which relieves the applicant from the requirements of a rule, regulation, order or other determination made or issued pursuant to this ordinance.

(16) "Existing construction" means any structure for which the "start of construction" commenced before the effective date of the initial floodplain management code or ordinance adopted by the community as a basis for that community's participation in the NFIP.

(17) "Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, final site grading or the pouring of concrete pads) is completed before the effective date of the first floodplain management code or ordinance adopted by the community as a basis for that community's participation in the NFIP.

(18) "Existing structures" see "existing construction."

(19) "Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

(20) "500-year flood" means the flood having a 0.2 percent chance of being equaled or exceeded in any given year. This flooding event is also referred to as the 0.2 percent annual chance flood.

(21) "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters.

(b) The unusual and rapid accumulation or runoff of surface waters from any source.

(22) "Flood elevation" means the water surface elevation of a flood of defined magnitude and frequency; and for the purposes of this ordinance shall include the one percent (1%) chance (100-year) flood and 0.2 percent chance (500-year) flood elevations identified or designated by any FIRM, FIS, or other flood study/report adopted for use by the community.

(23) "Flood elevation determination" means a determination by the Federal Emergency Management Agency (FEMA) of the water surface elevations of the base flood, that is, the flood level that has a one percent (1%) or greater chance of occurrence in any given year.

(24) "Flood elevation study" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) or flood-related erosion hazards.

(25) "Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by FEMA, where the boundaries of areas of special flood hazard have been designated as Zone A.

(26) "Flood hazard area" for the purposes of this ordinance shall include all special flood hazard areas designated on any FHBM or FIRM, along with any areas of 100-year and 500-year flooding identified by any other flood study/report adopted for use by the community.

(27) "Flood Insurance Rate Map (FIRM)" means an official map of a community, issued by FEMA, delineating the areas of special flood hazard or the risk premium zones applicable to the community.

(28) "Flood insurance study" is the official report provided by FEMA, evaluating flood hazards and containing flood profiles and water surface elevation of the base flood.

(29) "Floodplain" or "floodprone area" means any land area susceptible to being inundated by water from any source (see definition of "flooding").

(30) "Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

(31) "Flood protection system" means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

(32) "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities and structures and their contents.

(33) "Flood-related erosion" means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding.

(34) "Flood-related erosion area" or "flood-related erosion prone area" means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

(35) "Flood-related erosion area management" means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works and floodplain management regulations.



(36) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge a given size flood event ("base flood" or "500-year flood") without cumulatively increasing the water surface elevation more than a designated height.

(37) "Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge or culvert openings, and the hydrological effect of urbanization of the watershed.

(38) "Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

(39) "Highest adjacent grade" means the highest natural elevation of the ground surface, prior to construction, adjacent to the proposed walls of a structure.

(40) "Historic structure" means any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on the Tennessee inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or

(d) Individually listed on the City of Gatlinburg, Tennessee inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:

(i) By the approved Tennessee program as determined by the Secretary of the Interior, or

(ii) Directly by the Secretary of the Interior.

(41) "Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

(42) "Levee system" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage

devices, which are constructed and operated in accordance with sound engineering practices.

(43) "Lowest floor" means the lowest floor of the lowest enclosed area, including a basement. An unfinished or flood resistant enclosure used solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

(44) "Manufactured home" means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

(45) "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

(46) "Map" means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by FEMA.

(47) "Mean sea level" means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For the purposes of this ordinance, the term is synonymous with the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

(48) "National Geodetic Vertical Datum (NGVD)" means, as corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.

(49) "New construction" means any structure for which the "start of construction" commenced on or after the effective date of the initial floodplain management ordinance and includes any subsequent improvements to such structure.

(50) "New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of this ordinance or the effective date of the initial floodplain management ordinance and includes any subsequent improvements to such structure.

(51) "North American Vertical Datum (NAVD)" means, as corrected in 1988, a vertical control used as a reference for establishing varying elevations within the floodplain.

(52) "100-year flood" see "base flood."

(53) "Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.

(54) "Reasonably safe from flooding" means floodwaters will not inundate the land or damage structures to be removed from the flood hazard area and that any subsurface waters related to a regulated flooding event will not damage existing or proposed structures.

(55) "Recreational vehicle" means a vehicle which is:

(a) Built on a single chassis;

(b) Four hundred (400) square feet or less when measured at the largest horizontal projection;

(c) Designed to be self-propelled or permanently towable by a light duty truck;

(d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

(56) "Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

(57) "Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

(58) "Special flood hazard area" is the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, or A99.

(59) "Special hazard area" means an area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, or AH.

(60) "Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; and includes the placement of a manufactured home on a foundation. Permanent construction does not include initial land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds, not occupied as dwelling units or not part of the main

structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

(61) "State coordinating agency." The Tennessee Department of Economic and Community Development's Local Planning Assistance Office, as designated by the Governor of the State of Tennessee at the request of FEMA to assist in the implementation of the NFIP for the state.

(62) "Structure" for purposes of this ordinance means a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

(63) "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

(64) (a) "Substantial improvement" means any reconstruction, rehabilitation, addition, alteration or other improvement of a structure, during a one (1) year period, in which the cost equals or exceeds fifty percent (50%) of the market value of the structure before the "start of construction" of the initial improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The market value of the structure should be:

(i) The appraised value of the structure prior to the start of the initial improvement; or

(ii) In the case of substantial damage, the value of the structure prior to the damage occurring.

(b) The term does not, however, include either:

(i) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been pre-identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions and not solely triggered by an improvement or repair project; or

(ii) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

(65) "Substantially improved existing manufactured home parks or subdivisions" is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds fifty percent (50%) of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

(66) "Variance" is a grant of relief from the requirements of this ordinance.

(67) "Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certification, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

(68) "Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum (NAVD) of 1988, or other datum, where specified, of floods of various magnitudes and frequencies in the floodplains of riverine areas. (as added by Ord. #2404, April 2009, and replaced by Ord. #2427, Dec. 2010)

**14-305. General provisions.** (1) Application. This ordinance shall apply to all areas within the incorporated area of the City of Gatlinburg, Tennessee.

(2) Basis for establishing flood hazard areas. Areas of special flood hazard (one percent (1%) annual chance flood) and additional floodprone areas corresponding to the 500-year floodplain (0.2% annual chance flood) within the City of Gatlinburg, Tennessee shall include all such areas identified by the Federal Emergency Management Agency's "Sevier County, Tennessee and Incorporated Areas" Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM), Community Panel Number(s) 47155C0265E, 0270E, 0330E, 0332E, 0333E, 0334E, 0351E, 0352E, 0353E, and 0356E, dated May 18, 2009. Said FIS and FIRM, along with all supporting technical data, are adopted by reference and declared to be a part of this ordinance. In addition, areas of regulated flood hazard shall also include all 100-year and 500-year flood areas as identified by "Floods on West Prong Little Pigeon River, Dudley Creek, Roaring Fork Creek, Baskins Creek, and Le Conte Creek in the Vicinity of Gatlinburg, Tennessee" a report by the Tennessee Valley Authority, TVA/OECD/FPM-82/20, dated September 1982. Said report is adopted by reference and declared to be a part of this ordinance for use as best available information in connection with these regulations.

(3) Requirement for development permit. A development permit shall be required in conformity with this ordinance prior to the commencement of any development activities.

(4) Compliance. No land, structure or use shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

(5) Abrogation and greater restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants or deed restrictions. However, where this ordinance conflicts or overlaps with another regulatory instrument, whichever imposes the more stringent restrictions shall prevail.

(6) Interpretation. In the interpretation and application of this ordinance, all provisions shall be:

- (a) Considered as minimum requirements;
- (b) Liberally construed in favor of the governing body; and
- (c) Deemed neither to limit nor repeal any other powers granted under Tennessee statutes.

(7) Warning and disclaimer of liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside identified flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Gatlinburg, Tennessee or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

(8) Penalties for violation. Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance shall constitute a misdemeanor punishable as other misdemeanors as provided by law. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon adjudication therefore, be fined as prescribed by Tennessee statutes, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Gatlinburg, Tennessee from taking such other lawful actions to prevent or remedy any violation. (as added by Ord. #2404, April 2009, and replaced by Ord. #2427, Dec. 2010)

**14-306. Administration.** (1) Designation of ordinance administrator. The building official and/or his/her designee is hereby appointed as the administrator to implement the provisions of this ordinance.

(2) Permit procedures. Application for a development permit shall be made to the administrator on forms furnished by the community prior to any development activities. The development permit may include, but is not limited to the following: plans in duplicate drawn to scale and showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill placement, storage of materials or equipment, and drainage facilities. Specifically, the following information is required:

(a) Application stage. (i) Elevation in relation to mean sea level of the proposed lowest floor, including basement, of all buildings where flood elevations are available, or to certain height above the highest adjacent grade when applicable under this ordinance.

(ii) Elevation in relation to mean sea level to which any non-residential building will be floodproofed where flood elevations

are available, or to certain height above the highest adjacent grade when applicable under this ordinance.

(iii) A FEMA floodproofing certificate from a Tennessee registered professional engineer or architect that the proposed non-residential floodproofed building will meet the floodproofing criteria in § 14-307(1) and (2).

(iv) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(b) Construction stage. Within all flood hazard areas, where flood elevation data is available, any lowest floor certification made relative to mean sea level shall be prepared by or under the direct supervision of a Tennessee registered land surveyor and certified by same. The administrator shall record the elevation of the lowest floor on the development permit. When floodproofing is utilized for a non-residential building, said certification shall be prepared by, or under the direct supervision of, a Tennessee registered professional engineer or architect and certified by same.

Within flood hazard areas, where flood elevation data is not available, the elevation of the lowest floor shall be determined as the measurement of the lowest floor of the building relative to the highest adjacent grade. The administrator shall record the elevation of the lowest floor on the development permit. When floodproofing is utilized for a non-residential building, said certification shall be prepared by, or under the direct supervision of, a Tennessee registered professional engineer or architect and certified by same.

For all new construction and substantial improvements, the permit holder shall provide to the administrator an as-built certification of the lowest floor elevation or floodproofing level upon the completion of the lowest floor or floodproofing.

Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The administrator shall review the above-referenced certification data. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being allowed to proceed. Failure to submit the certification or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

(3) Duties and responsibilities of the administrator. Duties of the administrator shall include, but not be limited to, the following:

(a) Review all development permits to assure that the permit requirements of this ordinance have been satisfied, and that proposed building sites will be reasonably safe from flooding.

(b) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which

approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1334.

(c) Notify adjacent communities and the Tennessee Department of Economic and Community Development, Local Planning Assistance Office, prior to any alteration or relocation of a watercourse and submit evidence of such notification to FEMA.

(d) For any altered or relocated watercourse, submit engineering data/analysis within six (6) months to FEMA to ensure accuracy of community FIRMs through the letter of map revision process.

(e) Assure that the flood carrying capacity within an altered or relocated portion of any watercourse is maintained.

(f) Record the elevation, in relation to mean sea level or the highest adjacent grade, where applicable, of the lowest floor (including basement) of all new and substantially improved buildings, in accordance with § 14-306(2).

(g) Record the actual elevation, in relation to mean sea level or the highest adjacent grade, where applicable to which the new and substantially improved buildings have been floodproofed, in accordance with § 14-306(2).

(h) When floodproofing is utilized for a non-residential structure, obtain certification of design criteria from a Tennessee registered professional engineer or architect, in accordance with § 14-306(2).

(i) Where interpretation is needed as to the exact location of boundaries of a flood hazard area (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this ordinance.

(j) When flood elevation data and floodway data have not been provided by FEMA, obtain, review, and reasonably utilize any flood elevation and floodway data available from a federal, state, or other sources, including data developed as a result of these regulations, as criteria for requiring that new construction, substantial improvements, or other development in floodprone areas meet the requirements of this ordinance.

(k) Maintain all records pertaining to the provisions of this ordinance in the office of the administrator and shall be open for public inspection. Permits issued under the provisions of this ordinance shall be maintained in a separate file or marked for expedited retrieval within combined files. (as added by Ord. #2404, April 2009, and replaced by Ord. #2427, Dec. 2010)



**14-307. Provisions for flood hazard reduction.** (1) General standards. In all flood hazard areas, the following provisions are required:

(a) New construction and substantial improvements shall be anchored to prevent flotation, collapse and lateral movement of the structure;

(b) Manufactured homes shall be installed using methods and practices that minimize flood damage. They must be elevated and anchored to prevent flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State of Tennessee and local anchoring requirements for resisting wind forces;

(c) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

(d) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;

(e) All electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(f) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

(g) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters;

(h) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;

(i) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance;

(j) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provision of this ordinance, shall be undertaken only if said non-conformity is not further extended or replaced;

(k) All new construction and substantial improvement proposals shall provide copies of all necessary federal and state permits, including section 404 of the Federal Water Pollution Control Act amendments of 1972, 33 USC 1334;

(l) All subdivision proposals and other proposed new development proposals shall meet the standards of § 14-307(2);

(m) When proposed new construction and substantial improvements are partially located in a flood hazard area, the entire structure shall meet the standards for new construction;

(n) When proposed new construction and substantial improvements are located in multiple flood hazard risk zones or in a flood hazard risk zone with multiple flood elevations, the entire structure shall meet the applicable standards for the most hazardous flood hazard risk zone and the highest flood elevation.

(2) Specific standards. In all flood hazard areas, the following provisions, in addition to those set forth in § 14-307(1), are required:

(a) Residential structures. Within all flood hazard areas where flood elevation data is available; all new construction and/or substantial improvement of any residential building (including manufactured homes) or other buildings utilized for overnight accommodations/occupancy shall have the lowest floor, including basement, elevated at least to or above the greater (highest elevation) of:

(i) One foot (1') above the base flood elevation as established by the applicable FIRM and FIS; or

(ii) The "With (500-year) Floodway, Water Surface Elevation" as established by the adopted TVA Flood Report, TVA/OECD/FPM-82/20, when provided; or one foot (1') above the 500-year flood elevation where "With Floodway" elevations are not provided by said report.

Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

Within flood hazard areas where flood elevations have not been established and where alternative data is not available, the administrator shall require the lowest floor of a building to be elevated to a level of at least three feet (3') above the highest adjacent grade (as defined in § 14-304). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

(b) Non-residential structures. Within all flood hazard areas where flood elevation data is available, new construction and substantial improvement of any commercial, industrial, or non-residential building, shall have the lowest floor, including basement, elevated or floodproofed to no lower than one foot (1') above the level of the base flood elevation (100-year flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

Within flood hazard areas where flood elevations have not been established and where alternative data is not available, new construction and substantial improvement of any commercial, industrial, or non-residential building, shall have the lowest floor, including basement, elevated or floodproofed to no lower than three feet (3') above the highest adjacent grade (as defined in § 14-304). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

Non-residential buildings located in all flood hazard areas may be floodproofed, in lieu of being elevated, provided that all areas of the building below the required elevation are watertight, with walls substantially impermeable to the passage of water, and are built with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A Tennessee registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the administrator as set forth in § 14-306(2).

(c) Enclosures. All new construction and substantial improvements that include fully enclosed areas formed by foundation and other exterior walls below the lowest floor that are subject to flooding, shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

(i) Designs for complying with this requirement must either be certified by a Tennessee professional engineer or architect or meet or exceed the following minimum criteria:

(A) Provide a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;

(B) The bottom of all openings shall be no higher than one foot (1') above the finished grade;

(C) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

(ii) The enclosed area shall be the minimum necessary to allow for parking of vehicles, storage or building access.

(iv) The interior portion of such enclosed area shall not be finished or partitioned into separate rooms in such a way as to impede the movement of floodwaters and all such partitions shall comply with the provisions of § 14-307(2).

(d) Standards for manufactured homes and recreational vehicles. (i) All manufactured homes placed, or substantially improved, on:

(A) Individual lots or parcels;

(B) In expansions to existing manufactured home parks or subdivisions; or

(C) In new or substantially improved manufactured home parks or subdivisions, must meet all the requirements of new construction.

(ii) All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that either:

(A) The lowest floor of the manufactured home is elevated on a permanent foundation in accordance with subsection (2)(a) (residential structures) of this section in all flood hazard areas with flood elevations; or

(B) In flood hazard areas without flood elevations, the manufactured home chassis is elevated and supported by reinforced piers (or other foundation elements of at least equivalent strength) that are at least three feet (3') in height above the highest adjacent grade (as defined in § 14-304).

(iii) Any manufactured home, which has incurred "substantial damage" as the result of a flood, must meet the standards of § 14-307(1) and (2).

(iv) All manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(v) All recreational vehicles placed in an identified flood hazard area must either:

(A) Be on the site for fewer than one hundred eighty (180) consecutive days;

(B) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is licensed, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached structures or additions); or

(C) The recreational vehicle must meet all the requirements for new construction.

(e) Standards for subdivisions and other proposed new development proposals. Subdivisions and other proposed new developments, including manufactured home parks, shall be reviewed to determine whether such proposals will be reasonably safe from flooding.

(i) All subdivision and other proposed new development proposals shall be consistent with the need to minimize flood damage.

(ii) All subdivision and other proposed new development proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(iii) All subdivision and other proposed new development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(iv) In all flood hazard areas require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than fifty (50) lots or five (5) acres, whichever is the lesser, include within such proposals flood elevation data (see § 14-307(5)).

(3) Standards for flood hazard areas with established flood elevations and with floodways designated. Located within the flood hazard areas established in § 14-305(2) are areas designated as floodways. A floodway may be an extremely hazardous area due to the velocity of floodwaters, debris or erosion potential. In addition, the area must remain free of encroachment in order to allow for the discharge of the base flood and 500-year flood without increased flood heights and velocities. Therefore, the following provisions shall apply:

(a) Encroachments are prohibited, including earthen fill material, new construction, substantial improvements or other development within any identified floodway. Development may be permitted however, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the cumulative effect of the proposed encroachments or new development shall not result in any increase in the water surface elevation of flood elevations, velocities, or floodway widths during the occurrence of the base flood and 500-year flood discharges at any point within the community. A Tennessee registered professional engineer must provide supporting technical data using the same methodologies as in the effective flood insurance study, and certification thereof.

(b) New construction and substantial improvements of buildings, where permitted, shall comply with all applicable flood hazard reduction provisions of § 14-307(1) and (2).

(4) Standards for flood hazard areas with established flood elevations but without floodways designated. Located within the flood hazard areas established in § 14-305(2), where streams exist with flood elevation data provided but where floodways have not been designated, the following provisions apply:

(a) No encroachments, including fill material, new construction and substantial improvements shall be located within areas of special flood hazard, unless certification by a Tennessee registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevations of the base flood and 500-year flood more than one foot (1') at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.

(b) New construction and substantial improvements of buildings, where permitted, shall comply with all applicable flood hazard reduction provisions of § 14-307(1) and (2).

(5) Standards for streams without established flood elevations and floodways. Located within the flood hazard areas established in § 14-305(2), where streams exist, but no flood elevation data has been provided and where floodways have not been delineated, the following provisions shall apply:

(a) The administrator shall obtain, review, and reasonably utilize any flood elevation and floodway data available from any federal, state, or other sources, including data developed as a result of these regulations (see (b) below), as criteria for requiring that new construction, substantial improvements, or other development in such flood hazard areas meet the requirements of § 14-307(1) and (2).

(b) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than fifty (50) lots or five (5) acres, whichever is the lesser, include within such proposals flood elevation data.

(c) Within flood hazard areas, where flood elevations have not been established and where such data is not available from other sources, require the lowest floor of a building to be elevated or floodproofed to a level of at least three feet (3') above the highest adjacent grade (as defined in § 14-304). All applicable data including elevations or floodproofing certifications shall be recorded as set forth in § 14-306(2). Openings sufficient to facilitate automatic equalization of hydrostatic flood forces on exterior walls shall be provided in accordance with the standards of § 14-307(2).

(d) Within flood hazard areas, where flood elevations have not been established and where such data is not available from other sources, no encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or twenty feet (20'), whichever is greater, measured from the top of the stream bank, unless certification by a Tennessee registered professional engineer is provided demonstrating that the cumulative effect of the proposed

development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood and 500-year flood more than one foot (1') at any point within the City of Gatlinburg, Tennessee. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.

(e) New construction and substantial improvements of buildings, where permitted, shall comply with all applicable flood hazard reduction provisions of § 14-307(1) and (2). Within flood hazard areas, require that those subsections of § 14-307(2), dealing with the alteration or relocation of a watercourse, assuring watercourse carrying capacities are maintained and manufactured homes provisions are complied with as required.

(6) Standards for areas of shallow flooding (AO and AH Zones on FIRM). Located within the flood hazard areas established in § 14-305(2) may be areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths (100-year flood) of one to three feet (1' – 3') where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions, in addition to those set forth in § 14-307(1) and (2), apply:

(a) All new construction and substantial improvements of residential and non-residential buildings shall have the lowest floor, including basement, elevated to at least one foot (1') above as many feet as the depth number specified on the FIRMs, in feet, above the highest adjacent grade. If no flood depth number is specified on the FIRM, the lowest floor, including basement, shall be elevated to at least three feet (3') above the highest adjacent grade. Openings sufficient to facilitate automatic equalization of hydrostatic flood forces on exterior walls shall be provided in accordance with standards of § 14-307(2).

(b) All new construction and substantial improvements of non-residential buildings may be floodproofed in lieu of elevation. The structure together with attendant utility and sanitary facilities must be floodproofed and designed watertight to be completely floodproofed to at least one foot (1') above the flood depth number specified on the FIRM, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. If no depth number is specified on the FIRM, the structure shall be floodproofed to at least three feet (3') above the highest adjacent grade. A Tennessee registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this ordinance and shall provide such certification to the administrator as set forth above and as required in accordance with § 14-306(2).

(c) Adequate drainage paths shall be provided around slopes to guide floodwaters around and away from proposed structures.

(7) Standards for areas protected by flood protection system (A-99 Zones on FIRM). Located within the flood hazard areas established in § 14-305(2) may be areas of regulated floodplains protected by a flood protection system but where flood elevations have not been determined. Within these areas (A-99 Zones) all applicable provisions of §§ 14-306 and 14-307 shall apply.

(8) Standards for unmapped streams. Located within the City of Gatlinburg, Tennessee, are unstudied or unmapped streams where flood hazard areas are neither indicated nor identified. Adjacent to such streams, the following provisions shall apply:

(a) No encroachments including fill material or other development including structures shall be located within an area of at least equal to twice the width of the stream, measured from the top of each stream bank, unless certification by a Tennessee registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood and 500-year flood more than one foot (1') at any point within the locality.

(b) Whenever a new flood hazard risk zone is determined, and/or flood elevation and floodway data become available for such streams, new construction and substantial improvements shall meet all standards established in accordance with §§ 14-306 and 14-307. (as added by Ord. #2404, April 2009, and replaced by Ord. #2427, Dec. 2010)

**14-308. Variance procedures.** (1) Board of floodplain review.

(a) Creation and appointment. The municipal board of zoning appeals is hereby designated to serve as the board of floodplain review and shall consist of five (5) members appointed by the city commission.

(b) Procedure. Meetings of the board of floodplain review shall be held at the call of the chairperson or by a majority of the membership and at such other times as the board may determine. Such chairperson, or in his/her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question if other than a unanimous vote, or if absent or failing to vote, indicating such fact; shall take all evidence necessary to justify or explain its action, and shall keep records of its examinations and of other official action, all of which shall be immediately filed in the office of the board and shall be a public record. Compensation of the members of the board of floodplain review, when authorized, shall be set by the legislative body.



(c) Appeals: how taken. An appeal to the board of floodplain review may be taken by any person, firm or corporation aggrieved, or by any governmental officer, department, board, or bureau affected by any decision of the administrator (building official) based in whole or in part upon the provisions of this ordinance. Such appeal shall be taken within a reasonable time, as provided by the board, by filing with the building official and with the board of floodplain review a notice of appeal, specifying the grounds thereof. In all cases where an appeal is made by a property owner or other interested party, a fee of fifty dollars (\$50.00) for the cost of processing the application, document reproduction, and publishing a notice of such hearings shall be paid by the appellant. The building official shall transmit forthwith to the board all papers constituting the record upon which the appeal action was taken. The board shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to parties in interest, and decide the same within a reasonable time which shall not be more than sixty-five (65) days from the date of the hearing. Upon hearing, any party may appear in person or by agent or attorney.

(d) Powers. The board of floodplain review shall have the following powers:

(i) Administrative review. To hear and decide appeals where it is alleged by the applicant that there is error in any order, requirement, permit, decision, determination, or refusal made by the administrator or other administrative official in carrying out or enforcement of any provisions of this ordinance.

(ii) Variance procedures. In the case of a request for a variance the following shall apply:

(A) The City of Gatlinburg, Tennessee, Board of Floodplain Review shall hear and decide appeals and requests for variances from the requirements of this ordinance.

(B) Variances may be issued for the repair or rehabilitation of historic structures as defined, herein, upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary deviation from the requirements of this ordinance to preserve the historic character and design of the structure.

(C) In passing upon such applications, the board of floodplain review shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

(1) The danger that materials may be swept onto other property to the injury of others;

(2) The danger to life and property due to flooding or erosion;

(3) The susceptibility of the proposed facility and its contents to flood damage;

(4) The importance of the services provided by the proposed facility to the community;

(5) The necessity of the facility to a waterfront location, in the case of a functionally dependent use;

(6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(8) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(9) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;

(10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, and streets and bridges.

(D) Upon consideration of the factors listed above, and the purposes of this ordinance, the board of floodplain review may attach such conditions to the granting of variances, as it deems necessary to effectuate the purposes of this ordinance.

(E) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood and 500-year flood discharge would result.

(2) Conditions for variances. (a) Variances shall be issued upon a determination that the variance is the minimum relief necessary, considering the flood hazard and the factors listed in § 14-308(1).

(b) Variances shall only be issued upon: a showing of good and sufficient cause, a determination that failure to grant the variance would result in exceptional hardship; and a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud

on or victimization of the public, or conflict with existing local laws or ordinances.

(c) Any applicant to whom a variance is granted shall be given written notice that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance (as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00)) coverage, and that construction below flood elevations increases risks to life and property.

(d) The administrator shall maintain the records of all appeal actions and report any variances to FEMA upon request. (as added by Ord. #2404, April 2009, and replaced by Ord. #2427, Dec. 2010)

## CHAPTER 4

### TREE PROTECTION ORDINANCE

#### SECTION

- 14-401. Purpose and intent.
- 14-402. Definitions.
- 14-403. Applicability.
- 14-404. Trees protected.
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- 14-406. Approval/denial of application.
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- 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.
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- 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 (1) 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. (as added by Ord. #2408, April 2009)

**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 inches (6") above the ground for trees up to four inches (4") in diameter and twelve inches (12") 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 feet (4 1/2') above the ground. If the tree splits into multiple trunks below four and one-half feet (4 1/2'), 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 vertical 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 four hundred (400) woody, free-to-grow seedlings per acre, which are capable of reaching a height of at least twenty feet (20') 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 inches (24");

(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 feet (20') or more and which usually provides one (1) 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. (as added by Ord. #2408, April 2009)

**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. (as added by Ord. #2408, April 2009)

**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 inches (10") 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. (as added by Ord. #2408, April 2009)

**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:

(a) The name and location of the project;

(b) A north arrow and a written and graphic scale;

(c) The name, address, telephone number, and seal or statement of professional qualifications of the professional responsible for the preparation of the plan;

(d) An indication of proposed improvements and the proposed area of disturbance;

(e) The general location and approximate square footage and acreage of all covered areas;

(f) 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 six inches (6") at DBH; "intermediate stands" would be used where the predominant tree cover is from trees that are six to ten inches (6"-10") at DBH; and "mature stands" would be used where the predominant tree cover is from trees that are greater than ten inches (10") at DBH;

(g) The species, exact location, as determined by a licensed surveyor, and size of any hardwood tree which has a DBH of ten inches (10") or greater, any evergreen tree which has a DBH of fifteen inches (15") or greater. Such trees shall be shown only if they are within and/or twenty-five feet (25') 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.



- (h) The species, exact location, as determined by a licensed surveyor, and size of any specimen tree which is within and/or twenty-five feet (25') beyond the proposed area of disturbance;
- (i) An indication of whether an identified tree is proposed to be saved or is proposed for removal;
- (j) An indication of those trees which are considered to be hazardous;
- (k) The location of any environmentally sensitive areas;
- (l) The location of any required buffer strips;
- (m) A detail and an indication of the location, height, and material used for tree protective fencing;
- (n) An indication, including, where applicable, a detail of any other tree protective measures, such as dry wells, retaining walls, mulched aisle ways, etc.;
- (o) Proposed location for temporary construction activities such as equipment or worker parking, materials storage, burn holes, and equipment wash down areas; and
- (p) 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. (as added by Ord. #2408, April 2009)

**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 (BMPs);

(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 percent (15%) 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 percent (25%) 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 (BMPs);

(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. (as added by Ord. #2408, April 2009)

**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. (as added by Ord. #2408, April 2009)

**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 inches (10") or greater and/or an existing healthy, nonhazardous evergreen tree with a DBH of fifteen inches (15") 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 one and one-half inches (1.5") 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. (as added by Ord. #2408, April 2009)

**14-409. Tree credit provision.** An existing healthy, nonhazardous tree to be saved and which has a DBH of ten inches (10") 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 inches (10") at DBH but more than four inches (4") 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 (1/2) may be dropped and any fraction one-half (1/2) 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. (as added by Ord. #2408, April 2009)

**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. (as added by Ord. #2408, April 2009)

**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. (as added by Ord. #2408, April 2009)

**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. (as added by Ord. #2408, April 2009)

**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 feet (3') 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. (as added by Ord. #2408, April 2009)

**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. (as added by Ord. #2408, April 2009)

**14-415. Administration and enforcement.** The provisions of this chapter shall be administered and enforced by the building official. (as added by Ord. #2408, April 2009)

**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 (\$50.00). 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. (as added by Ord. #2408, April 2009)