

PETITION TO ADDRESS THE COUNCIL

St. Charles Parish Council Chairman
 P. O. Box 302
 Hahnville, LA 70057
 (985) 783-5000

Today's Date:

MONDAY
 7/29/19

Dear Chairman:

Please place my name to address the Council on:

DATE:

MONDAY, AUGUST 1, 2019

SPECIFIC TOPIC:

PROPOSED ORDINANCE AUTHORIZING REMOVAL
 OF TWO HAZARDOUS TREES IN PARISH DRAINAGE SERVITUDE

(*See specific guidelines on the reverse side and refer to Parish Charter Article VII Sec. I)

DOCUMENTS, IF ANY:

YES

NO

TWO WORD DOCUMENTS

AND QUESTIONS

DOCUMENTS MUST BE ATTACHED AT THE TIME OF SUBMISSION

NAME: VICTOR + VERONICA BUCCOLA

COMPANY / ORGANIZATION:

MAILING ADDRESS: 105 BUNGUERES LANE DESTREHAN, LA 70047

PHONE: 504-816-1717

EMAIL ADDRESS: VLBAKALA55@GMAIL.COM

SIGNATURE:

Victor & Buccola

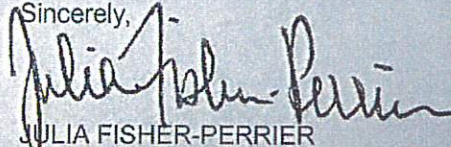
Dear Constituent:

Thank you for your active participation. Your views and comments will be considered by the Council in making our decisions. The Council has a considerable amount of business to conduct in a limited amount of time, therefore, please note the following items that are expected of you:

- The Home Rule Charter provides for citizens to address the Council. All requests and pertinent information must be received in writing by the Council Secretary at least one (1) week prior to the scheduled meeting; request may be hand-delivered, mailed, emailed (scpcouncil@stcharlesgov.net), or faxed (985-783-2067) to be received by 4:00 pm. It makes no provision for initiating debate, discussion, or question and answer sessions with Councilmembers or Administration Officials. Your right is also guaranteed to examine public documents as you prepare your presentation. Should you have any questions for Councilmembers and/or Department Heads as you prepare, please forward such inquiries to the Council Office to insure a timely response. Should you wish to speak to any Official or Department personally; a complete list of contact information will be furnished at your request.
- Please be brief and limit your comments to the specific subject matter on which you have requested to address the Council. Please reference the Council guidelines for time limit specifications.
- Please forward supporting documents to the Council Secretary for distribution to the Parish Council at the time your form is submitted in order for the Council to prepare themselves, if necessary.
- Upon completion of your allotted time to address the Council, please respect the time given to Councilmembers to respond to your comments by not interrupting or interjecting remarks.
- Slanderous remarks and comments will not be tolerated. If slanderous remarks or comments are made, your opportunity to address the Council will end, regardless of the remaining time left to address the Council.
- Repetitious comments and subject matter will be strictly limited.

A confirmation letter will follow when your name is placed on the agenda.

Sincerely,



JULIA FISHER-PERRIER
 COUNCIL CHAIRMAN

(OVER)

PETITION TO ADDRESS THE COUNCIL ON 8/1/19, **WITH QUESTIONS (needing answers)**

As indicated on the PETITION TO ADDRESS THE COUNCIL form, we have many questions for the Council and/or the Administration. We are submitting these questions one week prior to the 8/1/19 Council Meeting, so there presumably should be no excuse for parish government not being able to **insure a timely response**. If the Council so chooses to disregard any of the following questions by not providing verbal answers immediately AFTER my presentation to the Council, then we presume every question will be answered in writing, within a reasonable amount of time (10 calendar days) in our effort to realize an insured timely response.

QUESTIONS FROM THE BUCCOLAS NEEDING ANSWERS TO BE PROVIDED BY THE ST CHARLES PARISH GOVERNING AUTHORITY or the Parish Attorney - We are requesting Madame Chairman Julia Fisher-Perrier, any other Council member, and Parish Attorney Robert Raymond to please be prepared to provide answers to these questions during the public meeting.

- On May 6, 2019 the Buccolas invited seven Council members to personally visit the site of the two problematic trees residing in a publicly recorded dedicated drainage servitude. Please reveal the names of only those seven Council members who have visited the site and have personally seen the situation. Councilmen Wilson and Hogan are exempt from this question. **Madame Chair, which Council members have taken interest and visited the site as we have asked?**
- Councilwomen Benedetto indicated to Victor Buccola on June 17, 2019 that she was working on sponsoring a Resolution addressing the removal of the two trees. The Resolution introduction was abandoned because the Buccolas decided to withdraw the request, but amended the request for the measure to be introduced as an Ordinance instead (revised Ordinance attached). **We now ask Ms. Benedetto, does she and/or any other Council member intend to sponsor and co-sponsor this Ordinance? If yes, will Ms. Benedetto or Madame Chair please reveal the names of the co-sponsors, if any?**
- Does the SCP Council agree or disagree with the Public Works Director who has stated at the 5/6/19 meeting that the decision to remove or not remove trees from public drainage servitudes is the responsibility of the Risk Management Officer? Madame Chair, will you or any other Council member please ask for a show of Council members' hands of those who agree that this decision is that of the Risk Management Officer to make? Or, is this a determination that only the governing authority is authorized to make?
- Concerning the proposed Ordinance (revised version attached), it was communicated to Victor Buccola that the Council was apprehensive about entertaining this measure as an Ordinance, for reasons that are unclear to us. The proposed Ordinance, as drafted by Victor Buccola, was supposedly to be reviewed by the Parish Attorney at the request of the Council. Purportedly, Parish Attorney Robert Raymond has indicated that the proposed Ordinance is unnecessary because the matter of removing hazardous trees in drainage servitudes is already covered in the St. Charles Parish Code of Ordinances. We are requesting any Council member to please ask Mr. Raymond to please elaborate at length on this matter and be prepared to cite precise code sections that pertain to objects such as trees located in drainage servitudes. **Madame Chair, will you or any other Council member please ask the Parish Attorney to elaborate on trees in the**

servitude that the administration has already gone on record as being specifically for drainage only?

- In the email Victor Buccola received from Risk Manager Champagne on June 19, 2019, she wrote that the drainage servitude is for drainage only, and that the trees we have been complaining about, in her opinion, do not impede drainage, therefore she considered the removal of the trees a civil matter to be addressed between private land owners. **If the servitude is for drainage only, why are trees growing in the drainage servitude? Madame Chair, will you or any other Council member please ask the Parish Attorney if trees are considered objects, objects for which the Parish is responsible to care for and maintain? Should the parish be concerned if those objects have the potential to cause property damage or personal injuries or even death? Madame Chair, will you or any other Council member please ask the administration to straighten the live oak tree or remove it, and remove the sweet gum tree that is causing itself damage and overcrowding the servitude?**

The Buccolas have now been before this Council four times this year asking for assistance. We want – **we need** – we expect these hazardous trees to be removed by the parish from the drainage servitude behind our property. The SCP governing authority is the dominant servitude holder, first in line to make an informed decision concerning the removal of these trees thereby mitigating all potential liability risks. Construction of a legally permitted new home is being delayed. State law clearly says that no one other than this governing authority has the power to make this determination, as per LSA RS 38:1236(13). For this Council to **not** do its job in this instance, or any other instance concerning removing objects from within the drainage servitudes, is a perfect example of this Council violating its oath of office. **Ladies and Gentlemen, does anyone on this Council really want this situation to be the first publicized example of you individually violating your sworn oath of office?**

This Council has been lied to by the administration concerning whose responsibility it is to determine **if and when** trees in drainage servitudes must be removed. I do not care to believe the lie was intentional; I want to believe it was an honest but unwise error in judgment rendered by the administration without realizing what the law allows.

In light of my revelation to you that **it is only this Council's call to make**, as per LSA RS 38:1236(13), the parish's legal advisor has apparently failed this Council and the citizens by not correctly legally advising you in this matter. **Madame Chair, will you or any other Council member please ask the parish attorney: why does LSA RS 38:1236(13) not apply to the St. Charles Parish Council? If it does apply, please also ask our parish attorney if the Council alone refuses to make the determination, would this be a violation of state law because it would then be considered a violation of the oaths of office?**

We have come before you tonight –AGAIN - trying to help this Council, ensuring that it steps up to the plate and accepts its responsibility to be our voice and decide. After all, in theory, this Council is here to represent all the good citizens of SCP, regardless if all the people voted at all, or even voted for you. **Madame Chair, or any other Council member, is this one of those times when some of**

you apparently feel you are smarter than your constituents and you simply refuse to take action because you do not want to be told how to act?

What I am trying to impress upon this Council is you must fulfill your obligation to the citizens you were elected to represent, otherwise you may find yourselves being turned out of office in the next election cycle. This could be the year if this Council shows the voting public in SCP that its membership refuses to honor the mandates contained in our Home Rule Charter, State Law, and in the State Constitution. The Rule of Law is paramount, and this Council must act accordingly.

On a side note, in light of LSA RS 38:1236(13), when it comes to dealing with drainage servitude matters, in my opinion the SCP Code is inconsistent with state law in that our Code assigns responsibility to make these determinations to the department which is the beneficiary of the right-of-way, easement, or servitude. **This is inconsistent with state law and needs to be fixed; would any of you on this Council or the parish attorney agree or disagree with this? Also, how and/or why is the St. Charles Parish Office of Risk Management involved, because Risk Management is NOT the department which is the beneficiary of the servitude.**

Sec. 15-25. - Shrubs, trees, and plantings.

(a) No shrubs, trees, and plantings on parish right-of-ways, easements, and servitudes should be allowed to impede the vehicular sight lines of vehicles travelling on or entering onto parish streets which are located within such right-of-ways, easements, and servitudes. When a question exists as to whether or not lines of sight are impeded, the benefit of the doubt shall rest with on the side of the line of sight being impeded. **After such time that a hindrance or interference is found to exist, the department which is the beneficiary of the right-of-way, easement, or servitude has the authority to address the hindrance or interference as allowed by law.**

(b) No shrubs, trees, and plantings should be allowed within parish right-of-ways, easements and servitudes if they hinder or unreasonably interfere with their purpose **as determined by the department which is the beneficiary of the servitude,** unless authorized by ordinance. **After such time that a hindrance or interference is found to exist, the department which is the beneficiary of the right-of-way, easement, or servitude has the authority to address the hindrance or interference as allowed by law.**

(d) **In addressing hindrances or interferences, only items which are located completely or substantially within** the right-of-ways, easements, or **servitudes may be removed as needed.**

([Ord. No. 14-12-11, § I, 12-15-14](#))

2019-_____

(DRAFT - 7/29/19 revision)

INTRODUCED BY:

ORDINANCE NO. _____

An Ordinance to approve and authorize the removal of two problematic trees that are situated within a publicly recorded dedicated drainage servitude over private land by 1) the St. Charles Parish Department of Public Works or 2) a licensed, commercial tree company.

WHEREAS, the care and maintenance of all objects located within publicly recorded dedicated drainage servitudes, which include trees and other vegetation, is the responsibility of St. Charles Parish government. SEE: Act of Dedication COB 328 Folio 445, Entry #108224 and Ordinance No. 85-1-8; and

WHEREAS, St. Charles Parish is a local governmental subdivision as defined by Article VI, §44 of the Louisiana Constitution of 1974 and in order to secure for its citizens the benefits and responsibilities of home rule, have adopted and shall operate under this Home Rule Charter and plan of government under authority of Article VI, §5 of the Louisiana Constitution; and

WHEREAS, the St. Charles Parish Home Rule Charter provides the governing authority with the right and authority to exercise any power and perform any function necessary, requisite, or proper for the management of its affairs, not denied by this Charter or general law, or inconsistent with the constitution of the State of Louisiana; and

WHEREAS, the St. Charles Parish Council is vested with and shall have and exercise such other powers, rights, privileges, immunities, authority and functions not inconsistent with the Home Rule Charter as may be conferred on or granted to a local governmental subdivision by the constitution and laws of the State of Louisiana; and

WHEREAS, the St. Charles Parish governing authority, being the dominant estate servitude holder, is entitled to take reasonable measures to protect St. Charles Parish from liability concerns by exercising its right to remove objects from within its servitudes, and it may make such decisions when weighing the magnitude of the risk against the cost of remedial measures to eliminate both known and potential exposure; and

WHEREAS, as long as St. Charles Parish acts within its legitimate right to maintain its public drainage servitudes and expends public funds in accordance with La. R.S. 33:1236(13) and other applicable laws, there can be no question of a donation, loan, or pledge of public funds in contravention of Art. VII, §14 of the Louisiana Constitution; and

WHEREAS, the specter of liability litigation over risks to health, safety and the public fisc occurring on private lands covered by public servitudes can be mitigated by the parish governing authority, and public funds can be expended in these efforts; and

WHEREAS, the St. Charles Parish Council, in its discretion, and in order to protect health, safety, and the public interest may remove trees that are situated within a publicly recorded dedicated drainage servitude located over private land, and public funds can be expended in these efforts; and

WHEREAS, the main trunk and upper portions of the live oak tree growing in the drainage servitude at 173 Longview Drive is leaning excessively in the easterly direction, encroaching into the air space above private land located at 107 Burguieres Lane, and although exhibiting no insect or disease problems, the live oak tree

was determined by then St. Charles Parish County Agent Rene Schmit in November 2018 to be a significant safety hazard due to its angle of weighted lean (greater than a 45 degree pitch); and

WHEREAS, concerning the sweet gum tree that is subject to overcrowding, there are a few upper limbs that exhibit breakage and some decay that should be removed to reduce further breakage and decay, however the complete removal of this tree will eliminate all specter of parish liability and possible future litigation attributable to this potential safety hazard; and

WHEREAS, it is the desire and will of the St. Charles Parish governing authority to mitigate any and all possible liability claims resulting from likely future property damages and/or personal injuries sustained that would be attributable to either of the two problematic trees; and

WHEREAS, it is the desire and will of the St. Charles Parish governing authority to authorize and instruct the Executive Branch of St. Charles Parish government to initiate the removal of the two problematic trees from this portion of a major drainage canal known as the Unnamed Canal which is located within a publicly recorded dedicated drainage servitude at municipal address 173 Longview Drive in Destrehan located adjacent to 107 Burguieres Lane; and

WHEREAS, furthermore, the property owner of 107 Burguieres Lane has agreed to grant St. Charles Parish government free, but temporary, unfettered access to the publicly recorded dedicated drainage servitude for the purpose of allowing parish employees and equipment, or professional hires and their equipment, to access the twenty-foot wide parish servitude that is situated on private land, for the express purpose of performing required maintenance within the said servitude, including but not limited to, the removal of two problematic trees; and

WHEREAS, whoever performs the cutting and complete removal of the trees may enter upon and utilize the vacant lot at 107 Burguieres Lane to access the public servitude area with the said land owner's permission and shall **not** be held responsible by the land owner for any disturbance of the dirt on the lot and the parish will **not** be required to restore the lot to the condition in which it was found when first entered upon.

NOW, THEREFORE, THE ST.CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. There can be no question of a donation, loan, or pledge of public funds in contravention of Art. VII, §14 of the Louisiana Constitution, considering the specter of liability litigation over risks to health, safety and the public fisc occurring on private lands covered by public servitudes, in order to mitigate any and all claims that may result by not removing the said hazards.

SECTION II. The governing authority only, acting within its power and authority shall make the determination to exercise its legitimate right to maintain its public drainage servitudes and expend public funds in accordance with La. R.S. 33:1236(13) and other applicable laws.

SECTION III. In order to protect health, safety, and the public interest, the governing authority hereby exercises its power and authority to authorize the removal of two problematic trees on private land that is subject to a publicly recorded dedicated drainage servitude in the rear yard at municipal address 173 Longview Drive in Destrehan.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows: