

H. Tree protection requirements.

1. Purpose.

- a. To promote environmental and ecological awareness;
- b. To improve the city's image and aesthetic charm and beauty;
- c. To protect property values from the adverse aesthetic and ecological effects of imprudent tree removal;
- d. To promote ground and surface water stabilization and decrease the adverse impact of the water table fluctuations caused by imprudent removal;
- e. To protect against greater noise pollution which is increased by the imprudent removal of buffer trees;
- f. To protect existing vegetation from greater wind velocities resulting from the imprudent removal of buffer trees;
- g. To promote air quality which is significantly affected by the natural clearing of the atmosphere by the trees through particulate matter interception and the release of oxygen into the atmosphere as a byproduct of photosynthesis;
- h. To stabilize the urban wildlife habitat and ecosystem balance;
- i. To provide for the public health, safety and welfare;
- j. To support the provisions of the Mobile Tree Act (Act. No. 929, Acts of Alabama, 1961 Regular Session, as amended in 1981);
- k. To provide uniform standards in the removal and replacement of trees on public and private property within the corporate limits of the City of Mobile, with the exception of the rights-of-way of public streets and areas designated as rights-of-way on approved subdivision plats in accordance with both municipal and state laws which are governed by the Mobile Tree Act and the Mobile Tree Commission;
- l. To educate the public in the economic, aesthetic and historic benefits of preserving trees, including conserving energy, reducing soil erosion, and protecting trees and the ecosystem of the City of Mobile, Alabama;
- m. To preserve the economic base attracted to the City of Mobile by such factors.

2. Application of section. The requirements of this subsection shall apply to all land, other than the public rights-of-way, and areas designated as rights-of-way, located within the corporate limits of the City of Mobile, except R-1 and R-2 lots with an existing habitable structure, which are not located in an historic district subject to the rules and regulations of either the architectural review board and/or the Old Dauphin Way review board. However, R-1 and R-2 lots which are under the purview of the rules and regulations of either the architectural review board and/or the Old Dauphin Way review board are subject to the requirements of this section.

3. Mobile tree commission.

- a. The Mobile tree commission shall act in an advisory, research and consultation capacity to the City of Mobile and the general public, in coordination with the city's urban forester.
- b. Nothing in this section shall be construed to limit the Mobile tree commission's regulatory authority pursuant to the Mobile Tree Act of 1961, (Act. No. 929, Acts of Alabama, 1961 Regular Session, as amended, 1981) with regard to monitoring trees in public rights-of-way.
- c. Further, the Mobile tree commission shall take active steps to:
 - (1) Conduct regular meetings in a public place in a manner conducive to public comment and participation;
 - (2) Educate the public as to provisions of Article IV, section H of the zoning ordinance and the State Tree Act, as well as the economic, aesthetic and historic

benefits of trees to the city and its citizens, both on publicly and privately owned property protected by this section;

- (3) Promote the planting and replacement of trees in the city;
- (4) Promote the health, care, watering, fertilization and other desirable measures which promote the maintenance and growth of existing trees in street rights-of-way and public parks in the city;
- (5) Protect trees located in the city's street rights-of-way and public parks from damage, removal, lack of sustenance or any other act or condition which might threaten the health and growth of such trees; and

d. On the 1st day of March in each year, the Mobile tree commission shall make a written report to the mayor, the city council and the planning commission which report shall state:

- (1) The number of heritage trees and heritage live oak trees preserved during the previous twelve (12) months;
- (2) The number of public trees and new heritage trees planted during the previous twelve (12) months;
- (3) Other pertinent information.

The inspection services department shall keep monthly totals on the number of heritage trees preserved and planted during the previous month and shall transmit the same to the Mobile tree commission for use in the above referenced report.

4. **Permit.** Any person wishing to remove or relocate a heritage live oak tree shall under the provisions of this section make written application with the city inspection services department, which application shall include a landscape plan as provided in section IV E. Upon paying an administrative application fee of thirty dollars (\$30.00) to cover the costs of researching and processing the application, the application and plan shall be stamped with the date and time and forwarded to the city's urban forester for review and approval. All proceeds from the said processing fee shall be earmarked for the use of the city's urban forester for the administration of this subsection.

a. *Time of permit.* Any and all permits issued by the city as per the requirements of this subsection shall be declared null and void if commencement of work so permitted is not started within a reasonable time, not to exceed six (6) months. But in no case will the permit be valid for more than twelve (12) months. Permits not used within this period will become null and void and future work will require a new application.

b. *Permit procedure.* An application may be field checked prior to issuance of a permit, but in no event more than ten (10) working days after the date of receipt of the application. Failure to deny the application, as provided herein, within this ten-day period shall result in the automatic issuance of the permit as requested in the application. The urban forester may request a recommendation concerning the application from any or all appropriate city departments, and/or the tree commission.

c. *Pre-application inspection service.* In connection with applications involving extremely large tracts of property, the urban forester may arrange and coordinate a pre-application inspection of the site involved.

d. *Issuance and denial of permit.* Upon receiving the field inspection report and any requested recommendations concerning the application, the urban forester shall issue a permit for the removal or relocation of trees if one (1) or more of the criteria in subparagraph (e) is met.

e. *Criteria for issuance of tree removal permit.*

- (1) The tree is located in an area where a structure or improvement will be placed according to an approved plan.

- (2) In addition to criteria #1 above, as to R-1 and R-2 properties only, the tree is located where a swimming pool or detached carport or garage will be located.
 - (3) The tree is diseased, injured, in danger of falling too close to existing or proposed structures, interferes with existing utility service, creates unsafe vision clearance or conflicts with other ordinances or regulations.
 - (4) The tree is, or will be after construction, in violation of federal, state, or local laws or regulations, or cause the construction to violate federal, state, or local laws or regulations including, but not limited to, laws and regulations pertaining to government programs for financing the construction.
- f. *Basis for denial of permit.* The urban forester, upon a determination that an application for tree removal does not meet the criteria of subparagraph (e) above, may, within his discretion, deny the same and shall notify the applicant of the reason(s) for said denial within five (5) working days of his decision.
- g. *Historic areas.* All other provisions of this subsection notwithstanding, no heritage tree can be removed, nor can land be cleared or grubbed, in any historic district, area, or property within the jurisdiction of the architectural review board and/or the Old Dauphin Way review board, except under a permit issued by the urban forester after application as provided above, which shall be granted only upon a showing that the said heritage tree is:
- (1) Diseased or injured, in danger of falling too close to existing or proposed structures, interferes with existing utility service, creates unsafe vision clearance or conflicts with other federal, state or local laws and regulations;
 - (2) Certified by the architectural review board or the Old Dauphin Way review board to be removed for the purpose of renovating an historic structure or enhancement of the aesthetic quality of the property; or
 - (3) The owner of the property on which the heritage tree is located has demonstrated by clear and convincing evidence that the owner will suffer extreme and extraordinary hardship unless the permit is granted.

In all cases where removal is permitted, the said tree shall be relocated if deemed feasible by the urban forester and the cost does not exceed five hundred dollars (\$500.00). Otherwise the said tree shall be replaced on a two (2) for one (1) basis, with replacement heritage trees in compliance with section IV E. For trees located in areas covered by this subsection the definition of a heritage tree shall be amended to reduce the size to eight (8) inches DBH.

5. ***Tree protection during construction.*** It shall be unlawful for any person in the construction of any structures or other improvements to place solvents, material, construction machinery, or temporary soil deposits within ten (10) feet of any protected tree trunk having a twenty-four-inch or greater DBH above grade.

Before development, land clearing, filling or any land alteration, a permit will be required; the developer shall be required to erect suitable protective barriers, and this protection, where required, shall remain until permanent barriers have been erected. Also, during construction, no attachments or wires shall be attached to any of said trees so protected.

Except for sidewalks, driveways, and streets, no person shall pave with concrete, asphalt or other impervious material within eight (8) inches per one (1) inch of DBH of any remaining heritage tree or heritage live oak tree, not to exceed five (5) feet. The urban forester shall have the discretion to waive this requirement.

6. ***Emergencies.*** In case of emergencies, such as hurricane, windstorm, flood, freeze, or other disasters, the requirements of these regulations may be waived by the urban forester, upon a

finding that such waiver is necessary so that public or private work to restore order in the city will not be impeded.

7. **Exemptions.** The provisions of this article shall not apply to any land recognized by the city upon which bona fide agricultural uses or commercial nursery or tree farm are being conducted, which land exceeds ten (10) acres, as hereinafter defined:

- a. *Bona fide agriculture:* A land used to derive income from growing plants or trees on land, including but not limited to, land used principally for timber production, and not including land used principally for another use and incidentally for growing trees or plants for income.
- b. *Commercial nursery of tree farm:* A licensed plant or tree nursery or farm in relation to those trees planted and growing on the premises of the licensee, which are planted and growing for sale or intended sale to the general public in the ordinary course of said licensee's business.

This exception shall not be interpreted to include timber harvesting incidental to imminent development of the land.

8. **Removal of public trees.**

- a. No trees shall be removed from public rights-of-way except as provided by the Mobile Tree Act of 1961, as amended, in accordance with the rules and regulations of the Mobile tree commission.
- b. No public tree located in any city property shall be removed without first filing a notice of intent with the tree commission at least two (2) weeks prior to obtaining a resolution of authority from the city council, said resolution and notice of intent requirements shall be in lieu of obtaining a permit from the urban forester. The foregoing provision shall not apply to public trees whose removal is authorized by the urban forester.

9. **Tree removal companies; construction companies.** All provisions of this subsection H shall apply to any person removing trees on behalf of any other person, including all tree removal construction companies or persons in the business of removing trees or constructing. It shall be unlawful for any person or company to remove or cause to be removed any tree, or undertake any work for which a permit is required pursuant to this ordinance, unless a valid permit therefor is in effect and is displayed in accordance with the provisions of subsection 10 herein. If any such work or removal is performed without the permit being displayed as required in subsection 10 herein, such removal or work shall constitute a violation of this ordinance and shall subject the person or company violating this ordinance to all penalties provided for herein.

10. **Display of permit; inspection.** The applicant shall prominently display on the site the permit issued. Such permit shall be displayed continuously while trees are being removed or replaced or work is being done as authorized on the permit, and for ten (10) days thereafter. As a condition for the issuance of the permit, the applicant shall agree in writing to entry onto his premises by representatives of the city and all law enforcement officers to inspect the permit at any time, and such entry shall be lawful. Failure to allow such entry shall be unlawful, shall constitute a violation of this ordinance and shall constitute failure to display the permit as required under this subsection H.

11. **Arborists' license and bond.** It shall be unlawful for any person, individual, corporation, institution, or agent of such, to engage principally in the business or occupation of pruning, fertilizing, or removing trees within the corporation limits of the City of Mobile, without first applying for and procuring the appropriate business license from the city. Plus, all local arborists must abide by all relevant state laws.

- a. City employees and public service workers who perform arboricultural duties within the street right-of-way and public parks of the city in protection of the public health, safety and welfare shall not be required to apply for a city business license. However, should such arboricultural work be subcontracted, the city department(s) and/or public

service organization(s) which subcontract the work shall be responsible for insuring that their contractors are properly licensed arborists.

- b. Where federal, state, and local laws require the certification of any person, individual, corporation, institution, or agent of such, to utilize the services of workers certified to practice arboriculture, said certification shall apply, in addition to having a business license from the city.
- c. Before any permit is issued to a subcontractor for work within the street right-of-way and public parks of the city, the applicant shall file with the executive director of public works evidence of possession of a performance bond, either in the minimum amount of ten thousand dollars (\$10,000.00) or the minimum amount specified by the city for the type of development activity being performed, whichever amount is the greater of the two. All other insurance coverage, such as bodily injury, damages and related coverages, shall comply with the requirements mandated by the city's legal department. The developer or primary contractor can agree by notarized letter to be the responsible party for damages of subcontractor.

12. *Removal, abuse or mutilation of heritage trees.* No person shall damage, cut, carve, transplant, mutilate, abuse or remove any public tree, heritage tree, or heritage live oak tree; attach any rope, wire, nails, advertising posters, or other contrivance to any public tree, heritage tree, or heritage live oak tree; allow any gaseous liquid, or solid substance which is harmful to such trees to come in contact with any such tree, including roots damaged during curb cuts, sidewalk and driveway installation and repair.

- a. Utility line clearing in conformance with International Society of Arboriculture, National Arborist Association Standards and the National Electrical Safety Code clearances does not constitute tree abuse.
- b. No curb cuts which involve public trees, heritage trees, or heritage live oak trees shall be allowed without prior coordination with the urban forester.
- c. No action in removing trees due to lightning, hurricanes, or other natural disasters shall be considered tree abuse.
- d. The removal of trees for which permits have been issued shall not be prohibited by this subsection.

Notwithstanding the foregoing, heritage trees may be removed pursuant to a properly filed and approved landscape plan.

13. *Enforcement of ordinance.* The urban forester, in coordination with the parks department, traffic engineering department, inspection services department, engineering department and any other affected city department, shall perform, or cause to be performed, the following duties and/or activities:

- a. Direct the enforcement of this section H plus coordinate and educate the various departments of the city and the general public which are affected by the provisions of this section H;
- b. Develop and maintain a tree inventory for the purpose of creating a master data bank of all trees within the city's street rights-of-way and public properties;
- c. Develop and maintain a tree disease and injury list for the purpose of establishing the most common problems which afflict trees in Mobile's urban environment;
- d. To develop and maintain a tree plan for the purpose of establishing design standards for trees and other landscaping materials planted within the public rights-of-way.

14. *Interference with the urban forester.* No person shall hinder, prevent, delay, or interfere with the urban forester, the tree commission or any other duly authorized individual, while engaged in carrying out the execution or enforcement of this ordinance; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable,

in any court or [of] competent jurisdiction for the protection of property rights by the owner of any property within the municipality.

15. *Tree trails.*

- a. *Tree trails.* The following city streets are of significant historic and aesthetic value because of the trees adjoining the land, and hereby are declared tree trails of the city: Government Street, Dauphin Street, Michigan Avenue, Park Avenue, Houston Street, Old Shell Road, Springhill Avenue, and the Avenue of Oaks. Other streets, such as those in historic districts, may be designated tree trails by the planning commission upon recommendation by the urban forester, the tree commission, or the public in the future.
- b. All tree trails of the city shall be clearly marked with municipal signs.
- c. On all designated tree trails within the city, utility companies shall work closely with both the urban forester and the tree commission prior to performing any projects which would affect the trees along these designated streets.
- d. In no event shall any utility company be authorized to cut or prune more than thirty (30) percent of the existing tree overstory of any tree along these designated streets.
- e. All oversized vehicles, specifically those vehicles in excess of thirteen (13) feet, six (6) inches in height and ten (10) feet in width, and any vehicle hauling or pulling an oversized load in excess of the dimensions of an oversized vehicle are prohibited from traversing tree trails, without first obtaining a written permit therefor from the urban forester.

16. *Tree planting and preservation trust fund.* The tree commission shall establish a trust fund, known as the tree planting and preservation trust fund, for the purpose of replenishing the urban forest. Endowments for said fund shall be received from private contributions for said purpose. The tree commission, using nationally accepted accounting methods, shall deliver an annual report to the city council regarding the status of the tree planting and preservation trust fund.

17. *Appeal of grant or denial of permit.* Appeals of either a grant or denial of permits pursuant to this section H shall be to the planning commission and may be taken by the applicant or by any officer, department or board of the city affected by any decision of the urban forester, the architectural review board, or the Old Dauphin Way review board, with respect to the administration or enforcement of this section H. All such appeals shall automatically be placed on the agenda of the next regularly scheduled meeting of the planning commission. The planning commission shall have the power to grant permits upon a showing by the applicant by clear and convincing evidence that the applicant will suffer extreme and extraordinary hardship. All appeals from the planning commission shall be to the circuit court of Mobile County and may be brought by any of the persons listed above.

18. *Civil penalty.* Notwithstanding any other provision of the zoning ordinance, any person, firm, or corporation violating or failing to comply with the stipulations of article IV, section H, pursuant to the provisions of this ordinance, shall be subject to a civil fine, to be assessed by the city's environmental judge, not to exceed five hundred dollars (\$500.00) per violation. In lieu of the foregoing, the environmental judge may require mitigation actions or the payment of the cost of the damage caused to the tree. The proceeds of all fines and damages shall be earmarked for the use of the urban forester in his official duties. Each violation of article IV, section H, including each unpermitted removal or mutilation of a heritage tree, public tree, or heritage live oak tree, is a separate and distinct civil offense.

19. *Civil appeals.* Appeals of municipal court judgments issued pursuant to violations of article IV, section H of the zoning ordinance shall be to the circuit court of Mobile County, as mandated by state law.