

## ARTICLE VIII. TREE PROTECTION

### **Sec. 7-150. Purpose and intent.**

These provisions are intended to regulate the removal and/or destruction of trees within the community for the purpose of:

1. Preserving the existing character of the city, part of which is derived from existing groves of mature pine, oak, and other species of trees;
2. Reducing the effects of noise and air pollution and protecting and enhancing the environmental and public health benefits of trees;
3. Preventing soil erosion and the siltation of drainage improvements and waterways;
4. Protecting and enhancing the aesthetic qualities of the community; and
5. Adding an element of landscape maturity to new developments in the city thereby enhancing buffering and privacy, and increasing the value of property.

### **Sec. 7-151. Applicability.**

These regulations shall apply within the corporate limits of the city. Protected Trees as defined in this article shall not be removed, relocated, destroyed or otherwise directly or indirectly damaged or injured unless and until a tree removal permit under this article has first been issued. If enforcement of a city regulation will result in the removal of a Protected Tree, the Planning Department will work within the regulations to modify the design standards to the extent possible to save the tree.

### **Sec. 7-152. Definitions.**

For the purposes of this article, the following words will have the following meanings:

*City Arborist* means the city staff member(s) so designated as the City Arborist.

*Damage* means any intentional or negligent act or lack of protection that is more likely than not to cause a tree to die within a period of five years, as determined by the City Arborist. The following actions may result in damage to a tree: performing grade changes (including lowering or filling the grade) that affect more than 20 percent of the root save area; over-mulching or

improper mulching; improper removal of soil or overfilling with soil; trenching of roots; cutting, girdling or inflicting other severe mechanical injury to the trunk, roots or other vital sections of the tree; removing an excess of the live crown of the tree or improper pruning practices; inflicting damage upon the root system of a tree by the application of toxic substances, including solvents, oils, gasoline and diesel fuel; causing damage by the operation of heavy machinery; burning; and improper trimming or pruning.

*Diameter at breast height (DBH)* means the measurement of the diameter of a tree trunk measured in inches at a height of four and one-half (4½) feet above the ground. If a tree splits into multiple trunks below four and one-half feet, then the trunk is measured at its most narrow point beneath the split.

*Disease* means any fungal, bacterial, or viral infection that will result in the death of the tree, as determined by the City Arborist. Disease shall also mean any fungal, bacterial or viral infection that has progressed to the point where treatment will not prevent the death of the tree, as determined by the City Arborist. If the City Arborist is unable to determine a tree is diseased, an applicant may present a report from an ISA certified arborist identifying and presenting the etiology (the cause and origin) of the fungal, bacterial or viral infection for review.

*Essential Utility Service* means water, sanitary sewer, storm sewer, gas, power, communications, and other similar utilities as may be designated by the city.

*Heritage Tree* see Section 7-153. Heritage Trees are also considered Protected Trees. Heritage Trees receive the same minimum protections as Protected Trees and may have additional requirements as specified in this article.

*Forestry* is the managed operation of forest and timberlands when practiced in accordance with sound forest management practices through developing, cultivating, harvesting, transporting and selling trees for commercial purposes, which does not involve any existing, proposed or future land development.

*Incidental trimming or pruning* means the process of pruning a tree that follows industry standards and best management practices as can be found in ANSI A300 tree care standards or current Best Management Practices publications as developed by the International Society of Arboriculture.

*Pine tree* means only a member of the genus *Pinus* and does not include other needled trees of the family Pinaceae.

*Protected Tree* see Section 7-153

*Rear yard* means a yard extending the full width of the lot between the main building and the rear lot line except those abutting the Gulf of Mexico.

*Remove* means the process of cutting down more than 30 percent of a tree and/ or removing a tree from its location, either through direct or indirect, or intentional or unintentional actions.

*Survey* means an accurate, scaled, plot or drawing that provides adequate detail to determine the location of property lines, structures, trees, and other necessary information as required by this article or by the City Arborist in order to ensure compliance with this article. Must be provided by an Alabama licensed surveyor or engineer (this requirement may be waived by the City Arborist for applications involving sites with existing development and involving one or few trees).

*Tree protection and landscaping account* is the account or fund managed by the City used for the purposes of replacing trees that have been removed.

*Tree protection zone (TPZ)* means a buffer or area around a tree or trees to provide protection from development or construction occurring nearby.

**Sec. 7-153. Protected and Heritage Trees.**

All trees with a DBH of 12” or more are Protected Trees and with a DBH of 30” or more are Heritage Trees, unless further defined below:

Table 7-153: Protected and Heritage Trees			
Common Name	Scientific Name	Protected DBH*	Heritage DBH*
Live Oak (Southern)	<i>Quercus virginiana</i>	6”	24”
Sand Live Oak**	<i>Quercus geminata</i>	6”	24”

\*trees meeting this minimum DBH and larger

\*\* Sand Live Oak Clusters – a cluster of Sand Live Oaks is defined as a group of five or more trees growing within 10 feet of each other (but not in a row), the average DBH of the cluster being 4” or more for Protected status; an average DBH of 12” or more will be considered Heritage status. Sand Live Oak Clusters will be treated as a single tree for TPZ purposes and if removal is approved (or trees destroyed or damaged), cumulative DBH of the cluster will be used for replacement or remediation calculations.

The following trees are not considered Protected or Heritage, regardless of the DBH:

1. Invasive Trees:
  - a. Chinese Tallow or Popcorn Tree (*Sapium sebiferum*)
  - b. Chinaberry (*Melia azedarach*)
  - c. Tree of Heaven or Chinese Sumac (*Ailanthus altissima*)
  - d. Silk Tree or Mimosa (*Albizia julibrissin*)
  - e. Paper Mulberry (*Broussonetia papyrifera*)
  - f. Camphor Tree (*Cinnamomum camphora*)
  - g. Other trees commonly considered invasive as determined by the City Arborist

**Sec. 7-153. Exemptions.**

The following activities are exempted from the requirements of this article:

1. Incidental trimming or pruning of a Protected Tree or Heritage Tree by the owner of the property or the owner's agent.
2. Commercial tree operation. Trees grown specifically for sale by commercial nurseries or the production of lumber and its byproducts in a managed forestry operation. Buildings, associated parking facilities, landscape buffers, and other trees otherwise required for these types of operations are not exempt from the requirements of this article.
3. Pruning or removal of trees by or on behalf of the City of Gulf Shores or another governmental agency.
4. The city may issue a no-fee permit to public utility companies allowing them to prune or remove Protected Trees that may interfere with utility lines located within public rights-of-way or easements, and upon such terms and conditions as may be determined by the city.
5. The mayor may declare an emergency and impose a temporary moratorium on the enforcement of this requirement following severe storms or similar events within the city.

**Sec. 7-154. Tree removal permit.**

Any person or entity wishing to remove, relocate, destroy, or otherwise injure a Protected Tree or trees, including Heritage Tree or trees, shall, under the provisions of this article, make written application on forms available from the City, unless specifically exempted within this article. Fees shall be set by the council.

Tree removal proposed in conjunction with land disturbance, site plan, or single family/duplex building permit application approval may be approved concurrently with approval or permit issuance and may not require a separate tree removal application.

**Sec. 7-155. Tree protection, replacement, and remediation.**

A tree removal permit shall be approved prior to the issuance of a land disturbance permit or activity, a building permit, site plan approval, or other city permit for development that could destroy, damage, injure, or otherwise have an adverse effect on existing vegetation. A tree removal permit shall be approved prior to the removal, or other activity that could destroy, injure, or otherwise have an adverse effect, on an existing Protected or Heritage Tree(s).

Tree protection fencing, if required, shall be installed, inspected, and approved prior to commencing land disturbance or construction activity, including placing equipment on site. Tree protection fencing may be placed at the same time as stormwater or erosion control measures and BMPs.

1. Tree Protection Plan. A tree protection plan shall be submitted with the following information:
  - a. A survey indicating the location, DBH, and common name of all protected and Heritage Trees on the property; the survey will also indicate the proposed and existing building or improvement footprint(s), property lines, setbacks, existing and proposed utilities (overhead and underground), existing and proposed infrastructure (e.g. streets, sidewalks, driveways, other paved surfaces, etc), and other features that may affect the existing trees. If grading is proposed, then the survey must indicate current and proposed contours or adequate spot elevations.
  - b. Indication whether individual trees are proposed to be preserved or removed.
  - c. Tree protection zone(s) location
2. Tree protection zones (TPZs):
  - a. TPZs must remain unpaved and open. The use of perforated pavers or grates may be allowed subject to review and written approval.
  - b. No vehicles may be parked or driven over the TPZ, nor may any construction material be stored or any substances poured, disposed, or placed within the tree protection zone at any time during clearing or construction.
  - c. No change of grade within the TPZ may occur around existing trees except for a maximum of two inches of mulch or sod, unless otherwise approved by the city.
  - d. Tree protection fencing, a minimum three (3) feet in height, shall be placed along the exterior of the TPZ of all Protected Trees. Installation of protective tree fencing shall not destroy or harm the root system of Protected Trees. Fencing shall consist of a combination of type 'A' silt fence (not dug in), type 'B' or plastic construction fence, or alternative fencing as approved by the City Arborist.
  - e. Signage which states, "Tree Protection Zone, Do Not Enter," in legible letters at least four inches tall, shall be placed for each Protected Tree, if in a TPZ of one tree, or placed at least every 20 feet along a TPZ perimeter fencing surrounding

multiple trees. Signs are not required for new or existing single family houses or duplexes unless specifically required by the City Arborist.

- f. Where grade changes may affect tree protection zones, protective dry wells or retaining walls shall be provided.
  - g. If roots must be removed during site clearing and/or construction, they shall be severed clean at the perimeter of the tree protection zone.
3. Remediation and replacement. Any Protected Tree(s) required to be replaced or remediated shall, at the expense of the owner/developer, occur on the same site, or the owner/developer shall make a monetary contribution to the tree protection and landscaping account.
- a. Total DBH of replacement trees shall equal or exceed the total DBH of Protected Trees removed and required to be replaced unless otherwise specified below or in Section 7-156. Any Protected Tree required to be preserved must remain undamaged and live through the duration of construction and the issuance of a Certificate of Occupancy. Any existing Heritage Tree required to be preserved must live for three years from the date of the Certificate of Occupancy. Trees that do not survive or are damaged must be replaced or remediated, with all replacement trees having a total tree DBH equivalent to that of the DBH of the tree(s) that died or were damaged.
    - i. Protected or Heritage Pine trees may be removed if replacement and/or remediation is provided. One replacement tree is required to be planted for each Protected or Heritage Pine Tree removed. Replacement trees must come from the preferred tree list in this section.
  - b. If, in the judgment of the City Arborist, the site cannot accommodate the total number of required replacement trees as a result of insufficient planting area, the applicant shall make a monetary contribution to the tree protection and landscaping account. The amount of such contribution shall be: For every single-trunk replacement tree required, the contribution shall be equal to the current retail value of an equivalent nursery-grown tree of similar species, plus the cost of planting. The retail value and planting cost for the replacement tree shall be

calculated by the city by taking the average published price of nursery grown trees of the same species and doubling it.

- c. Any replacement tree which dies or is removed shall be replaced by a tree meeting replacement guidelines, at the expense of the property owner.
- d. Replacement trees with the potential to reach a height that would interfere with overhead utilities lines may not be planted or otherwise located under or within 10 feet on either side of overhead utility lines. Replacement trees may not be placed so as to interfere with underground utilities.
- e. Preferred trees. The following list of trees may be approved as replacement trees:
  - i. Live Oak (*Quercus virginiana*)
  - ii. Sand Live Oak (*Quercus geminata*)
  - iii. Southern Magnolia (*Magnolia grandiflora*)
  - iv. Willow Oak (*Quercus phellos*)
  - v. Shumard Oak (*Quercus shumardii*)
  - vi. Bald Cypress (*Taxodium distichum*)
  - vii. Other native species appropriate for the location as approved by the City Arborist
- f. Protected or Heritage Trees may be removed without replacement or remediation if the City Arborist determines the tree meets any of the following criteria:
  - i. Is diseased, infested with insects, injured by natural or unavoidable causes (e.g. lightning strike, storm damage, etc), or causing structural damage to a building;
  - ii. b. Is in danger of falling on existing or proposed structures;
  - iii. c. Creates unsafe vision clearance; or
  - iv. d. Conflicts with other ordinances or regulations of the city.

**Sec. 7-156. Requirements for specific types of development.**

- 1. *Multi-family and nonresidential developments.* This includes new and existing (developed) commercial, industrial, and residential structures for three or more families.
  - a. Review Criteria.
    - i. A Heritage Tree may be removed only if:

1. It is within the footprint of a principal building, and the applicant has demonstrated that all reasonable efforts have been made to attempt to retain the tree on the site. If a Heritage Tree is actively causing damage to an existing structure (e.g. lifting or cracking of foundation) and it has been demonstrated that alternative means of protection are unfeasible, then the tree may be removed. If removal is approved, replacement or remediation will still be required.
  2. The City may administratively authorize a waiver or reduction of the front or rear yard setback, up to but not exceeding 10 feet, and in side yards, up to but not exceeding five feet, in cases where the reduction of the setback is necessary in order to preserve a Heritage Tree.
- ii. A Protected Tree may be removed without replacement or remediation if:
    1. It is located in an area where a structure or improvement is to be placed according to a site plan or building permit, and the applicant has made every effort to preserve Protected Trees on the site; or
    2. If a Protected Tree is actively causing damage to an existing structure (e.g. lifting or cracking of foundation) and it has been demonstrated that alternative means of protection are unfeasible, then the tree may be removed.
  - iii. A Protected Tree that does not meet the criteria above may be removed if replaced and/or remediated according to this article.
- b. Tree Protection Zone. There shall be an area around each tree extending fifteen (15) inches per inch of tree DBH in all directions from the trunk. In no case shall the tree protection zone be less than ten (10) feet. The City Arborist may authorize a TPZ containing multiple trees and may increase or decrease the tree protection zone based upon unique site conditions.
  - c. Replacement Trees. Single-trunk replacement trees shall have a minimum of 3” DBH and be a minimum of 12 feet in overall height and be on the City’s preferred tree list. If it can be demonstrated that 3” DBH trees are not available at the time of application, the City Arborist may authorize a reduction to 2 ½” DBH at 10 feet

in height. Palm trees shall not count as replacement trees except when replacing an existing palm.

2. *New single-family houses and duplexes.* This includes lots and parcels platted, zoned, or otherwise developed for a single family or duplex principal use and applying for a building permit for new single family or duplex use. This subsection does not apply to property being developed, including going through the subdivision process, or requiring a land disturbance permit.

- a. Review Criteria.

- i. A Heritage Tree may be removed without remediation only if it is demonstrated that all reasonable efforts have been made to retain the tree on the site.
- ii. The City may administratively authorize a reduction of the front or rear yard setback, up to but not exceeding 10 feet, or in the side yard, up to but not exceeding five feet, in cases where the reduction of the setback is necessary in order to preserve a Heritage Tree.
- iii. A Protected Tree may be removed without replacement or remediation if located within 10 feet of the footprint of the proposed principal residential structure or within 10 feet of other site improvements (including but not limited to the garage, carport, driveway and swimming pool), or would interfere with proposed essential utility services, as indicated on the plot plan submitted for permitting.
- iv. A maximum of 50% of the Tree Canopy Cover in the rear yards of single family or duplex homes may be removed. Tree canopy cover is defined generally as the layer of leaves, branches, and stems comprising the crown of the tallest trees present when viewed from above. The tree canopy cover delineation shall be used to determine what trees may be removed to meet this standard. A lot's tree canopy coverage shall be calculated by the City Arborist for all permits requiring arborist review. Heritage Trees may not be removed as part of the permitted tree canopy reduction in rear yards.

- v. A Protected Tree that does not meet criteria for removal without replacement or remediation may be removed if tree replacement and/or remediation is provided, as is required in this article.
  - b. Tree Protection Zone. There shall be an area extending five (5) feet from the outside edge of the trunk. The City Arborist may authorize a TPZ containing multiple trees and may increase or decrease the tree protection zone based upon unique site conditions.
  - c. Replacement Trees. Single-trunk replacement trees shall have a minimum of 3” DBH and be a minimum of 12 feet in overall height and be on the City’s preferred tree list. If it can be demonstrated that 3” DBH trees are not available at the time of application, the City Arborist may authorize a reduction to 2 ½” DBH at 10 feet in height. Palm trees shall not count as replacement trees except when replacing an existing palm.
- 3. *Developed or existing single-family houses and duplexes.* This includes lots and parcels with an existing single family or duplex principal use on site at the time of applying for a tree removal permit. Sites with existing or developed single family or duplex uses may be reviewed using a modified site plan as approved by the City Arborist (e.g. aerial photograph, single tree consideration, etc). This section applies to additions and accessory structures on parcels with existing houses and duplexes.
  - a. Review Criteria
    - i. A Protected Tree may be removed without replacement or remediation if it is located within 10 feet of the footprint of a principal building.
    - ii. A Protected Tree may be removed without replacement or remediation if it will be within 10 feet of the footprint or an accessory structure or building and the applicant has demonstrated that all reasonable efforts have been made to retain the tree.
    - iii. A Heritage Tree may be removed without replacement or remediation if it is located within ten feet of the footprint of a principal building, and the applicant has demonstrated that all reasonable efforts have been made to retain the tree on the site.

- iv. A Heritage Tree may be removed with replacement or remediation if located within five feet of the footprint of existing or proposed new site accessory improvements (including but not limited a detached garage, detached carport, driveway or swimming pool, and essential utilities) and the applicant has demonstrated that all reasonable efforts have been made to retain the tree on the site.
  - v. A protected or Heritage Tree actively causing damage to an existing structure, including sidewalks or driveways, (e.g. lifting or cracking of foundation) and it has been demonstrated that alternative means of protection are unfeasible, then the tree may be removed.
  - vi. Protected or heritage pines may be replaced or remediated at a one-to-one ratio (i.e. each individual pine tree, regardless of DBH, may be replaced with a single tree, or equivalent remediation fee).
  - vii. A maximum of 50% of the Tree Canopy Cover in the rear yards of single family or duplex homes may be removed. Tree canopy cover is defined generally as the layer of leaves, branches, and stems comprising the crown of the tallest trees present when viewed from above. The tree canopy cover delineation shall be used to determine what trees may be removed to meet this standard. A lot's tree canopy coverage shall be calculated by the City Arborist for all permits requiring arborist review. Heritage Trees may not be removed as part of the permitted tree canopy reduction in rear yards.
- b. Replacement Trees. Single-trunk replacement trees shall have a minimum of 2" DBH and be a minimum of 10 feet in overall height and be on the City's preferred tree list. Palm trees shall not count as replacement trees except when replacing an existing palm. Larger diameter trees, if available, may be used in the calculation of remediation fees in this subsection, as long as the total DBH of removed trees is accommodated (e.g. if three 2" trees are required for replacement (total of 6" DBH) the remediation calculation may use two 3" trees (total of 6" DBH) if more economical).

4. *New residential subdivisions that require a land disturbance permit or installation of public infrastructure.* Consideration is given to new subdivisions that require installation of public infrastructure such as streets, sidewalks, stormwater facilities, and other public utilities, and typically engage in extensive clearing of larger areas of land.
  - a. Review Criteria.
    - i. A survey must be prepared by a licensed surveyor or engineer that meets the requirements as found in Section 7-155. This can be done in conjunction with the preliminary plat process.
    - ii. Heritage Trees may not be removed unless it is demonstrated that all efforts have been made to preserve and protect the tree. This includes, but is not limited to: reconfiguration of lot layout, infrastructure layout, or building pad locations, reduction in the number of lots, increase in size of lots, increase in open space. Developers may pursue conservation subdivisions, Planned Unit Developments, or other alternative and available means of platting and development to protect trees. If a Heritage Tree is removed, the DBH must be replaced on site.
    - iii. Protected Trees may be removed if within the footprint of proposed infrastructure, including within a right-of-way, within a utility easement or 10 feet of utility lines, and within the footprint of stormwater or drainage facilities such as a detention pond.
    - iv. Tree Protection Zone. There shall be an area around each tree extending fifteen (15) inches per inch of tree DBH in all directions from the trunk. In no case shall the tree protection zone be less than ten (10) feet. The City Arborist may authorize a TPZ containing multiple trees and may increase or decrease the tree protection zone based upon unique site conditions.
  - b. Replacement Trees. Single-trunk replacement trees shall have a minimum of 3” DBH and be a minimum of 12 feet in overall height and be on the City’s preferred tree list. If it can be demonstrated that 3” DBH trees are not available at the time of application, the City Arborist may authorize a reduction to 2 ½” DBH at 10 feet in height. Palm trees shall not count as replacement trees except when replacing an existing palm.

**Sec. 7-157. Effective date and expiration of a tree removal permit.**

1. Approval of an application to remove a Protected Tree is effective upon issuance of a permit. A permit expires 90 days after its issuance date, provided that the mitigation conditions in the permit remain in effect until the conditions are met. If a tree removal permit is issued in conjunction with a building permit, site plan, land disturbance, or similar permit, the tree removal permit shall be effective while the development permit is active and valid.
2. For properties for which the building permit has expired and Protected Trees were removed, the property owner shall replace and/or remediate, within 90 days of the expiration of the building permit, the total DBH of the protected and Heritage Trees that were removed when the building permit was issued. Trees shall be planted outside of building setback lines or in other areas less likely to result in future removal.

**Sec. 7-158. Appeals.**

If in the determination of staff, the application does not meet the required criteria, it will be denied and the reasons communicated to the applicant who may appeal the decision to the Tree Protection Board within ten working days by filing a written request with the Planning Department in a format or on a form as specified by the department. The appeal request will be placed on the next available Tree Protection Board agenda and public notice of the meeting will be performed as is required for a site plan review.

**Sec. 7-159. Tree Protection Board.**

The Tree Protection Board hears and decides appeals of decisions of the City Arborist or other administrative officials related to this article. The Tree Protection Board shall consist of five regular members and two supernumerary members. The supernumerary members shall serve at the call of the chairman only in the absence of regular members and while so serving shall have and exercise the power and authority of regular members.

The membership of the Tree Protection Board shall be composed of the same membership of the Gulf Shores Board of Zoning Adjustment, and said Board of Zoning Adjustment's chairman shall also chair the Tree Protection Board.

The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of the City Arborist or other administrative official related to this article.

**Sec. 7-160. Enforcement and penalties.**

Whenever the City Arborist, zoning official, or designee, determines that a violation of this article has occurred, the following shall occur:

1. Notice of violation in writing shall be provided to the property owner, person, and/or contractor or other entity performing the work detailing the nature of the violation.
2. One of the following actions shall be initiated singly or in combination:
  - a. A stop work order shall be posted on site requiring all work to cease until the violation may be addressed and corrected.
  - b. A fine in the amount of \$500 shall be issued to the property owner or the person, contractor, or other entity who caused the tree removal, site clearing, or other violation of this article.
  - c. The property owner, or person acting on behalf of the owner, shall, within 14 days of notice of violation, submit a tree removal permit application in accordance with this article and along with the following:
    - i. For properties where the city can determine the size and species of trees removed, the property owner shall be required to plant replacement trees on the site or make a monetary contribution to the tree protection and landscaping account in accordance with this article.
    - ii. For properties where trees have been removed and the city cannot determine the size and species of trees removed, the property owner shall be required to plant replacement trees from the preferred list in Section 7-155 at a rate of two trees for every 1,000 square feet of property cut, or fraction thereof, or make a monetary contribution to the tree protection and landscaping fund in accordance with this article
    - iii. The permit fee shall be doubled.

**Sec. 7-161. Final approval of projects.**

No certificate of occupancy, final plat approval, or other final approval for a project which required a tree removal permit, shall be issued by the City until the City Arborist shall have inspected such site and confirmed that the provisions of the approved permit have been followed, including required trees remaining without damage, replacement trees properly planted, and/or remediation fees submitted to the City.

**Secs. 7-162 – 7-170. Reserved.**

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