

ORDINANCE NO.

**AN ORDINANCE
TO AMEND THE CODE OF ORDINANCES
ADOPTED JULY 24, 1989, AT CHAPTER 7,
BUILDINGS; CONSTRUCTION AND RELATED ACTIVITIES,
BY ADDING CERTAIN LANGUAGE
AT ARTICLE VIII, TREE PROTECTION**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GULF SHORES, ALABAMA, WHILE IN REGULAR SESSION ON **xx xx**, 2021, as follows:

Section 1. That Chapter 7, BUILDINGS; CONSTRUCTION AND RELATED ACTIVITIES, of the Code of Ordinances, adopted July 24, 1989, be and it is hereby amended by changing certain language at Article VIII, Tree Protection, so the entire Section shall read as follows:

CHAPTER 7 BUILDINGS, CONSTRUCTION AND RELATED ACTIVITIES

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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;
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.

(Ord. No. 833, § 1, 8-28-00)

Sec. 7-151. Applicability.

These regulations shall apply to each Protected Tree within the corporate limits of the City of Gulf Shores. Protected Trees as defined in this article shall not be removed, relocated, destroyed or otherwise directly or indirectly 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 Community Development Department (CDD) will work within the regulations to waive or modify the design standards to the extent necessary to save the tree.

The City may issue an annual permit to public utility companies exempting them from this requirement with respect to the trimming of Protected Trees that may interfere with utility lines located within public rights-of-way, and upon such terms and conditions as may be determined by the city. The Mayor of the City may declare an emergency and impose a temporary moratorium on the enforcement of this requirement, following severe storm events within the city.

Sec. 7-152. Definitions.

Diameter at Breast Height (DBH): The measurement of the diameter of a tree trunk measured in inches at a height of four and a one-half (4½) feet above the ground. If a tree splits into multiple trunks below four (4) feet, then the trunk is measured at its most narrow point beneath the split.

Heritage Tree: A healthy tree and its root system with a diameter at breast height equal to or greater than thirty (30) inches or a live oak tree with a diameter at breast height equal to or greater than twenty-four (24) inches.

Protected Tree: A tree that has a DBH of at least twelve (12) inches or is a live oak or sand live oak with a DBH of at least six (6) inches. The following invasive species shall not be considered Protected Trees:

Chinese Tallow (Popcorn Tree)	<i>Sapium sebiferum</i>
Chinaberry	<i>Melia azedarach</i>
Tree of Heaven (Chinese Sumac)	<i>Ailanthus altissima</i>
Silk Tree (Mimosa)	<i>Albizia julibrissin</i>
Paper Mulberry	<i>Broussonetia papyrifera</i>

Tree Protection Zone: 1) For all multi-family and nonresidential development, there shall be an area around a 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. 2) For all single family and duplex uses shall be an area extending five (5) feet from the outside edge of the trunk. 3) During the permit review and/or site inspection process, the City Arborist may increase or decrease the tree protection zone based upon unique site conditions.

Sec. 7-153 Exemptions.

The following activities are exempted from the regulations of this ordinance.

1. Incidental trimming or pruning of a Protected Tree located on private property by the owner of the property or the owner's agent.
2. Public utility construction activities within the public rights-of-way.
3. Commercial tree operation. Trees grown specifically for sale by commercial nurseries or the production of lumber and its byproducts. Buildings and associated parking facilities for these types of operations are not exempt from the requirements of this article.

Sec. 7-154. Tree Removal Permit.

Any person wishing to remove, relocate, destroy, or otherwise injure a Protected Tree shall, under the provisions of this section, make written application to the CDD unless exempted within this ordinance. Application fees for Tree Removal Permits shall be set by resolution of 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 shall not require a separate Tree Removal Permit.

Sec. 7-155. Tree Protection, Replacement and Remediation.

Documentation demonstrating compliance with tree protection, replacement, and remediation requirements of this Ordinance shall be submitted with any Tree Removal Permit application or prior to the issuance of a Building Permit, Land Disturbing Activity, Site Plan Approval or other City Permit for any new development that would destroy, injure or otherwise have an adverse effect on existing vegetation.

The submitted documentation shall contain at a minimum the following.

A. New Multi-family and Nonresidential Developments

1. Review Criteria

- a. A Heritage Tree may be removed only if 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.
- b. The Community Development Department may administratively authorize a waiver or reduction of the front, rear or side yard setback, up to but not exceeding five (5) feet, in cases where the reduction of the setback is necessary in order to preserve a Heritage Tree.
- c. A Protected Tree may be removed without replacement or remediation if:
 - i. 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
 - ii. The City Arborist determines the tree is diseased, injured, in danger of falling on existing or proposed structures, interferes with existing or proposed essential utility services, creates unsafe vision clearance or conflicts with other ordinances or regulations of the city.
- d. A Protected Tree that does not meet the criteria above may be removed if replaced and/or remediated according to this Ordinance, and a sufficient number of replacement trees are proposed to be planted on the site in appropriate locations and of sufficient size as required by Article 12 of the City of Gulf Shores Zoning Ordinance.

2. Tree Protection Plan

- a. Minimum Submittal Requirements:

- i. The name and phone number for the party responsible for each action and property owner shall be identified;
 - ii. A certified survey indicating the location, DBH and common name of all protected and heritage trees on the property;
 - iii. Indication whether individual trees are proposed to be preserved or removed;
 - iv. Tree Protection Zones shall be identified and the method for preserving Protected Trees in the field (fencing, etc.) throughout all phases of construction; and
 - v. The location of tree protection signage (minimum 6 square feet reading, "Tree Protection Zone, Do Not Enter").
- b. Demonstrate Compliance with the following standards which shall be incorporated into the site preparation and construction methods utilized on the site.
 - i. Tree Protection Zones must remain unpaved and open. The use of perforated pavers or grates may be allowed subject to written approval.
 - ii. No vehicles shall be parked or driven over the Tree Protection Zone, nor shall any construction material be stored or any substances poured, disposed or placed within the Tree Protection Zone at any time during clearing or construction.
 - iii. No change of Grade within the Tree Protection Zone shall be allowed around existing trees except for a maximum of two (2) inches of Mulch or Sod unless otherwise approved by the City.
 - iv. Tree protection fencing, a minimum three (3) feet in height, shall be placed to the exterior of the tree protection zone of all Protected Trees. Installation of protective tree fencing shall not destroy or harm the root system of Protected Trees.
 - v. Fencing shall consist of a combination of silt fence and hay bales. No entry, storage, temporary parking, or disturbance will be allowed within the protected area.
 - vi. Where grade changes affect tree protection zones, protective dry wells or retaining walls shall be provided.
 - vii. All roots to be removed during site clearing and/or construction shall be severed clean at the perimeter of the Tree Protection Zone.

3. Tree Replacement and Remediation Plan and Schedule.

Any Protected Tree(s) required to be replaced or remediated shall be replaced at the expense of the owner /developer, or the owner/developer shall make a monetary contribution to the Tree Protection and Landscaping Fund.

- a. Total DBH of replacement trees shall equal or exceed the total DBH of Protected Trees removed and required to be replaced. Any existing Protected Tree, proposed to be preserved, may be eligible for credit against the number of trees otherwise required to be planted by this section. Whether a tree is accepted for credit rests solely in the discretion of the approving authority, during the Site Plan Review or subdivision process. The credit schedule in

Article 12 of the City of Gulf Shores Zoning Ordinance may be applied to preserve Protected Trees during the site plan review or subdivision process.

- b. Single-trunk replacement trees shall have a minimum of three inches DBH and be a minimum of twelve feet in overall height.
- c. 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 may make a monetary contribution to the Tree Protection and Landscaping Fund. The amount of such contribution shall be determined as follows:
 - For every three diameter inches of replacement trees required, the contribution shall be equal to the retail value of a three-inch DBH, twelve foot tall 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 container-grown or balled and burlapped trees and doubling it.
- d. Any replacement tree, planted for credit, which dies within two years of planting, shall be replaced by a tree having not less than a three-inch DBH minimum height of twelve feet at the time of planting, at the expense of the owner / developer responsible for the replacement of the tree removed.
- e. No replacement trees with the potential to reach a height of 18 feet or greater shall be planted or otherwise located under or within ten feet on either side of overhead utility lines.
- f. All tree debris shall be removed within 30 days of lot clearance, and the property shall be maintained in accordance with the provisions of Chapter 14-2 of the Code of Ordinances.

B. Existing Multi-family and Nonresidential Uses shall meet all of the requirements for New Multi-family and Nonresidential Developments with the exception of the following.

1. Review Criteria

- a. A Protected Tree may only be removed if the City Arborist determines the tree is diseased, injured, in danger of falling close to existing structures, interferes with existing or proposed essential utility services, creates unsafe vision clearance or conflicts with other ordinances or regulations of the city. Replacement shall be in accordance with the landscaping requirements set forth in the Zoning Ordinance.

C. Single Family Houses and Duplexes

1. Review Criteria

- a. A Heritage Tree may be removed only if it is within 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.
- b. The Community Development Department may administratively authorize a waiver or reduction of the front, rear or side yard setback, up to but not exceeding five (5) feet, in cases where the reduction of the setback is necessary in order to preserve a heritage tree.

- c. A Protected Tree may be removed without replacement or remediation if located within ten feet of the footprint of the principal residential structure, or within the immediate footprint of site improvements (including but not limited to the garage, carport, driveway and swimming pool) as indicated on the plot plan submitted for permitting.
- d. Up to 50 % of total Protected Tree DBH within a rear yard may be removed without replacement or remediation for lawn areas.
- e. A Protected Tree may be removed without replacement or remediation if the City Arborist determines the tree meets any of the following criteria:
 - i. Is diseased or injured;
 - ii. Is in danger of falling on existing or proposed structures;
 - iii. Interferes with existing or proposed essential utility services;
 - iv. Creates unsafe vision clearance; or
 - v. Conflicts with other ordinances or regulations of the city.

The City Arborist may waive the application fee for stand-alone tree removal permits for Protected Trees that meet these criteria.
- f. 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, with all replacement trees having a total tree DBH equivalent to that of the DBH of the tree(s) removed.

2. Tree Protection Plan

- a. Minimum Submittal Requirements:
 - i. A certified survey indicating the location, DBH and common name of all protected and Heritage Trees on the property (The City Arborist may waive the requirement for a certified survey for tree removal meeting the criteria of C.1.e above, house additions, pools, accessory structures and fences);
 - ii. Indication whether individual trees are proposed to be preserved or removed; and
 - iii. Method of protecting and preserving Protected Trees in the field (fencing, etc.) throughout all phases of construction.
- b. Demonstrate Compliance with the following standards which shall be incorporated into the site preparation and construction methods utilized on the site.
 - i. No vehicles shall be parked or driven over the Tree Protection Zone, nor shall any construction material be stored or any substances poured, disposed or placed within the Tree Protection Zone at any time during clearing or construction.
 - ii. No change of Grade within the Tree Protection Zone shall be allowed around existing trees except for a maximum of two (2) inches of Mulch or Sod unless otherwise approved by the City.
 - iii. Tree protection fencing, a minimum three (3) feet in height, shall be placed to the exterior of the tree protection zone of all Protected Trees.

Installation of protective tree fencing shall not destroy or harm the root system of Protected Trees.

- iv. Fencing shall consist of a combination of silt fence and hay bales. No entry, storage, temporary parking, or disturbance will be allowed within the protected area. Where grade changes affect tree protection zones, protective dry wells or retaining walls shall be provided.
 - v. All roots to be removed during site clearing and/or construction shall be severed clean at the perimeter of the Tree Protection Zone.
3. Tree Replacement and Remediation Plan and Schedule. Any Protected Tree(s) required to be replaced or remediated shall be replaced at the expense of the owner /developer, or the owner/developer shall make a monetary contribution to the Tree Protection and Landscaping Fund unless specified otherwise below.
- a. Total DBH of replacement trees shall equal or exceed the total DBH of Protected Trees removed and required to be replaced.
 - b. Single-trunk replacement trees shall have a minimum of three inches DBH and be a minimum of twelve feet in overall height.
 - c. 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 may make a monetary contribution to the Tree Protection and Landscaping Fund. The amount of such contribution shall be determined as follows:
 - For every three diameter inches of replacement trees required, the contribution shall be equal to the retail value of a three-inch DBH, twelve foot tall nursery-grown tree of similar species plus the cost of planting. The retail value and planting cost shall be calculated by the City by taking the average published price of container-grown or balled and burlapped tree and doubling it.
 - d. Any replacement tree, planted for credit, which dies within two years of planting, shall be replaced by a tree having not less than a three-inch DBH minimum height of twelve feet at the time of planting, at the expense of the owner / developer responsible for the replacement of the tree removed.
 - e. No replacement trees with the potential to reach a height of 18 feet or greater shall be planted or otherwise located under or within ten feet on either side of overhead utility lines.
 - f. All tree debris shall be removed within 30 days of lot clearance, and the property shall be maintained in accordance with the provisions of Chapter 14-2 of the Code of Ordinances.

Sec. 7-156. Effective Date and Expiration of a Tree Removal Permit

Approval of an application to remove a Protected Tree is effective immediately. An approval to remove a Protected Tree expires ninety (90) days after its effective date, provided that the mitigation conditions in the permit remain in effect until the conditions are met.

Sec. 7-157. Appeals.

If in the determination of the City, the application does not meet the above criteria, it will be denied and the reasons communicated to the applicant who may appeal the decision to the City Council within ten (10) working days by filing a written request with the CDD in a format or on a form as specified by the Department.

Sec. 7-158. Enforcement and penalties.

Whenever the Zoning Official, or his designee, determines that a violation of this article has occurred, one of the following actions shall be initiated singly or in combination:

1. Any person and/or property owner who performs tree removal or site clearing without city approval may be required to pay a fine of one thousand dollars (\$1000) and two (2) times the cost of the permit for the work performed without a permit.
2. A cease and desist order, warning citation or formal citation shall be immediately issued to the contractor and/ or property owner when it is determined violations of this ordinance have occurred. The order shall specify the nature of the violation and require that any work not permitted under this article immediately stop.
3. The property owner shall, within two (2) weeks of receiving the warning citation, submit a Tree Removal Permit application in accordance with Section 7-155 to the City for rectifying the violation. Construction shall not be resumed until the Tree Removal Permit is approved by the CDD. The Tree Replacement and Remediation Plan shall meet the following requirements:
 - a. For properties for which 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 Fund in accordance with Section 7-155.
 - b. For properties for which all of the trees have been removed without a permit, and the City cannot determine the size and species of trees removed, the property owner shall be required to plant replacement trees in accordance with Section 7-155 at a rate of two trees for every 1,000 square feet of property clear cut or make a monetary contribution to the Tree Protection and Landscaping Fund in accordance with 7-155 at a rate of two (2) three-inch caliper trees for every 1,000 square feet of property clear cut.
4. Any person violating any of the provisions of this article shall be guilty of an offense against the City and shall, upon conviction, be punished for each violation as provided in section 7-155 of this Code as now in force or as hereafter amended.

Section 2. The provisions of this Ordinance are severable. If any part of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, such declaration shall not affect the validity and enforceability of the remaining provisions of the Ordinance.

Section 3. This Ordinance shall become effective upon its adoption and publication as required by law.

ADOPTED this xx day of xx, 2021.

Robert Craft, Mayor

ATTEST:

Wanda Parris CMC
City Clerk

C E R T I F I C A T E

I, Wanda Parris CMC, City Clerk of the City of Gulf Shores, Alabama, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1618(prepared by the City Clerk), which Ordinance was duly and legally adopted at a regular meeting of the City Council on August 23, 2010, and the same was duly published on September 1, 2010 in THE ISLANDER, a newspaper of local publication and distribution in the City of Gulf Shores, Alabama.

City Clerk