

## ARTICLE 16 TREE PROTECTION AND LANDSCAPING

(rev. 12/05/2023 unless otherwise noted)

- 16.01 PURPOSE
  - 16.02 APPLICABILITY
  - 16.03 DEFINITIONS
  - 16.04 LANDSCAPING REQUIREMENTS
  - 16.05 LANDSCAPE PLAN
  - 16.06 MAINTENANCE
  - 16.07 PROTECTED TREES AND TREES TO BE PRESERVED
  - 16.08 TREE REMOVAL AND SITE CLEARING PERMIT
  - 16.09 ENFORCEMENT
- 
- ### APPENDIX A – TREE REPLANT LIST
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#### 16.01 PURPOSE

The purpose of this Article is to establish protective regulations for heritage and protected trees and provide requirements for the planting of landscaped areas within the City. These regulations have also been adopted to allow for the removal of heritage and protected trees if they are hazardous, causing structural damage to the foundation, structural walls or roof of an existing building or when necessary to allow for reasonable use of a parcel or property. If heritage or protected trees are removed, it is also the intent of these regulations to require that the trees be replaced in order to preserve the tree canopy in the City of Orange Beach thereby protecting the environment and enhancing the natural beauty of the City. However, it is not the intent of this Article to preclude reasonable use of a parcel when the terms of these regulations are inconsistent with the City's zoning requirements or to inordinately burden the reasonable use of a property. Green areas create and preserve an ecological balance, control erosion, sedimentation and storm water runoff, provide shade and reduce heat and glare, abate noise pollution, and buffer incompatible land uses. It is critical that a balance be maintained between developed areas and natural/landscaped areas with appropriate existing and/or newly planted trees and other vegetation. The overall intent is to provide for the health and safety of our citizens and visitors through maintaining vital vegetative species that will reproduce for future generations.

#### 16.02 APPLICABILITY

- A. The provisions of this chapter shall apply to all new construction, expansion, development, redevelopment, clearing and grubbing, and maintenance of all property within the City of Orange Beach jurisdictional limits, unless expressly exempted by law.
- B. Exemptions: The following are exempt from the landscaping and tree removal, replacement and permitting requirements of this Article: (rev. 12/05/2023)
  - 1. Public Works and Recreation Department construction activities.
  - 2. Public utility construction activities within the public rights-of-way.
  - 3. Protected trees irreversibly damaged or destroyed by natural disaster are exempt from the tree protection requirements of this Article.

### 16.03 DEFINITIONS

For the purposes of this Article, certain abbreviations, terms, phrases, words and their derivatives shall have the following meanings:

**Circumference.** The distance around the periphery of a tree at four and one-half (4 ½) feet above existing grade.

**Diameter Breast Height.** The diameter, in inches, of a tree trunk measured at four and one-half (4 ½) feet above existing grade. DBH is also referred as the diameter of a tree.

**Heritage Tree.** A healthy, protected tree and its root system with a diameter at breast height equal to or greater than thirty (30) inch or seven (7) feet and ten (10) inch circumference, whichever dimension is less,

**Irrigation.** A permanent underground watering system equipped with surface, subsurface or overhead emitters and which provides one hundred percent (100%) water coverage.

**Protected Tree.** A tree and its root system as defined in Section 16.07, A.

**Protective Barricade.** A physical structure not less than three (3) feet in height; limiting access to protected trees and heritage trees. A suitable protective barricade may be composed of wood or other material which ensures protection of the protected trees and heritage trees during construction.

**Protective Dry Well and Drainage/Aeration System.** A tree protection technique used to stabilize soil and provide air and water to root systems when the grade is raised.

**Protective Retaining Wall.** A tree protection technique used to stabilize soil around root systems when the grade is lowered.

**Removed Tree.** A protected tree or heritage tree that has been irreversibly damaged or destroyed.

**Shade Tree.** A hardwood tree that reaches a minimum height of twenty-five (25) feet at maturity, provides relief from direct sunlight for at least six (6) months each year and is included in the tree replant list, Appendix A.

**Site Clearing.** Any development or other activity which alters the land upon which it is located, except for normal sodding and placement of signs.

### 16.04 LANDSCAPING REQUIREMENTS

With the exception of single family and duplex uses, the following landscaping requirements apply to all types of land uses.

#### A. Landscape Area Requirements

The minimum percentage of the total developable site which shall be devoted to landscaping, unless otherwise specified in this Article, shall be twenty percent (20%).

Effort shall be made to maximize upland habitat preservation and incorporate existing natural vegetation within the landscape areas.

**B. Vehicle Use Areas and Perimeter Fencing** (rev. 01/03/2017)

Vehicular use areas and perimeter fencing greater than three (3) feet in height shall meet the following requirements:

1. **Perimeter Requirements:** A ten (10) foot wide strip of privately owned land, located along the front, rear and/or side property line(s) adjacent to a street right of way shall be landscaped. In no case shall this strip be less than ten (10) feet wide. In the case of perimeter fencing, the landscape strip shall be located between the fence and the street right-of-way. This perimeter landscape requirement shall be credited toward the percentage required for the total developable site in Section 16.04, A. above. Material requirements in perimeter area are as follows:
  - a. One (1) tree for each thirty five (35) feet of linear foot frontage along the right of way shall be preserved or planted. Trees planted to meet this requirement shall measure a minimum of three (3) inches in diameter at four (4) feet above grade. The minimum height shall not be less than eight (8) feet of clear trunk. The remaining area within the perimeter strip shall be landscaped with landscape materials as follows:
    - (1) Hedge material at least three (3) feet in height and planted a minimum of three (3) feet on center. The hedge material shall form a continuous, opaque vegetative screen within one (1) year of planting. Other, non-vegetative screening may be used in conjunction with the hedge material but in no instance shall vegetation be minimized.
    - (2) Ground cover material which may include grass, pine straw or other organic material. No artificial turf or non-organic substances shall be used to satisfy this requirement.
  - b. Trees and other landscaping required in the perimeter strip shall be maintained to assure unobstructed visibility between three (3) feet and nine (9) feet above the average grade of the adjacent street and the driveway intersections through the perimeter strip.
2. **Interior Planting Areas:** Interior planting areas within parking lots shall be determined by subtracting the area set aside in the ten (10) foot perimeter strip from the total minimum area required to be landscaped in Section 16.04, A. above. This remaining percentage shall be allocated throughout the parking lot in planting areas located no greater than ten (10) parking spaces apart and in areas which are within ten (10) feet of the parking lot (other than in the perimeter strip required in B.1. above). Interior planting areas shall be located to most effectively accommodate storm water runoff and provide shade in large expanses of paving and contribute to orderly circulation of vehicular and pedestrian traffic. The minimum size of an interior planting area shall be one hundred fifty (150) square feet and a minimum width equal to eight (8) feet. Interior planting areas shall be located on the site to incorporate the preservation of on-site protected trees, where possible.
3. **Vehicle Overhang:** Vehicles shall not overhang more than two (2) feet into any interior planting area of perimeter strip.

4. **Hardwood Tree Replacement:** The minimum number of trees shall be one (1) hardwood (shade) tree from Appendix A, Type B, for every one thousand three hundred (1,300) square feet of impervious and pervious vehicular use area. (rev. 04/19/2016)

**C. Buffer Areas between Incompatible Zoning Districts and Uses**

Regulations applicable to buffer yards are specified in Table 4.05 of this Ordinance.

**D. Irrigation**

A fully automatic, permanent irrigation system shall be installed, providing one hundred percent (100%) coverage of all required landscape areas.

**16.05 LANDSCAPE PLAN**

Before commencing any clearing or construction and simultaneously with a site plan review application, the applicant shall submit a landscape plan pursuant to this Article.

The landscape plan shall be required as a condition of obtaining any building permit as specified in Section 16.04. The plan shall be submitted with the application for site plan review. No permit shall be issued by the Building Division unless the landscape plan has been approved by the Planning Department. No Certificate of Occupancy shall be issued unless all requirements of the Planning Commission and site plan approval have been met.

**A. Contents of Landscape Plan**

The landscape plan shall include the following information:

1. A tree survey showing the location, species and size of all on site protected trees and off site protected trees within twenty-five (25) feet of proposed construction and earthwork.
2. The location by species and size all trees, shrubs and other landscape material to be placed on the site. The existing trees to be removed and retained must be indicated on the landscape plan.
3. Location of proposed structures, driveways, parking areas, utilities and other improvements to be constructed or installed.
4. Location of irrigation system to be provided.
5. Tree barricade and root pruning plan, containing a tree barricade detail, to prevent damage to existing trees and other vegetation during construction.
6. Information, written and graphic, submitted to the Planning Commission as required in Section 16.08 of this Article.

## **B. Installation Period**

All landscape materials and trees depicted on the approved landscape plan shall be installed prior to the issuance of a Certificate of Occupancy. The Planning Commission may extend this period in the event of a storm or other act of God intervening.

### **16.06 MAINTENANCE**

The legal owner of record as it appears on the current tax assessment roll shall be responsible for the maintenance of all landscape areas which shall be maintained so as to present a healthy, neat and orderly appearance at all times and shall be kept free from refuse and debris. Maintenance shall include the replacement of all dead plant material. Dead plant material shall be replaced within a time appropriate to the growing season of the species in question, not to exceed six months.

### **16.07 PROTECTED TREES AND TREES TO BE PRESERVED**

Where a proposed site plan cannot be designed to accommodate existing protected trees on the site, a tree removal or site clearing permit shall be obtained from the Community Development Department as specified in Section 16.08. Every reasonable effort shall be made to retain existing protected trees on a project site. A tree survey shall be submitted as part of the permit application showing the location, species and size of all on site protected trees and off site protected trees within twenty-five (25) feet of proposed construction and earthwork. The tree removal or site clearing permit shall be issued in conjunction with the approval of a site development plan.

#### **A. Protected Trees**

Redbuds and dogwoods with a diameter at breast height (DBH) equal to or greater than four (4) inches, long leaf pine trees equal to or greater than eighteen (18) inches DBH and all other trees with a DBH equal to or greater than six (6) inches are protected trees with the exception of the following:

Chinese Tallow (Popcorn Tree)	Sapium Sebiferum
Chinaberry	Melia Azedarach
Tree of Heaven (Chinese Sumac)	Ailanthus Altissima
Silk Tree (Mimosa)	Albizia Julibrissin
Paper Mulberry	Broussonetia Papyrifera
All pine trees other than the Long Leaf Pine	
Other recognized nuisance and/or invasive species	

#### **B. Heritage Trees**

A healthy, protected tree with a diameter at breast height equal to or greater than thirty (30) inch or seven (7) feet and ten (10) inch circumference, whichever dimension is less, shall be classified as a heritage tree. A heritage tree may be removed only if it is within the footprint of a proposed building structure and the developer has demonstrated that all reasonable efforts have been made to attempt to retain the tree on the site.

### **C. Single Family and Duplex Development, Redevelopment and Expansion**

Single family and duplex lots, excluding subdivisions with associated capital improvements and planned unit developments, shall be exempt from the tree protection regulations within the footprint of the residential structures, including garage, carport, driveway and swimming pool. When a heritage tree is present on the lot, this exemption is limited to the footprint of the principal building, not accessory structures, unless protection of the heritage tree denies or precludes reasonable use of the property. 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. Tree replacement must be provided for all protected trees removed from the lot as required in Section 16.07, D. of this Article.

### **D. Tree Credits and Debits**

**Tree credit.** Any preserved, protected or heritage tree located on the subject private property shall be eligible for credit against the number of trees required to be planted on the site. The number of tree credits is equal to the number of diameter inches (DBH) of protected and heritage trees to be retained divided by six (6).

**Tree debit.** Any protected or heritage tree that is permitted for removal is classified as a tree debit in the calculation of the number of required replacement trees. The number of tree debits is equal to the number of diameter inches (DBH) of protected and heritage trees to be removed divided by six (6).

**Tree replacement.** The required number of inches of replacement trees to be planted on a site is equal to the subtraction of the number of tree credits from the number of tree debits. If the value of the tree credit exceeds the tree debit value, the credit inches of retained trees within ten (10) feet of the vehicular use area may be applied to the vehicular use landscape tree planting requirement.

Replacement trees are required in addition to the landscape trees required in Article 4 and Section 16.04 of this Article unless tree credits are available due to on-site tree preservation.

### **E. Tree Protective Radius and Barricades**

Development on parcels shall comply with the following tree protection requirements:

1. Protective barricades shall be placed around all protected trees and heritage trees during site clearing to create a protective radius and shall remain in place until land alteration, site clearing and construction activities are complete. Barricades for the protective radius shall be erected a minimum distance of ten (10) feet from the edge of trunk of protected trees and twenty (20) feet from the edge of trunk of heritage trees.
2. A minimum distance of ten (10) feet from all protected trees and twenty (20) feet from all heritage trees shall be maintained when installing underground utilities. If this results in unreasonable hardship, a soil auger shall be used to tunnel under the root systems.

3. Installation of artificial barriers such as protective barricades, fences, posts or walls shall not destroy or irreversibly harm the root system of protected trees and heritage trees. Footers for walls shall end at the point where larger roots are encountered, and the roots shall be bridged. Post holes and trenches located close to protected trees or heritage trees shall be adjusted to avoid damage to major roots.
4. All roots to be removed during site clearing and/or construction shall be severed clean at the perimeter of the designated protective radius.
5. A protective dry well and drainage/aeration system shall be provided where protected trees or heritage trees will be adversely affected by raising the grade.
6. A protective retaining wall shall be constructed at or beyond the perimeter of the protective radius around a protected tree or heritage tree where the protected tree or heritage tree will be adversely affected by lowering the grade.
7. Paving base placement within the outside five (5) feet of the required protective radius may be approved by the Planning Commission, provided an effective pervious radius of ten (10) feet for protected trees and twenty (20) feet for heritage trees is created through the use of grass pavers, pavement aeration devices or similar products. These pervious material products must be placed on grade to minimize the negative impact of fill on the root system.
8. Structural foundations may be located at a radius of five (5) feet from the trunk of a protected tree, provided an effective pervious area radius is extended proportionally in three other directions to allow a minimum of four hundred (400) square feet of pervious area.

**F. Parking Reduction**

A reduction of required parking spaces may be allowed by the Planning Commission when a twelve (12) inch protected tree (DBH) or greater is in conflict with a required parking space and a reduction in required parking would result in the preservation of the protected tree. The following reduction schedule shall apply:

<b>REDUCTION SCHEDULE</b>	
<b>Number of Required Parking Spaces</b>	<b>Reduction of Required Parking Spaces Allowable</b>
1 to 4	0
5 to 9	1
10 to 19	2
20 or above	10% of total number of spaces (total reduction regardless of number of trees preserved)

## **G. Replacement of Protected and Heritage Trees**

When proposed improvements necessitate removal of protected trees, the owner or his agent shall replace the removed protected tree with a protected tree species or a species identified on the "Tree Replant List" in Appendix A. The replacement tree shall measure a minimum of three (3) inches in diameter, four (4) feet above grade and shall measure a minimum of eight (8) feet of clear trunk in order to comply with Section 16.07, D. above. Trees identified as dead shall not be required to be replaced.

## **H. New Planting of Protected Trees**

On sites proposed for development where no existing protected trees are identified, the owner or his agent shall be required to plant one new tree species identified in the tree replant list (Appendix A), a minimum of three (3) inches in diameter measured four (4) feet above grade and shall measure a minimum of eight (8) feet of clear trunk for each three thousand six hundred (3,600) square feet of impervious surface area.

## **I. Road Right of Way Tree Protection Zone**

No person or agency shall cut, remove, trim, or in any way damage any protected tree in any street right of way or create any condition injurious to any such tree without first obtaining a permit to do so from the Community Development Department.

## **16.08 TREE REMOVAL AND SITE CLEARING PERMIT**

Unless exempt from the provisions of this Article, no person shall cut, remove, trim, or in any way damage any protected tree on private property or the road right of way without first obtaining a permit from the Community Development Department as provided below. In addition to this graphic information, a written statement shall be included noting the reasons why tree removal is requested. A fee shall be charged for services rendered by Community Development in the required review and on-site inspection for tree removal permits that are not in conjunction with Site Plan Review.

### **A. Permit Application Information**

Prior to commencing any activity whether or not for impending development that will require removal of trees, including removal of vegetation for site preparation in any residential, commercial or industrial district, the owner, developer, or his agent shall submit an accurately scaled drawing prepared by a registered land surveyor or landscape architect or engineer or architect, or certified arborist or certified forester or other qualified person which includes the following information: (rev. 5/4/99)

1. Location of all protected trees noting species, size and general condition.
2. Location of proposed structures, driveways, parking areas, required perimeter and interior landscaped areas, and other improvements to be constructed or installed.
3. Identification of trees to be preserved and trees to be removed, including dead trees.

4. Proposed grade changes and other significant cutting and filling which might adversely affect or endanger trees proposed to be preserved with specifications for maintaining protection.

#### **B. Onsite Inspection**

Prior to the issuance of a tree removal permit, the Community Development Director or his designee shall conduct an on-site inspection.

#### **C. Conditions of Approval**

The Community Development Director or his designee may approve the permit if one or more of the following conditions are present:

1. Safety hazard: Necessity to remove trees which pose a safety hazard to pedestrians or vehicular traffic or threaten to cause disruption of public services; or which pose a safety hazard to persons or buildings.
2. Diseased or weakened trees: Necessity to remove diseased trees or trees weakened by age, storm, fire or other injury.
3. Good forestry practices: Necessity to observe good forestry practices.
4. Construction of improvements: Necessity to remove trees in order to construct proposed improvements as a result of:
  - a. Need for access to a proposed structure or access to a necessary part of a building site, and a redesign of the development plan is not feasible.
  - b. Essential grade changes.
  - c. Stormwater management facility and utility installations.
  - d. Location of driveways, buildings or other permanent improvements.
5. Compliance with other ordinances or codes: Necessity for compliance with other city codes such as building, zoning, subdivision regulations, health provisions, and other environmental ordinances.

#### **D. Review**

The Community Development Department has fifteen (15) working days after receipt of a completed application filed pursuant to this Article in which to approve or deny the requested permit. In the event an application is denied, the department shall specify to the applicant in writing the reason for said action. If no final action with respect to a completed application is taken within the required fifteen (15) working days, the application shall be deemed to have been approved.

### **16.09 ENFORCEMENT**

#### **A. Stop Work Order**

Whenever the Community Development Department determines that a violation of this Article has occurred, the following actions shall be initiated:

1. **Written notice:** Immediately issue written notice by personal delivery or certified mail to the person violating this Article of the nature and location of the violation, specifying what remedial steps are necessary to bring the project into compliance. Such person shall immediately, conditions permitting, commence the recommended remedial action and shall have ten working days after receipt of said notice, or such longer time as may be allowed by the Community Development Department, to complete the remedial action set forth in said notice.
2. **Remedial work and stop work orders:** If a subsequent violation occurs during the ten working days referred to in Subsection A., 1. above, or if remedial work specified in the notice of violation is not completed within the time allowed, or if clearing and development of land is occurring without a permit, then the building official shall issue a stop work order immediately. Said stop work order shall contain the grounds for its issuance, and shall set forth the nature of the violation. The stop work order shall be directed not only to the person owning the land upon which the clearing and development is occurring, but also a separate stop work order shall be directed to the person or firm actually performing the physical labors of the development activity or the person responsible for the development activity, directing him forthwith to cease and desist all or any portion of the work upon all or any geographical portion of the project, except such remedial work as is deemed necessary to bring the project into compliance. If such person fails to complete the recommended remedial action within the time allowed, or fails to take the recommended action after the issuance of such stop work order, then the building official may issue a stop work order on all or any portion of the entire project.
3. **Notice of compliance:** Upon completion of remedial steps required by notice the Community Development Department shall issue a notice of compliance and cancellation of said notice or stop work order.

## **B. Penalties**

1. **Work started without a permit:** Any person who performs tree removal or site clearing without City approval shall be required to pay two (2) times the cost of the permit for the work performed without the permit. In addition, the developer shall be required to plant replacement trees on the site, equal to the number of diameter inches of protected trees removed without a permit, regardless of the number of trees being preserved.
2. **Criminal penalties:** In addition to the penalties cited in Section 16.09, B., 1. of this Article, any person who violates the provisions of this article upon conviction may be deemed guilty of a misdemeanor and shall forfeit and pay such penalties as the court may decide not to exceed five hundred dollars (\$500.00) or thirty (30) days imprisonment, or both, at the discretion of the court for each violation.

**APPENDIX A  
Tree Replant List**

Species Type A (Small)	Species Type B (Medium and Large)
Dogwood (Cornus Florida)	American Holly (Ilex Opaca)
Redbud (Cercis Canadensis)	Southern Magnolia (Magnolia Grandiflora)*
Dahoon Holly (Ilex Cassine)*	Eastern Red Cedar (Juniperus Virginiana)*
Fringe Tree (Chionanthus Virginicus)	Southern Red Cedar (Juniperus Silicicola)*
Ashe's Magnolia (Magnolia Ashei)*	Cherry Laurel (Prunus Caroliniana)*
Red Bay (Persea Palustris)*	Large leafed Magnolia (Magnolia
Smooth Red Bay (Persea Borbonia)*	Macrophylla)*
Sassafras (Sassafras Variifolium)	Hornbeam (Carpinus Caroliniana)*
Yaupon (Ilex Vomitoria)	River Birch (Betula Nigra)*
Wild Olive (Osmanthus Americana)	Florida Maple (Acer Banbatum Floridanum)*
Scrubby Post Oak (Quercus Margaretta)	Sweetbay (Magnolia Virginiana)*
Wild Crabapple (Malus Angustifolia)	Sand Live Oak (Quercus Virginiana
Hop Hornbeam (Ostrya Virginiana)	Geminata)*
Wax Myrtle (Myrica Cerifera)	Live Oak (Quercus Virginiana)*
Crape Myrtle (Lagerstroemia Indica)	Laurel Oak (Quercus Laurifolia)*
	Sweet Gum (Liquidambar Sytraciflua)*
	Pecan (Carga Illinoensis)*
	Water Oak (Quercus Nigra)*
	Red Maple (Acer Rubrum)*
	Tulip Tree (Lirodendron Tulipifera)
	Willow Oak (Quercus Phellos)
	Sour Gum (Nyssa Sylvatica)
	Southern Red Oak (Quercus Falcata)*
	Shumard's Red Oak (Quercus Shumardii)*
	Hackberry (Celtis Laevigata)
	White Oak (Quercus Alba)*
	Bald Cypress (Taxodium Distichum)*
	Cabbage Palm (Sabal Palmetto) or other
	climatized palm**

\* **Shade Trees**

\*\* **Must be a minimum of 12' clear trunk, and a minimum of 3 must be clustered, (spaced no greater than 10' from each other) to count as 1 tree. (rev. 02/21/2006)**