

ORDINANCE NO. XXXX

AN ORDINANCE REGULATING HERITAGE TREE PRESERVATION WITHIN THE CITY OF FOLEY

WHEREAS, the City of Foley, Alabama adopted Ordinance No. 1009-07 on the 1st day of October, 2007, providing for tree and natural feature preservation and restoration.

WHEREAS, the City Council of the City of Foley, Alabama deems it to be in the best interest of aesthetics, historical value, environmental quality, increased land value and the general welfare of its citizens to establish regulations for heritage tree preservation within the City of Foley.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA AS FOLLOWS:

SECTION I: TITLE

This Ordinance shall be titled ORD. NO. XXXX HERITAGE TREE PRESERVATION WITHIN THE CITY OF FOLEY.

SECTION II: JURISDICTION

The provisions of this Ordinance shall apply to all lands within the corporate limits of the City of Foley.

SECTION III: PURPOSE

The intent of this Ordinance is to provide minimum standards for protection and restoration of heritage trees. Trees provide the City of Foley with aesthetics, historical values, environmental quality and increased land values.

SECTION IV: DEFINITIONS

For the purposes of this Ordinance, the following words and phrases shall have the meaning respectively ascribed to them by this section unless taken specific exception to elsewhere in this Ordinance:

1. "Caliper" means the diameter or thickness of the main stem of a young tree or sapling as measured at six inches above ground.
2. "Circumference" means the distance around the periphery of a tree at 4 ½ feet above existing grade.
3. "City" means the City of Foley, Alabama.

4. “Code Enforcement Officer” means the City employee who carries out the City’s code enforcement program whereby individuals in violation of City codes and related regulations are identified, investigated, and corrected utilizing appropriate enforcement measures. This includes the Environmental Manager and Environmental Assistant positions within the City.
5. “Diameter Breast Height” means the diameter, in inches, of a tree trunk measured at 4 ½ feet above existing grade. DBH is also referred to as the diameter of a tree.
6. “Heritage Tree” means a healthy, protected native tree and its root system with a diameter at breast height equal to or greater than 30” or 7’-10” circumference, whichever dimension is less. Also redbuds and dogwoods with a diameter at breast height equal to or greater than 10” or 30” circumference, whichever dimension is less.
7. “Ordinance” means this ordinance regulating environmental permits related to land disturbance.
8. “Overstory Tree” means a tree which, at maturity, comprises the canopy of a natural forest and which are generally greater than fifty (50) feet at mature height.
9. “Permittee” means any person who obtains an environmental permit from the City of Foley.
10. “Replacement Trees” means a minimum of two trees planted to replace a removed heritage tree.
11. “Silviculture” means the care and cultivation of forest trees; forestry.
12. “Site Plan” means a plan describing for a particular site where the building(s), driveway, roads, heritage trees are located and replacement trees are to be planted.
13. “Understory Tree” means a tree which, at maturity, comprises the sub-canopy of a natural forest. These are generally less than fifty (50) feet at a mature height.

SECTION V: EXEMPTIONS

The following activities are exempted from compliance with this Ordinance:

1. Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
2. Any nursery, agricultural and silvicultural operations. This exemption does not apply to silvicultural operations in preparation of development.
3. Any public utility construction and maintenance activities within the public rights-of-way.
4. Those portions of airports and heliports which require clear areas for safety purposes, including runways and taxiways, approach and departure clear zones, etc.

5. Utility easements for power lines, pipelines, drainage areas, etc.
6. Trees irreversibly damaged or destroyed by a federally declared natural disaster.

SECTION VI: HERITAGE TREES

1. This Ordinance hereby protects heritage trees. It shall be unlawful to cut or intentionally harm heritage trees, as defined, without a permit.
2. Heritage tree species include, but are not limited to cypress, oaks, magnolias, sweet gums, black gums, juniper, and longleaf pines. This Ordinance does not apply to the following invasive, exotic trees: mimosa, tree of heaven, camphor tree, chinaberry, and Chinese tallow tree (popcorn tree).

SECTION VII: HERITAGE TREE REMOVAL PERMIT

No heritage tree shall be cut or harmed prior to receiving a heritage tree removal permit from the City of Foley Environmental Division.

- a. The Heritage Tree Removal Permit shall include submittal of the permit application and a site plan (See Section VIII). A fee of twenty-five dollars (\$25.00) shall be charged and collected by the City of Foley Environmental Division for the issuance of the Heritage Tree Removal Permit.
- b. Replacement trees shall be required for the removal of all heritage trees (See Section VIX).

SECTION VIII: SITE PLAN

For the purposes of this Ordinance, the following are the minimum requirements for the Site Plan:

1. The site plan shall show property boundaries, buildings and roads.
2. Each heritage tree shall be located and include type of tree and DBH.
3. Replacement trees to be planted shall be shown with type of tree.

SECTION VIX: REPLACEMENT TREES, PLANTING AND MAINTENANCE REQUIREMENTS

For the purposes of this Ordinance, the following are the minimum requirements for Replacement Trees:

1. Each heritage tree removed shall have two (2) replacement trees planted on the property where the heritage tree was removed.
2. Replacement trees are preferred to be the same type of tree as the heritage tree removed, but in no case shall they be non native and/or invasive trees.
3. The following standards shall apply to all trees planted as required as part of this Ordinance:

- a. All tree plantings shall be installed to current nursery industry standards.
 - b. Trees selected for planting must be free from injury, pests, disease, nutritional disorders or root defects, and must be of good vigor in order to assure a reasonable expectation of survivability.
 - c. Replacement tree plantings and overstory shall measure a minimum of 3", 4' above grade and shall measure a minimum of 8' of clear trunk.
 - d. Understory trees shall have an initial caliper diameter of at least 1 inch and shall measure a minimum of 5' of clear trunk.
 - e. No overstory trees shall be planted within twenty (20) feet of overhead wires.
 - f. All plantings that die or are destroyed must be replaced during the next suitable planting season, except those on single family lots.
4. 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 one year.

SECTION X: ENFORCEMENT

1. Upon inspection by the Environmental Division, if there are violations of this Ordinance, a verbal warning shall be issued to the site contact on the permit requiring compliance with this Ordinance within 48 hours of the notice or as soon as safe conditions allow.
2. Failure to comply with any section of this Ordinance is hereby deemed a violation and shall be sufficient cause for the City of Foley, through a Code Enforcement Officer, Environmental Manager or Environmental Assistant, to issue an order suspending all work (a "Stop Work Order") on the heritage tree removal until satisfactory measures are taken to comply with this Ordinance.

SECTION XI: CRIMINAL PROSECUTION

1. Any person that has violated or continues to violate this Ordinance shall be liable to criminal prosecution to the fullest extent of the law, and be punished by a fine of not less than one hundred dollars (\$100.00), but not more than five hundred dollars (\$500.00), or imprisonment not to exceed one-hundred and eighty days (180), or both.
2. The City may recover all attorneys' fees court costs and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

SECTION XII: ABROGATION AND GREATER RESTRICTIONS

This Ordinance is not intended to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION XIII: INTERFERENCE

No person shall hinder, prevent, delay or interfere with the City 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 of competent jurisdiction for the protection of property rights by the owner of any property within the municipality.

SECTION XIV: SEVERABILITY

Should any section or provision of this article be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of any of the remaining provisions of this Ordinance.

SECTION XV: EFFECTIVE DATE.

This Ordinance shall take effect and be in force from and after the date of its approval by the City Council of the City of Foley and publication as required by law.

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FOLEY,
ALABAMA, THIS _____ DAY OF _____, 2015.**

JOHN E. KONIAR, MAYOR

ATTEST:

VICTORIA SOUTHERN, CITY CLERK