

# **City of Foley, Alabama Tree and Natural Feature Preservation and Restoration Ordinance**

## **Section I. Title**

This ordinance shall be known and called as the City of Foley, Alabama Tree and Natural Feature Preservation and Restoration Ordinance.

## **Section II. Jurisdiction**

The provisions of this ordinance shall apply to all lands within the corporate limits of the City of Foley and subdivision developments within the Planning Jurisdiction of the City of Foley.

## **Section III. Purpose**

The purpose of this Ordinance is to establish minimum standards for protection and restoration of trees and natural features on disturbed land. Trees provide the City of Foley with aesthetics, historical values, environmental quality, and increased land values. The objectives of this Ordinance are to increase the current canopy coverage by trees within the City of Foley and to increase the greenspace areas preserved within the City of Foley.

## **Section IV. Exemptions**

The following are exempted from compliance with the tree and landscape provisions of these regulations.

1. Utility easements for power lines, pipelines, drainage ditches, etc.
2. Those portions of airports and heliports which require clear areas for safety purposes, including runways and taxiways, approach and departure clear zones, etc.
3. Land currently zoned and used for agricultural purposes for the duration of such use, provided that property rezoned for purpose other than agriculture shall be subject to the provisions of these regulations.
4. 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 these requirements. This exclusion does not exempt trees cut and sold for timber in anticipation for development.
5. Public utility construction activities within the public rights-of-way.
6. Trees irreversibly damaged or destroyed by natural disaster.

## **Section V. Definitions**

For the purposes of these regulations, certain words or terms herein shall be defined as follows. Words not defined herein shall be interpreted so as to give them the meaning they have in common usage. The word “shall” is mandatory and not discretionary. The word “may” is permissive.

1. Caliper: The diameter or thickness of the main stem of a young tree or sapling as measured at six inches above ground.
2. Circumference: The distance around the periphery of a tree at 4 ½' above existing grade.
3. Diameter Breast Height: The diameter, in inches, of a tree trunk measured at 4 ½' above existing grade. DBH is also referred as the diameter of a tree.
4. Greenspace: Any area retained as permeable unpaved ground and dedicated to supporting vegetation.
5. Heritage Tree: 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. Any tree determined by the Mayor and Council, as provided herein, to be of notable historic interest, high aesthetic value, or of unique character because of species, type, age, or size.
6. Overstory Trees: Trees which, at maturity, comprise the canopy of a natural forest which are generally greater than fifty (50) feet at mature height.
7. Site Clearing: Any development or other activity which alters the land upon which it is located, except for normal sodding and placement of signs.
8. Site Plan: A plan describing for a particular site where the building(s), driveway, utility easements, parking, and stormwater management facilities are to be located and where greenspace is to be retained or planted in compliance with these regulations.
9. Species Diversity: A diverse planting or retention of tree species on a site within the City to prevent dominance by any single type of tree. The purpose of this diversity is to prevent the destruction of the entire urban forest in the event of disease or pestilence.
10. Understory Trees: Trees, which, at maturity, comprise the sub-canopy of a natural forest. These are generally less than fifty (50) feet at a mature height.

## Section VI. Natural Features

Preservation of outstanding and irreplaceable natural features may be required by the Planning Commission or the Mayor and City Council and shall be determined on a case-by-case basis. These features may include, but are not limited to watercourses, historical lands, wetlands, and protected species habitat.

## Section VII. Heritage Trees

Heritage trees are hereby protected and cannot be cut or intentionally harmed without the expressed written permission of the City of Foley. Species could include but are not limited to cypress, live oak, magnolia, sweet gum, black gum, juniper, and pine. Replacement trees shall be required for the removal of all heritage trees. The developer is required to plant two (2) trees for each heritage tree removed. The replacement trees shall correspond to the tree removed. For example a heritage live oak shall be replaced by two live oak plantings. Replacement trees must be native non-invasive trees. The site plan shall show the placement and species of the proper number of required new trees.

## Section VIII. Heritage Tree Removal Permit

Any person wishing to remove or relocate a heritage tree shall submit a heritage tree removal permit to the City of Foley Community Development Department accompanied by a site plan and a \$25.00 fee for processing. The Community Development Department shall review the permit for consistency with the requirements and will either grant or deny the permit in writing within five working days from the permit submittal date. The site plan must identify the location and type of heritage tree to be removed and the location and type of plantings for replacement. The permit may be denied if the tree has aged or grown to an impressive stature for its species or it is considered an integral part of the natural heritage of the City of Foley. Heritage trees may be removed, subject to review, prior to the permit issued if it is in immediate threat to life, safety and welfare. The following criteria must be established for the permit to be issued:

- (1) The tree is located in an area where a structure or improvement is to be placed in accordance with the proposed plan.
- (2) The tree is diseased, injured, or in danger of falling too close to an existing or proposed structure, interferes with the existing utility service, creates an unsafe vision clearance or conflicts with other Ordinances, Articles or Regulations.
- (3) The tree shall be prior to or after construction in violation of federal, state or local laws or regulations including but not limited to laws and regulations pertaining to government programs for the financing of the construction.

## Section IX. Tree Survey

### A. General Requirements

1. All reasonable steps shall be taken to preserve heritage trees. A written justification and heritage tree removal

permit shall accompany the tree survey for the removal of all heritage trees.

2. Native trees in flood plains and wetlands shall be left in natural state unless otherwise directed or permitted by state or federal agencies.
3. The tree survey conducted by the surveyor, contractor or owner shall be submitted along with the land disturbance permit application. The tree survey shall include a review fee of \$50.00 for developments under five acres or a review fee of \$100.00 for developments five acres or greater. The tree survey shall be reviewed by the Community Development Department for compliance.

B. Developments Five (5) Acres or Greater shall detail the following:

1. All heritage trees to be preserved and to be removed;
2. Areas of tree preservation in common areas and/or buffers;
3. Areas of tree plantings to include replacement heritage plantings and plantings per the requirements.

C. Developments Under Five (5) Acres shall detail the following:

1. All heritage trees to be preserved and to be removed;
2. Existing trees, shrubbery, and other vegetation to be preserved in common areas, buffers and/or yards;
3. Trees, shrubbery, or other vegetation to be planted to complete the final landscaping of the property.

## Section X. Tree Density

Residential lots less than 6000 square feet shall have a minimum of one (1) tree located anywhere on the lot. Residential lots containing 6000 square feet or greater shall have a minimum of two (2) trees, one of which must be between the front setback line and the right-of-way and one of the said trees shall be an overstory tree. These individual trees per lot may be counted as part of the required tree density units per acre for the development, but they may be an additional requirement if the appropriate units per acre requirement are met elsewhere on the site. This tree per lot requirement shall apply to the developer or homebuilder, whoever is responsible for obtaining the building permit for the individual lot, but if it is applied to the homebuilder, the developer will be given credit on the whole project for the trees which will be required to be planted on the lots which may be built upon later.

Residential subdivisions, commercial and industrial developments shall have a minimum tree density of ten (10) native trees per acre. All preserved and planted trees shall be included in the tree density, which includes trees located in the buffers, parking areas, perimeter, individual lots, and common areas.

## Section XI. Tree Planting

The following standards shall apply to all trees planted as required as part of these regulations.

- (1) All tree plantings shall be installed to current nursery industry standards.
- (2) 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.
- (3) Replacement tree plantings and overstory shall measure a minimum of 3", 4' above grade and shall measure a minimum of 8' of clear trunk.
- (4) Understory trees shall have an initial caliper diameter of at least 1 inch and shall measure a minimum of 5' of clear trunk.
- (5) No overstory trees shall be planted within twenty (20) feet of overhead wires.
- (6) All plantings that die or are destroyed must be replaced during the next suitable planting season, except those on single family lots.
- (7) Maintenance of new plantings is the responsibility of the property owner.

## Section XII. 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 one year.

## Section XIII. – Enforcement

The City of Foley shall serve the following to the owner of said property, each person, firm or corporation engaged in activities regulated hereunder in which the activities are being conducted in violation of any provision of this Ordinance.

### 1. Stop Work Order

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

- a. Written notice: Immediately issue written notice by personal delivery or certified mail to the person violating this Ordinance 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 fourteen (14) 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.

b. Remedial work and stop work orders

If a subsequent violation occurs during the fourteen (14) working days referred to in Section XIII 1. a. 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 Community Development Department 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.

c. 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.

2. Penalties

a. Work started without a permit. Any person who performs tree removal or site clearing without City approval shall be required to pay two 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.

b. Criminal penalties. In addition to the penalties, 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 \$500 or 30 days imprisonment, or both, at the discretion of the court for each violation.

Section XIV. 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 XV. 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 XVI. Severability

If any provision of this ordinance is declared to be invalid, such declaration shall not affect, impair or invalidate the remaining provisions of this ordinance.

## APPENDIX I

### RECOMMENDED OVERSTORY TREES

The following species are recommended for planting within the City of Foley. Other species that are recognized as suitable for this area may be used if approved by the Planning Department and are species native to coastal Alabama (*Baldwin, Escambia, and Mobile Counties*).

*Acer rubrum* Red Maple

*Betula nigra* River Birch

*Carya spp.* Hickory (*any species native to coastal Alabama*)

*Celtis laevigata* Hackberry/Sugarberry

*Fagus grandifolia* American Beech

*Fraxinus spp.* Ash (*any species native to coastal Alabama*)

*Liquidambar styraciflua* Sweetgum/Redgum

*Liriodendron tulipifera* Yellow-poplar/Tulip-tree

*Magnolia grandiflora* Southern Magnolia

*Magnolia virginiana* Sweetbay Magnolia

*Nyssa sylvatica* Black Gum, Tupelo

*Quercus spp.* Oak (*any arborescent species native to coastal Alabama*)

*Pinus palustris* Longleaf Pine

*Platanus occidentalis* Sycamore

*Taxodium ascendens* Pond Cypress

*Taxodium distichum* Bald Cypress

## APPENDIX II

### RECOMMENDED UNDERSTORY TREES

The following species are recommended for planting within the City of Foley. Other species that are recognized as suitable for this area may be used if approved by the Planning Department and are native to coastal Alabama.

*Amelanchier aboreum* Downy Serviceberry

*Cercis canadensis* Eastern Redbud

*Chamaecyparis thyoides* Atlantic White Cedar

*Chionanthus virginicus* Fringe-tree/Grandsie-graybeard

*Cornus florida* Flowering Dogwood

*Ginkgo biloba* Ginkgo/Maidenhair Tree (*use male plants only*)

*Halesia caroliniana* Carolina Silverbell

*Halesia diptera* Two-wing Silverbell

*Ilex spp.* Holly/Ilex (*arborescent species native to coastal Alabama*)

*Juniperus virginiana* Eastern Red cedar

*Juniperus silicicola* Southern Red cedar

*Lagerstroemia indica* Crape-myrtle (*varieties over 15 feet tall at maturity*)

*Myrica cerifera* Southern Bayberry, Wax Myrtle

*Nyssa ogeche* Ogeeche Gum

*Osmanthus americanus* American Olive, Devilwood

*Oxydendrum arboreum* Sourwood

*Persea borbonia* Redbay

*Styrax americanum* American Snowbell

### APPENDIX III.

#### PLANTS NOT SUPPORTED BY THIS ORDINANCE

The following plants are exotic species, which are difficult to control, or otherwise unsuitable for this area, and are not acceptable to meet any of the requirements for overstory trees, understory trees or buffer zone planting.

*Albizia julibrissin* Mimosa

*Ailanthus altissima* Tree of heaven

*Cinnamomum camphora* Camphor Tree

*Ligustrum sinense* Chinese Privet

*Melia azedarach* Chinaberry

*Pawlonia tomentosa* Princess Tree

*Sapium sebiferum* Chinese Tallowtree/Popcorn Tree

Additionally, all non-native species of bamboo (except those in the genus *Bambusa*) and all invasive exotic vines (such as Kudzu, Chinese Wisteria, Japanese Honeysuckle, and Air Potato) are not acceptable.