

Section 23-2-2(G)

**(G) TREE COMMITTEE**

**(4) Powers and Duties.**

The Biloxi Tree Committee shall advise City officials with regard to the development of a comprehensive city beautification plan, Tree Protection, and when undertaking those tasks shall work under the direction of the City Arborist. With the assistance of the Director of Community Development or his designee the Committee shall serve in an advisory capacity to perform the following functions:

**(a) Tree Permits.**

To review applications for permits involving the proposed removal of protected trees from a property site as outlined in 23-2-4 (I) – Tree Permit; The City Arborist shall notify all Committee members by email of the content of all applications for Tree Permits.

**(b) DRC and Planning Commission Participation.**

The Committee may serve as a non-voting member to the Development Review Committee in order to be aware of all projects with potential for removal or alteration of protected trees. A designated individual from the Tree Committee may serve as the Committee's representative at DRC and Planning Commission Meetings, and may be a different designee by the Committee for each permit. The Designee shall have the authority to inquire and comment on projects in regards to tree protection, and to modify any recommendations of the Committee.

For Permits requiring a Tree Hearing before the Planning Commission, The City Arborist shall notify the Committee by email of each Tree Hearing and include documents required by the Developer in order to facilitate evaluation of the impact of tree removal. The Committee shall review and make a written recommendation of such applications (by email or other writing) to the City Arborist, The Community Development Director, and the Mayor within ten (10) days of receipt of such permits. The Committee's failure to make a written recommendation on Tree Hearing cases within said ten (10) days will result in the City Arborist making a determination without the Committee's input.

**(c) Review of Prior Approved Permits.**

Review previously issued Tree Permits periodically in order to determine compliance with replacement/mitigation and establishment provisions during the terms of those permits, and to provide resulting reports to the Mayor, the Director of Community Development and the City Council when requested, but at least annually. The Committee shall report any perceived violation to the Mayor, and Director of Community Development for follow up and enforcement. The City Arborist shall provide the Committee with the information and data necessary to carry out these follow-up tasks including but not limited to:

- (1) All permits issued in a given period;
- (2) Quantity, caliper size and species of trees required for replacement/mitigation;
- (3) Date, general location when on-site, and GPS coordinates when off-site of replacement/mitigation;
- (4) Annual inspection findings for each year to three years from the date of mitigation;
- (5) Incurrence of all notices of non-compliance and associated actions and/or penalties

**(d) Mitigation Site Recommendation**

To identify and suggest potential suitable sites to help promote the appropriate replenishment of trees throughout the City and provide mitigation sites for developers where such mitigation is required and not suitable for the developed site; and,

(e) **Majestic Trees**

The Committee receives and reviews applications by property owners for a designation of an individual tree on their property to be designated a "Majestic Tree". If approved by the Committee, such designation will be submitted to the Mayor and City Council for their consideration. If that designation is also approved by the Mayor and City Council, or if the City Council otherwise designates a tree a Majestic Tree, then any tree permit involving such Majestic Tree shall require assessment of the Tree Committee, and determination of risk by an ISA-certified arborists, who should be a TRAQ (Tree Risk Assessment Qualification) certified professional if available, and who must be contracted at the expense of the applicant.

**23-2-4 (I) - Tree Permit**

(1) **Purpose**

The purpose of a Tree Permit is to support the preservation and replenishment of the native stock of trees, specifically those described as protected trees, to ensure compliance with the standards in Section 23-6-4, Tree Protection, and to ensure that existing trees on vacant or underdeveloped lands are not removed without an approved application in order to:

- (a) Preserve the cultural heritage and aesthetic qualities of the city;
- (b) Encourage site design techniques that preserve the natural environment and enhance the developed environment;
- (c) Provide for a separation of uses and establish a sense of privacy;
- (d) Minimize the impact of incompatible land uses;
- (e) Reduce glare, dust, heat, and noise;
- (f) Preserve and enhance air and water quality;
- (g) Increase slope stability, and control erosion and sediment run-off into streams and waterways;
- (h) Conserve energy by reducing heating and cooling costs; and
- (i) Maintain and enhance the quality of life in the City.
- (j) Provide incentive for Sustainable Development/Landscape Bonuses are available in Section 23-6-12 (C)

(2) **Applicability**

(a) **Activities Subject to Permitting Process**

A Tree Permit is required for the removal, relocation or alteration in any of the following conditions:

within any zoning district and on any size lot:

- 1. Any tree of a protected species (Live Oak, Bald Cypress, and Southern Magnolia) that are at least 8" diameter at DBH (diameter at breast height – 54" above the ground).; or
- 2. Any tree of a non-protected species with a DBH of sixteen (16) or more inches.

(b) **Activities Exempt from Permitting Process**

A Tree Permit is not required for the removal, relocation or alteration in any of the following conditions:

- 1. Any Pecan (*Carya illinoensis*), Chinese tallow or Popcorn (*Sapium sebiferum*), Water Oak (*Quercus Nigra*), or member of the Pine genus (*Pinus spp.*); or
- 2. Any protected species (Live Oak, Bald Cypress, and Southern Magnolia) that are less than 8" diameter at DBH; or
- 3. Any tree of non-protected species with a DBH of less than sixteen (16) inches.

(3) **Application Requirements**

**(a) Coordination with Site Plan**

Where the application for a Tree Permit relates to a development proposal for a site, the application for Tree permit shall be submitted simultaneously with an application for Site Plan Review and the material required below shall, to the maximum extent practicable, be integrated with the site plan application.

**(b) Contents**

An application for a Tree Permit shall be filed with the Department of Community Development and shall include the following:

1. A completed Application form for Tree Permit signed by the applicant.
2. A drawing showing the following information at an adequate scale to make a determination.
  - a. The shape and dimensions of the lot of record, together with the existing and proposed locations of all structures and improvements, if any;
  - b. Location, species, and DBH of all existing trees including those proposed for removal and those proposed to remain.
  - c. Groups of trees in close proximity to one another (5' or less) may be designated as a cluster of trees with the predominant species, estimated number, average DBH, and overall canopy shown. Within a cluster however, trees of protected species with a DBH of 8" or greater, and trees of any non-protected species with a DBH of 16" or greater, must be identified by location, species, whether proposed to remain, be removed or relocated.
  - d. A statement showing how trees not proposed for removal are to be protected during land clearing and construction with protective barriers to disallow excavation, stockpiling or vehicular traffic encroaching upon the root zone, as stipulated in Section 23-6-4(F), Tree Protection during Construction.
  - e. A drawing as to grade changes, if proposed, for the lot or parcel and how such changes will affect matters of this Chapter, as stipulated in Section 23-6-4, Tree Protection. Grade changes may not occur beneath more than 10% of the canopy of a protected tree.
  - f. A statement identifying the reason for removal of each protected tree.
  - g. A replacement/mitigation plan, as stipulated in Section (23-6-4(E)(4), Replacement/Mitigation of a Protected Tree.

**(4) Review Procedure**

**(a) Basic Procedures**

Except as modified by Sections 23-2-4(l)(4)b. below, review of an application for a Tree Permit shall be subject to the common review procedures and requirements established in Section 23-2-3, Standard Review Procedures.

**(b) Authority and Review Process**

1. All applications for Tree Permits shall be submitted to the Department of Community Development and reviewed for completeness by the Director of Community Development and City Arborist who will then forward the application to the Biloxi Tree Committee in accordance with the procedure set out in Section 23-2-2(G), Tree Committee. Written or verbal recommendations of the Tree Committee regarding protected trees will be presented verbatim before the Planning Commission.
2. For Tree Permits involving the removal, relocation, or alteration of 1-4 protected trees, and not otherwise requiring Planning Commission approval, the review and approval authority shall rest with the Director of Community Development or City Arborist. The final determination will be sent in writing from the Director of Community Development to the applicant and to the Tree Committee. The Director of Community Development may delegate this task to City Arborist.

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3. For Tree Permits involving any multi-phased residential subdivisions or the removal, relocation, or alteration of 5 or more protected trees the Tree Committee shall review and make recommendation to the Planning Commission and approval rests with the Planning Commission and requires a Public Tree Hearing to be posted by the Director of Community Development in accordance with Section 23-2-3(F)(4), Public Hearing Notice. The final determination on cases heard before the Planning Commission are written into the public record.
4. In the event of a conflict between the recommendations of the Tree Committee, the decision of the Director of Community Development and/or the Planning Commission, the Director of Community Development shall report the conflict to the Mayor within two days and submit the entire application, including all photographs of the site, the Tree Committee recommendation, and the Director of Community Development and/or Planning Commission's recommendation to the Mayor for review. The Mayor may either accept the Tree Committee recommendation, the decision of the Director of Community Development, The Planning Commission, or modify the decision and the permit, or deny the permit. The City Arborist and Tree Committee are to be copied on all reports of conflict and final decisions.

**(c) Expiration**

A Tree Permit shall automatically expire at the end of six months following the date of approval. An extension may be granted in accordance with Section 23-2-3(K)(2)b., Extension, that extension may be for a time period of up to six months.

**(5) Tree Permit Review Standards**

A Tree Permit shall be approved only upon receipt of a complete permit application and finding that all the standards in Section 23-6-4, Tree Protection, are met. The Review Criteria used by City Arborist and Director of Community Development that allows for the issuance of a Tree Permit is as follows:

- (a) A tree of any species is in danger of falling or damaging structures, or the where the tree's roots pose a significant threat of damaging utilities or structures; or
- (b) A tree of any species that either encroaches into established easements, is a detriment to access, or obstructs required sight distances, as determined by the Director of Community Development; or
- (c) The City Arborist provides written verification and photographic documentation that the tree is dead or dying; or
- (d) The removal is necessary to comply with storm water regulations, or to maintain public health and safety around utilities and infrastructure; or
- (e) The removal is necessary to address extraordinary circumstances such as weather-related emergencies and natural disasters, as determined by the Mayor.

**(6) Amendments**

Modifications to an approved Tree Permit shall require review by the Tree Committee and Community Development Department and an amended Tree Permit be issued,

**(7) Tree Damage or Removal**

The unauthorized removal or accidental damage or removal of existing protected trees shall be subject to the replacement/mitigation standards of Section 23-6-4(G)(4)a., Replacement/Mitigation of Protected Trees, and Penalties, according to Section 23-2-4(I)(10) Penalties.

**(8) Credit for Retaining Existing Trees**

Qualifying trees located onsite shall be credited towards the landscaping requirements in accordance with Section 23-6-4(G)(1), Tree Preservation Incentives, if the site or parcel of land becomes the subject of a development application in accordance with this Ordinance.

**(9) Appeals**

Any aggrieved person may appeal a determination by the Director of Community Development to the City Council by providing written notice to the Clerk of Council of such appeal within ten days of the receipt by the applicant.

**(10) Penalties**

The provisions of Chapter 23 of this Code of Ordinances relating to the protection of trees and Tree Permits are hereby incorporated herein by reference, and violation of the terms of any of those provisions relating to the protection of trees or the terms of any Tree Permit is a general offense. Any one so convicted shall be subject to the provisions of Section 1-1-8 of the Code of Ordinances. Each day a violation continues to exist constitutes a separate offense.

**Section 23-6-4 - Tree Protection**

**(A) - Purpose and Intent**

The purpose and intent of this section is to:

- (1) Preserve the cultural heritage and aesthetic qualities of the city;
- (2) Encourage site design techniques that preserve the natural environment and enhance the developed environment;
- (3) Provide for a separation of uses and establish a sense of privacy;
- (4) Minimize the impact of incompatible land uses;
- (5) Reduce glare, dust, heat, and noise;
- (6) Preserve and enhance air and water quality;
- (7) Increase slope stability, and control erosion and sediment run-off into streams and waterways;
- (8) Conserve energy by reducing heating and cooling costs; and
- (9) Maintain and enhance the quality of life in the city.
- (10) Provide incentives for Sustainable Development/Landscape Credits [See Section 23-6-4(6)]

**(B) - Applicability**

**(1) General**

Unless exempted in accordance with Section 23-6-4(B)(2), Exemptions, the standards in this section shall apply to all lands and development in the city.

**(2) Exemptions**

The following tree removal activities are exempt from the standards of this section:

- a. The removal of dead or naturally fallen trees;
- b. The removal of diseased trees posing a threat to adjacent trees;
- c. The removal of Any Pecan (*Carya illinoensis*), Chinese tallow or Popcorn (*Sapium sebiferum*), Water Oak (*Quercus Nigra*), or member of the Pine genus (*Pinus spp.*);
- d. The selective and limited removal of trees or vegetation necessary to obtain clear visibility at driveways or intersections;
- e. Removal of trees by the public utilities, local, state or federal government as necessary to maintain safe operations;
- f. Silvicultural activities undertaken in accordance with best management practices for forestry in Mississippi established by the Mississippi Forestry Commission; and
- g. Agricultural activities undertaken in accordance with agricultural best management practices for Mississippi established by the Mississippi Department of Environmental Quality.

**(C) - Tree Permit Required**

No removal of existing trees on a parcel of land or a development site shall occur before approval of a Tree Permit [Section 23-2-4(l)] unless in accordance with the unexpired

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approval of a Site Plan [Section 23-2-4(E)], Preliminary Plat [Section 23-2-4(F)], Certificate of Appropriateness [Section 23-2-4(G)], Public Works Permit [Section 23-2-4(H)], or Certificate of Zoning Compliance [Section 23-2-4(L)], as appropriate.

### **(D) - Responsibility for Compliance**

Failure to comply with the standards of this section is a violation of this Ordinance subject to the remedies and penalties in this section and Article 23-9: Enforcement.

### **(E) - Protection of Trees**

#### **(1) Applicability**

- a. General - All development in the city shall be required to support the preservation and replenishment of the native stock of trees, specifically those described as protected trees, as defined in Section 23-10-2, Terms and Uses Defined, in accordance with this subsection.

#### **(2) General Requirement**

No protected tree may be removed, except in accordance with Section 23-6-4(E)(3), Removal of a Protected Tree. In addition, all protected trees shall have the following protections, whether located on public or private land:

- a. Cutting, Removal, or Harm Prohibited - Protected trees shall not be cut, removed, pushed over, killed, or otherwise harmed.
- b. Paving or Soil Compaction Prohibited - The area within the drip line of any protected tree shall not be subject to paving or soil compaction greater than ten percent of the total area within the drip line, if at all possible. (See Figure 23-6-4(E)(2)b., Paving or Soil Compaction Prohibited.)

#### **(3) Removal of a Protected Tree**

Protected trees may be removed if the landowner demonstrates to the Director of Community Development one of the following conditions:

- a. Removal of a Healthy Protected Tree - A protected tree is in healthy condition, and all of the following standards are met:
  1. The landowner is otherwise in compliance with this section;
  2. The protected tree prevents development of a lot in a way that limits building area to less than otherwise allowed, or hinders compliance with the standards in Article 23-3: Zoning Districts, Article 23-5: Intensity and Dimensional Standards, Article 23-6: Development Standards, or Article 23-7: Subdivision Standards; and
  3. Mitigation is provided in accordance with Section 23-6-4-E(4) - Replacement/Mitigation of Protected Trees.
- b. Removal of a Diseased, High Risk, or Dying Protected Tree - A protected tree is certified by an arborist or other qualified professional as diseased, high risk, or dying. Removal of a diseased, high risk, or dying protected tree shall not require mitigation in accordance with Section 23-6-4(E)(4), Replacement/Mitigation of Protected Trees.

#### **(4) Replacement/Mitigation of Protected Trees**

Those causing the destruction or removal of a healthy protected tree, unless exempted, shall be responsible for the following mitigation:

##### **a. Replacement Trees Required**

All healthy protected trees removed or destroyed shall be mitigated on a 2 for 1 basis with a tree minimum 2 inch caliper tree with a minimum height of 6 feet tall at planting. The replacement trees shall be replanted within six months of the removal or destruction of the protected tree.

- b. Mitigation Species shall be a protected tree species (Live Oak, Bald Cypress and Southern Magnolia).
- c. Location of Replacement Trees

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Replacement trees shall be either planted on the parcel of land from which the protected tree was removed, if sufficient space is available, or placed on nearby lands in accordance with Section 23-6-3(I), Alternative Landscape Plan. The Director of Community Development may allow replacement trees to be planted to provide street trees in accordance with the standards in Section 23-6-3(F), Street Trees.

- d. Mitigation Trust, in lieu of mitigation plantings  
If the developer does not have the space to plant the mitigation trees onsite, they may elect to donate to the Mitigation Trust in lieu of planting mitigation trees. The donation amount will be based on the number of mitigation trees required by the cost of the purchase, planting and maintenance (Purchase Price X 2 = Cost of Mitigation Purchase, Planting, Irrigation and Maintenance).
  - 1. The City will establish a Mitigation Trust account to receive funds from Developer in lieu of off-site mitigation.
  - 2. All mitigation trust planting projects shall be planted on city-owned property with protected species, or from approved City of Biloxi tree species list as defined herein, and recommended by Planning Commission and approved by City Council prior to disbursing any funds from the Mitigation Trust account and will be used exclusively for mitigation trees in accordance with the Biloxi Comprehensive Beautification Plan.
  - 3. All mitigation trust planting sites will be documented in the Biloxi Comprehensive Beautification Plan.
- e. Establishment Period  
Replacement trees shall be maintained through an establishment period of at least three years. The applicant shall guarantee the survival and health of all replacement trees during the establishment period and guarantee any associated replacement costs (See Section 23-7-9, Performance and Maintenance Guarantees.). If the replacement trees do not survive the establishment period, the applicant shall purchase and install new replacement trees.
- f. Trees removed on newly proposed residential home sites are exempted from the requirements of this section.

### **(F) - Tree Protection during Construction**

#### **(1) Owner's Responsibility**

During development, the owner or developer shall be responsible for the erection of any and all barriers necessary to protect any existing or installed vegetation from damage both during and after construction.

#### **(2) Tree Protection Fencing**

##### **a. Where Required**

Protected trees, existing tree canopy, and other existing trees being used for credit towards landscaping requirements shall be fenced with a sturdy and visible fence before grading or other development activity begins. Fencing shall be erected to protect the tree's drip line. The Director of Community Development shall consider the existing site conditions in determining the exact location of tree protection fencing. Areas located inside of tree protection fencing are considered as tree protection areas.

##### **b. Type of Fencing**

All fencing required by this section shall be a minimum four feet high and of durable construction (i.e., plastic snow fencing or chain link). Chain link or wire fencing utilized as tree protection fencing shall not be required to be vinyl coated. Passive forms of tree protection may be utilized to delineate tree protection zones that are remote from areas of land disturbance. These must be surrounded by fencing,

- continuous rope, or other forms of clear delineation.
- c. Signage  
Signs shall be installed on the tree protection fence visible on all sides of the fenced-in area delineating the tree protection zone.
- d. Inspection  
All tree protection measures shall be inspected and approved by the Director of Community Development before start of any land disturbing activities. Failure to have tree protection measures prior to the commencement of construction is a violation of this Ordinance.
- e. When Required  
No construction, grading, equipment or material storage, or any other activity shall be allowed within the fenced tree protection area. Fencing shall be maintained until after the final site inspection.

**(3) Encroachments into Tree Protection Areas**

Encroachments into tree protection areas shall occur only when no other alternative exists. If such an encroachment is anticipated, the following preventive measures shall be employed:

- a. Soil Compaction  
Where compaction might occur due to construction traffic or materials delivery through a tree protection area, the area must first be mulched with a minimum four-inch layer of wood chips. Equipment or materials storage shall not be allowed within a tree protection area.
- b. Fill  
No fill shall be placed within a tree protection area without adequate venting to allow air and water to reach the roots.
- c. Chemical Contamination  
Trees located within a tree protection area shall be protected from chemical contamination from liquids or other materials, including but not limited to paint, chemical solvents, gasoline, oil, diesel fuel, hydraulic fluid, concrete spoils, or rinse water from vehicle cleaning, including rinsing of concrete truck tanks and chutes.
- d. Paving Limitations  
Except for driveway access points, sidewalks, curb, and gutter, no paving shall occur within of a tree protection area unless authorized through an alternative landscape plan (See Section 23-6-3(I), Alternative Landscape Plan.).

**(G) - Tree Preservation Incentives**

**(1) Tree Preservation Credits**

To encourage the preservation of as many trees as practical on a development site, credit towards the minimum landscaping requirements shall be applied to all existing trees retained on a site that are not protected trees. Credits are offered only for trees that are not required to be retained by other sections of this Ordinance. Credits shall be designated on the landscape plan for the development, and shall be granted in accordance with the following standards:

- a. A credit for trees that are not protected trees shall be credited and applied towards the vehicular use landscaping standards in Section 23-6-3(D) and the perimeter buffer standards in Section 23-6-3(E) when the trees that are saved are:
  - 1. Deciduous or evergreen canopy trees of four inches in caliper or greater, measured at DBH (54 inches) above ground level; or
  - 2. Deciduous or evergreen understory or ornamental trees of three inches in caliper or greater, measured at DBH (54 inches) above ground level.
- b. In no case shall credits substitute for more than 75 percent of the required site or



vehicular use area landscaping material.

**(2) Reduction in the Minimum Number of Required Parking Spaces**

Up to a ten percent (10%) reduction in the number of off-street parking spaces required on a development site shall be allowed if the reduction in the amount of required pavement will preserve the root zones of existing healthy trees with a DBH of eight inches or greater. The amount of reduction can be determined only after taking into consideration any unique site conditions and the impact of the reduction on parking needs for the use, and must be agreed upon by both the applicant and the Director of Community Development. Alternative paving materials (See Section 23-6-2(C)(4), Alternative Materials.) may be allowed by the Director of Community Development in cases where required parking areas encroach upon root zones.

**DEFINITIONS 23-10**

**DBH (DIAMETER AT BREAST HEIGHT)**

The measurement of the diameter of a tree trunk, taken at a height of four and one-half feet (54 inches) above the ground. Trees with multiple tree trunks should be treated as multiple trees and the DBH of each trunk added to the aggregate diameter measurement.

**MAJESTIC TREES**

Trees having or showing impressive beauty and dignity, whether cultural, historical, or as a natural resource, making them worthy enough to warrant additional scrutiny in the permitting process in order to protect the asset for the future.

**MITIGATION**

the process or restoring/replacing of a destroyed natural resource

**MITIGATION TRUST**

An account that holds mitigation funds for use in planting protected tree species on city-owned properties

**REPLACEMENT/MITIGATION**

Trees planted as replacement for a mitigated loss of a protected tree.

**TREE, PROTECTED**

A tree—other than a Pecan (*Carya illinoensis*), Chinese tallow or Popcorn (*Sapium sebiferum*), Water Oak (*Quercus Nigra*), or member of the Pine genus (*Pinus spp.*)—that falls in any of the following categories:

1. Protected species include: Live Oak, Bald Cypress, and Southern Magnolia that are at least 8” diameter at DBH (diameter at breast height – 54” above the ground).
2. All non-protected species of trees at least 16” DBH.
3. All trees planted as mitigation for a Tree Permit.