Ordinance No. 2475

ORDINANCE TO AMEND SELECTED SECTIONS OF THE LAND DEVELOPMENT ORDINANCE, SECTIONS 23-2-2(G), 23-2-4 (I) AND 23-6-4, SPECIFICALLY AS IT RELATES TO THE TREE COMMITTEE, TREE PERMIT, AND TREE PROTECTION WITH NO RESIDENTIAL MITIGATION

WHEREAS, on Thursday, November 4, 2021, the Biloxi Planning Commission conducted a public hearing in the Auditorium of the Dr. Martin Luther King, Jr., Municipal Building, 676 Dr. Martin Luther King, Jr. Boulevard, Biloxi, Mississippi, to hear Case No. 21-058-PC, a charge initiated by the Director of Community Development, to consider Text Amendments to the Biloxi Land Development Ordinance, to amend Sections 23-2-2(G), 23-2-4 (I) and 23-6-4, specifically as it relates to the Tree Committee, Tree Permit, and Tree Protection; and

WHEREAS, the Planning Commission members, at their meeting on November 4, 2021, were apprised of the particulars of this case, being made cognizant of the specific section of Text involved with Sections 23-2-2(G), 23-2-4 (I) and 23-6-4, specifically as it relates to the Tree Committee, Tree Permit, and Tree Protection – as noted in the original Text Amendment change; and

WHEREAS, after much discussion, the Biloxi Planning Commission voted to approve the proposed Text Amendments to the Land Development Ordinance; and

WHEREAS, on January 25, 2022, the City Council recommended changes excluding Residential Mitigation, as follows:

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 ~~City Arborist~~ the Ceommittee shall serve in an advisory capacity to perform the following functions:

(a) ~~Major~~ Tree Permits.

To review applications for ~~tree permits required under Chapter 23 of this Code of Ordinances with respect to~~ permits involving the proposed removal of ~~one or more~~ protected trees ~~or specimen trees (Major Tree Permit)~~ 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) Mitigation Recommendation.~~

~~To identify and suggest potential suitable sites (i.e., public land or other locations that have been determined to have a demonstrated need for additional landscaping/tree replacement measures as a result of a previous tree adjudication process resulting in tree displacement, or due to a loss of trees and greenery from some previous storm event or act of nature) to help promote the appropriate replenishment of trees and landscaping throughout the City and provide mitigation sites for developers where such mitigation is required and not suitable for the developed site; and,~~

(be) DRC and Planning Commission Participation.

~~The City Arborist shall notify all committee members by email of the content of all applications for Major Tree Permits. The Committee shall review and make a written recommendation (by email or other writing) to the City Arborist, the Director of Community Development and the Mayor within ten days of receipt by all committee members of each proposed Major Tree Permit, and if the committee shall fail to meet and make a recommendation within said ten days, then the City Arborist shall make the determination without its input. The committee shall report its recommendations in writing (by email or other writing) to the City Arborist, the Director of Community Development and the Mayor. A designated individual from the Tree Committee (a different individual may be designated by the committee for each permit) shall serve as a non-voting member of the Development Review Committee (DRC) and shall have the authority at any meeting of the DRC to modify any recommendation or approval of the Tree Committee. The Director of Community Development shall notify the Tree Committee by email or other writing of all tree permit applications and all meeting times and dates of the DRC and shall provide each member of the Tree Committee a copy of the tree permit application, with the site's tree inventory attached and with information regarding tree canopy on the site to facilitate evaluation of the impact of tree removal on erosion, storm water runoff, and other impact.~~

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~~d~~) Review of Prior Approved Permits.

Review previously issued Tree Permits periodically ~~both Major and Minor,~~ 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 ~~the Department of~~ Community Development and the City Council when requested, but at least annually. The Ceommittee shall report any perceived violation to the Mayor, and Director ~~and Department~~ of Community Development for follow up and enforcement. The City Arborist ~~Director of Community Development~~ shall provide the Ceommittee 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~~Oaks~~

~~To~~ The Committee receives and reviews applications by property owners for a designation of an individual ~~live oak~~ tree on their property to be designated a "Majestic

Tree ~~Oak~~". 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 ~~Oak~~, then any tree permit involving such Majestic Tree ~~Oak~~ shall ~~be considered a Major Tree Permit and shall~~ require assessment ~~approval~~ 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.

~~(5) Appeals.~~

~~Any tree permit applicant may appeal a determination by the Director of Community Development or the Mayor 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 of notice of the determination.~~

~~(6) 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 it is the intent of the City that 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 1-8-1 of this Code of Ordinances. Each day a violation continues to exist constitutes a separate offense.~~

Delete Section 23-2-4 (I): Tree Permit, as originally written and Replace with 23-2-4 (I) - Tree Permit, as follows:

(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 illinoinensis*), 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(I)(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.
3. For Tree Permits involving 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. This section will apply to any multi-phased developments.
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 is 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.

Delete Section 23-6-4 - Tree Protection, and Replace with 23-6-4 - Tree Protection, as follows:

(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 illinoinensis), 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(I)] unless in accordance with the unexpired 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

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 ~~bank~~ 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 ~~Bank~~ 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 residential home sites are exempt 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 trunek ~~over ten inches~~ ~~in diameter,~~ taken at a height of four and one-half feet (54 inches) above the ground. Trees with multiple tree truneks 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 illinoinensis), 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.

WHEREAS, the Biloxi City Council, after careful review, hereby adopts the report and findings of the Biloxi Planning Commission, and in so doing, determines that the Text Changes proposed to the City of Biloxi Land Development Ordinance, as presented, are appropriate.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BILOXI, MISSISSIPPI, THAT THE ABOVE MENTIONED SECTIONS OF THE LAND DEVELOPMENT ORDINANCE be amended, as presented above.

Ord. No. 2475

SECTION ONE: All other sections of said of the Biloxi Code of Ordinances of the City of Biloxi, Mississippi, shall remain in full force and effect.

SECTION TWO: This ordinance shall become effective thirty days from and after its passage and publication with law.

The foregoing Ordinance having first been reduced to writing, was read by the Clerk and moved by Councilmember Tisdale, seconded by Councilmember Gines, and was adopted by the following vote:

YEAS:	Lawrence Newman Deming	Tisdale Barrett	NAYS:	None
ABSENT:	Gines Glavan			

The President then declared the Ordinance adopted this the 1st day of February, 2022.

ATTEST: APPROVED:

STATE OF MISSISSIPPI CITY OF BILOXI HARRISON COUNTY

CLERK OF THE COUNCIL PRESIDENT OF THE COUNCIL

Submitted to and approved by the Mayor, this the 4th day of February, 2022.

APPROVED:

MAYOR

Scheduled for:
November 4, 2021
PC Meeting

City of Biloxi
Case No. 21058-PC
Text Amendments to
the Biloxi Land Development Tree Ordinance

Planning Commission
Case Fact Sheet

Case No.:	21-058-PC
Name of Applicant:	City of Biloxi
Address of Property:	N/A
Tax Parcel/Ward:	N/A

Request: **Text Amendments** to the **Biloxi Land Development Ordinance Sections 23-2-2(G), 23-2-4(I)** and **23-6-4.**

Purpose of Request: Amend **Section 23-2-2(G), 23-2-4 (I)** and **23-6-4,** specifically as it relates to the Tree **Committee, Tree Permit,** and **Tree Protection**.

Letters or Concerns stated: The Planning Division Office has not received any letters or other written communications relative to this case, as of October 28, 2021.

Comments/ Recommendations: The sections of text to be considered for change/modification are as follows:

Amend the Following Text:

G) TREE COMMITTEE

(1) **Tree Committee; Purpose and Intent.**

The purpose and intent of this article is to establish a body to assist the City in promoting the preservation and replenishment of the native stock of trees, conservation, ground water recharge, storm water runoff retardation, oxygen regeneration, and noise abatement, and to make the City a healthier, more beautiful, and safer place to live. This committee is to be known as the Biloxi

Tree Committee, referred to in this article as the "Ccommittee." In making its recommendations the Ccommittee is charged with using its best efforts to balance those public goals with the public need for economic development while respecting the rights of individuals to develop their property in a meaningful yet responsible way within the confines of the law.

(2) **Membership; Term of Office; No Compensation of Committee.**

The Biloxi Tree Committee shall be composed of seven members, one individual from each of the City's seven Wards, all of whom shall be resident citizens of the City and qualified electors therein. The members will be selected by the Mayor and ratified by the City council. Each member shall be appointed for a period of three years and shall continue to serve until a successor is appointed and ratified. Vacancies shall be filled in accordance with this section, and appointments to fill vacancies shall be for the unexpired terms only. Each member shall be eligible for reappointment, and all members of the Ccommittee shall serve without pay.

(3) **Officers; Rules of Procedure.**

The Biloxi Tree Committee shall elect from among its members its own chairman, vice chairman, and secretary, and provide from time to time such rules and regulations, not inconsistent with the ordinances of the City, for its own organization and procedure, as it may deem appropriate. Meetings may be held by telephonic or other electronic means, and any official action shall only require a majority of the members participating in the meeting. A quorum shall consist of a majority of the members appointed and ratified, and vacancies shall not be considered in the determination of a quorum.

(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 ~~City Arborist~~ the Ccommittee shall serve in an advisory capacity to perform the following functions:

(a) ~~**Major**~~ **Tree Permits.**

To review applications for ~~tree permits required under Chapter 23 of this Code of Ordinances with respect to~~ permits involving the proposed removal of ~~one or more~~ protected trees ~~or specimen trees (Major Tree Permit)~~ 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) **Mitigation Recommendation.**~~

~~To identify and suggest potential suitable sites (i.e., public land or other locations that have been determined to have a demonstrated need for additional landscaping/tree replacement measures as a result of a previous tree adjudication process resulting in tree displacement, or due to a loss of trees and greenery from some previous storm event or act of nature) to help promote the appropriate replenishment of trees and landscaping throughout the City and provide mitigation sites for developers where such mitigation is required and not suitable for the developed site; and,~~

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

~~The City Arborist shall notify all committee members by email of the content of all applications for Major Tree Permits. The Committee shall review and make a written recommendation (by email or other writing) to the City Arborist, the Director of Community Development and the Mayor within ten days of receipt by all committee members of each proposed Major Tree Permit, and if the committee shall fail to meet and make a recommendation within said ten days, then the City Arborist shall make the determination without its input. The committee shall report its recommendations in writing (by email or other writing) to the City Arborist, the Director of Community Development and the Mayor. A designated individual from the Tree Committee (a different individual may be designated by the committee for each permit) shall serve as a non-voting member of the Development Review Committee (DRC) and shall have the authority at any meeting of the DRC to modify any recommendation or approval of the Tree Committee. The Director of Community Development shall notify the Tree Committee by email or other writing of all tree permit applications and all meeting times and dates of the DRC and shall provide each member of the Tree Committee a copy of the tree permit application, with the site's tree inventory attached and with information regarding tree canopy on the site to facilitate evaluation of the impact of tree removal on erosion, storm water runoff, and other impact.~~

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.

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

Review previously issued Tree Permits periodically ~~both Major and Minor,~~ 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 ~~the Department of~~ Community Development and the City Council when requested, but at least annually. The Ccommittee shall report any perceived violation to the Mayor, and Director ~~and Department~~ of Community Development for follow up and enforcement. The City Arborist ~~Director of Community Development~~ shall provide the Ccommittee 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~~Oaks~~.**

The Committee receives and reviews applications by property owners for a designation of an individual ~~live oak~~ tree on their property to be designated a "Majestic Tree~~Oak~~". 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~~Oak~~, then any tree permit involving such Majestic Tree~~Oak~~ shall ~~be considered a Major Tree Permit and shall~~ require assessment~~approval~~ 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..

~~(5) **Appeals.**~~

~~Any tree permit applicant may appeal a determination by the Director of Community Development or the Mayor 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 of notice of the determination.~~

~~(6) **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 it is the intent of the City that 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 1-8-1 of this Code of Ordinances. Each day a violation continues to exist constitutes a separate offense.~~

Delete Section 23-2-4 (I): Tree Permit, and Replace same with **23-2-4 (I) - Tree Permit,** as follows:

(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 illinoinensis*), 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(H), 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(G)(4), Replacement/Mitigation of a Protected Tree.

(4) Review Procedure

a. Basic Procedures - Except as modified by Sections 23-2-4(I)(3)b—d. 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)(4), 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.

3. For Tree Permits involving the removal, relocation, or alteration of 5 or more protected trees on a Proposed Residential Subdivision, Multi-Family, Commercial, or Industrial project the review 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. For Tree Permits involving the removal, relocation, or alteration of 5 or more protected trees on a proposed residential home site, 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.

5. 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, or the decision of the Director of Community Development or The Planning Commission, 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 is 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)(8)a., Replacement/Mitigation of Protected

Trees, and Penalties, according to Section 23-2-4(I)(9) 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(I)(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.

Delete Section 23-6-4 - Tree Protection, and Replace same with **23-6-4 - Tree Protection,** as follows:

(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 23-3-4(I)

(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 illinoinensis), 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(I)) unless in accordance with the unexpired 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.

(G) - 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(G)(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(G)(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.

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(G)(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

Trees removed on newly proposed residential subdivisions and residential home sites are exempted from the requirements of this section, all other healthy protected tree removed or destroyed shall be replaced according to the following

Mitigation schedule with a tree 2-3 inch caliper tree with a minimum height of 6 feet tall at planting.

DBH of Protected Tree Removed	# of Mitigation Trees
8-12"	2
13-17"	3
18-22"	4
23-27"	5
28-above"	6

The replacement trees shall be replanted within six months of the removal or destruction of the protected tree.

b. Mitigation Species shall be a minimum of 75% protected tree species (Live Oak, Bald Cypress and Southern Magnolia) with up to a 25% allowance for diversity of other native tree species from approved City of Biloxi Native Tree Species List.

c. Location of Replacement Trees

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 Bank, 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 Bank 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 Bank account to receive funds from Developer in lieu of off-site mitigation.

2. All mitigation bank 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 Bank account and will be used exclusively for mitigation trees in accordance with the Biloxi Comprehensive Beautification Plan.

3. All mitigation bank 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.

(H) - 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 and 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.).

(I) - 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 required by the Director of Community Development in

cases where required parking areas encroach upon root zones.

DEFINITIONS 23-10

ARBORETUM OR BOTANICAL GARDEN

A garden or place where trees, shrubs, or other woody plants are grown, exhibited or labeled for scientific, educational, or passive recreational purposes, not including the harvest of plants or their produce.

BEST MANAGEMENT PRACTICES

Methods or techniques that are generally accepted as the most effective and practical means in achieving an objective (such as preventing or minimizing pollution) while making the optimum use of generally available resources.

BUFFER, PERIMETER

An area of land along the perimeter of a development site that contains any combination of vegetative materials, berms, fences, and walls, and provides separation and screening to minimize potential adverse impacts between the development and dissimilar development on abutting property.

BUFFER, RIPARIAN

An area of trees and other vegetation adjacent to a stream, river, or shoreline that is managed to maintain the integrity of the water body, to reduce pollution, and to provide food, habitat, and thermal protection for fish and wildlife.

CALIPER

A horticultural method of measuring the diameter of a tree trunk for the purposes of determining the tree's size. The caliper of the trunk is measured six inches above the ground for trees with a diameter of four inches or less, 12 inches above the ground for trees with a diameter more than four and less than ten inches, and at breast height (4½ feet) for trees with a

diameter of ten inches or greater.

COMMON AREA OR COMMON OPEN SPACE

An open space area within or related to a development site that is designed and intended for the shared use or enjoyment of residents, occupants, and owners of the development.

COMMUNITY GARDEN

A private or public facility for cultivation of fruits, flowers, vegetables, or ornamental plants by more than one person, household, or family.

DBH (DIAMETER AT BREAST HEIGHT)

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

GRADE, FINISHED

The completed surfaces of lawns, walks and roads brought to grades as shown on official plans or designs relating thereto.

GROUND COVER

Low-growing plants that grow in a spreading fashion to form a more or less solid mat of vegetation, generally planted to provide decorative landscaping or permeable cover for bare earth that prevents soil erosion.

HEDGE

A group of shrubs planted in line or in groups that forms a compact, dense, living barrier that demarcates an area from on-site or off-site views.

IMPERVIOUS SURFACE AREA

Any hard-surfaced, man-made area that is more impervious than the natural surface, including, but not limited to, buildings, decks and porches, other structures, parking and driveway

areas, sidewalks, and paved recreation areas.

MAINTENANCE GUARANTEE

Cash or other surety provided by an applicant to ensure the maintenance of constructed or installed public infrastructure or required private site features pending their acceptance or for a specified time period.

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 a destroyed natural resource.

MITIGATION BANK

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

OPACITY

A measurement indicating the degree of obscuration of light or visibility.

OPEN SPACE SET-ASIDE

Portion of a proposed development required for reservation as permanent open space by Section 23-6-6, Open Space Set-Asides.

PLANT NURSERY

The growing, storage, and sale of garden plants, shrubs, trees, vines, groundcovers, and other related landscaping materials for resale, typically occurring as wholesale or retail sales directly to landscaping professionals. Such uses may include limited incidental retail sales to members of the general public. Such uses may include greenhouses; outdoor storage of goods, materials, and equipment; irrigation systems; and

caretaker's dwelling.

PLANTING STRIP

Areas intended for the placement of vegetation within the interior of vehicular use areas or along street right-of-way edges, typically between the back of the curb and the inside edge of the sidewalk.

RAINWATER CISTERN

A catchment device to capture rain water from a roof or other surface before it reaches the ground.

REPLACEMENT/MITIGATION

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

SHRUB

A woody plant, smaller than a tree, consisting of several small stems emerging from the ground, or small branches near the ground. Shrubs may be deciduous or evergreen.

SILVICULTURE (FORESTRY)

The growing or harvesting of forest tree species trees used for commercial or related purposes.

SITE PLAN

A plan (to scale) showing uses and structures proposed for a legal lot or lots of record as required by Section 23-2-4(E), Site Plan Approval.

TREE, PROTECTED

A tree—other than a Pecan (Carya illinoinensis), 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.

TREE REMOVAL

The actual removal of a tree by digging up or cutting down, or the effective removal through damage.

TREE, UNDERSTORY

A tree that has an expected height at maturity of not greater than 30 feet.

Options:

1. Accept the proposed modifications to sections of the Biloxi Land Development Ordinance, as presented.

2. Recommend denial of the **Text Amendments**, as offered.

BILOXI PLANNING COMMISSION MEETING
NOVEMBER 4, 2021
COMMUNITY DEVELOPMENT,
DR. MARTIN LUTHER KING JR. MUNICIPAL BUILDING,
676 DR. MARTIN LUTHER KING JR. BOULEVARD,
BILOXI, MISSISSIPPI,
BEGINNING AT 2:00 P.M.

PLANNING COMMISSION MEMBERS PRESENT:

Kyle Carron
Steve Delahousey
Charlie Dellenger
Gary Lechner
Joann Humphries
Joe King
Debora Magee
August Parker
Jimmy Poulos
Cheryl Thompson
Michael Todaro

ALSO PRESENT:

Jerry Creel, Director of Community Development
Caryle Lena, Planning Technician
Ed Shambra, Executive Planner
Eric Nolan, City Arborist

REPORTED BY

Melissa Burdine-Rodolfich
Simpson Burdine & Migues

C-O-N-T-E-N-T-S

	PAGE
CONTINUED PUBLIC HEARING:	
21-052-PC (Held in abeyance)	--
NEW PUBLIC HEARINGS:	
21-058-PC	5
21-059-PC	39
21-060-PC	57
TREE HEARING:	
TR-21-007	65
Certificate of Reporter	82

MR. DELLENGER:
Let's go ahead and call the Planning Commission meeting to order.
We'll take a roll call of the members in attendance. Mr. Lechner, Mr. Todaro, Mr. Parker, Ms. Magee, Ms. Thompson, Mr. Delahousey, Ms. Humphries, Mr. Carron, Mr. King, Mr. Poulos; myself, Mr. Dellenger.
I would like to recognize Ed Shambra, Jerry Creel, and Caryle Lena and Eric Nolan on the video and the court reporter, Melissa Rodolfich. And, of course, Dr. Paul Tisdale, in the audience, Councilman Ward 5.
Mr. Parker, would you like to open us with a prayer.
(Moment of prayer.)
MR. DELLENGER:
Pledge of allegiance, Mr. Delahousey.
(Pledge of allegiance.)
MR. DELLENGER:
Thank you.
Now, I will ask if everyone has had a chance to review the minutes from the last meeting.
And if we could, please silence all cell

phones in the audience.
MR. DELAHOUSEY:
I move for approval of the minutes.
MR. KING:
Second.
MR. DELLENGER:
Motion and second.
All in favor?
(All in favor.)
MR. DELLENGER:
That's approved.
Are there any committee reports, Mr. Creel?
MR. CREEL:
I'll give it at the building official hearing. I actually left it on my desk, so I'll get back to you. But it was a good one.
MR. DELLENGER:
All right. Continued public hearings, we still have Case Number 21-024-PC Joseph Simon, Stifel and Associates for a preliminary subdivision plat approval.
We've had a request to pull this from the agenda by the owners, so if we could have a motion to pull this from the agenda.

MR. POULOS:
So moved.
MS. THOMPSON:
Second.
MR. DELLENGER:
Moved and seconded.
All in favor, signify by saying "aye."
(All in favor.)
MR. DELLENGER:
Any opposed?
(None indicated.)
MR. DELLENGER:
Continued public hearing, as well is Case Number 21-052-PC, Alterna Mortgage Income Fund and Ken Jones on behalf of Gulf Coast Development and Design, an application for a preliminary subdivision and zoning map amendment.
This is still being continued from the September 23rd meeting and we will be held in abeyance until the owner and the applicant resolve some easement issues on that case.
For new public hearings, we have case Number 21-058, the City of Biloxi, for consideration for a text amendment to the Biloxi Land Development Ordinance, Section 23-2-2(G),

23-2-4(I) and 23-6-4, specifically as it relates to the Tree Committee, tree permit and tree protection sections of the UDO. This was advertised on October 12th, October 19th and October 26th.
Mr. Creel, do you have anything on the text amendment?
MR. CREEL:
Yes. What that is, we've been working with the Tree Committee to make some improvements to the current ordinance, and specifically in this one is the creation, the tree bank, the tree mitigation bank. What's happening -- and I'll let Eric go into the details about it. But the tree bank, we just feel like it's vital whenever we have a developer that comes in and there is not enough room on the property to put in the number of mitigation trees that are required, what the tree bank does is allow them to just pay the mitigation amount, which is three-to-one, put that into an account for the city, which we've already got that account set up. And then at some point during the course of the year, the Planning Commission and the City Council would make recommendations -- we would accept recommendations

on where the best places are to place those replacement trees.
And so this is something that we've been working on. We're excited that's on -- it's contained in the proposed changes to the ordinance. And with that, I'll let Eric take it from there and go into specifics about the rest.
MR. NOLAN:
Good afternoon.
Yeah. I've been working with the Tree Committee for -- well, really solid since about the end of 2018. We started going through the ordinance trying to really simplify it, make it -- it was really hard to understand and some of the sections it didn't work in it. So we ended up having to go back to square one with some of it and just do a complete re-write of certain certifications to make it as clear as possible where when people were coming in I wasn't having to translate the ordinance to them every time they came in.
One of the things that -- some of the main points that we hit on we're adding some trees to the omitted list where they don't have to ever get a permit. Pecans were already there. Tallows

were already there and pine trees were there. And we added water oaks because water oaks are probably 90 percent of my removals and most of the time it's either -- because of the severe hazard with decay or rot problems that they have.
One of the other things we have done is we have upped the minimum diameter limit from five inches to eight inches and that's going to cover live oaks, bald cypress and only southern Magnolia. So, you know, small trees like that, they're not going to have to worry about. You get to an eight-inch tree, which is more like that, then we felt it was a better way to focus our gaze and protect the best stuff at a bigger diameter. That way, we can be a little bit more selective on what we allow them to take out when they're already taking -- they're going to take the small stuff without a permit and that's not a problem.
Then, the trees that -- all other trees that weren't exempt up above, the pecans, Chinese tallows, water oaks and pines, they're going to be protected 16 inches and above. So that covers all your big sycamore trees that are healthy, you know. If the tree is not healthy, it's still going to get a permit, but this gives us a little

bit more review authority over the really big stuff in the city, which is mainly what people look at and they complain a lot more when he cut the big trees down.

The Tree committee did give you their recommendations. There are some points of agreement, which I will let y'all go through points of compromise that we worked with and there are some remaining points of concern. And I have -- I have ID'ed them in the case fact sheets.

If y'all would, turn to Page 2 under Section 4, their comment -- they wanted to be involved in the city beautification plan and that was an error on our part, so we are all in favor of them helping us -- giving us assistance with the city beautification plan. They will be used in order to find a place for these mitigation bank trees or mitigation trust trees.

If you would then turn to Page 10, under Number 4, we're not requiring Planning Commission approval for new residential homesites, which we don't -- we never had before, and so this is kind of going back to what it was in the previous ordinance.

So if you're building a homesite and you

have to remove five or more trees, you wouldn't be held up having to get Tree Committee approval and Planning Commission approval in order to be able to build your house. We thought that would -- it would stifle the new home construction and new development.

Now, the next page is -- if you turn to Page 12, under Number 10, it deals with penalties. The Tree Committee wanted some more clarification on penalties. And penalties are governed by the state and by the courts and those fee maximum and minimums are governed by the city regs, so we're going to leave that to the courts.

The next page, on Page 13, we do have to work on some sustainable -- under Number 10 on Page 13, they were concerned about -- not very much details on sustainable development and landscape credits. That's an area that we can improve on, but this ordinance really was like trying to eat an elephant. And we've gotten most of the way through and we've got some things that we can improve upon along the way. So we'll work on those, but we're getting a tree ordinance in place first.

If you would, turn to Page 15. One of

the things we did do is we are removing the mitigation requirements for new home subdivisions, new residential subdivisions because it was going to stifle the subdivision development. Plus, it's really hard to figure out who's going to be responsible for the mitigation.

You can make the developer responsible for the mitigation. But if it's a guy that's just building the development and then selling off to the home builder, then it just became a coordination nightmare. And a lot of the property owners want to plant their own things in their own lots when they get their own houses. When they own a house, they want to plant their trees in their own lot. So we thought that probably was a better way to deal with it.

And the last page, turn to the next page, Page 16. The Tree Committee recommendation was changed to the name of the Mitigation Bank under D, which is about two-thirds of the way down. And we'll change it all the way through, change the word "bank," instead of mitigation bank, calling it a mitigation trust. We're in favor of those changes.

One of their last recommendations, they

questioned the mitigation purchase costs that will go into the bank, as a starting point a two-for-one on the cost basis for the trees was reasonable. If we find down the road that that's not covering the cost to get the job done, we can come back and revisit that. But we didn't want to hit them on the front end with a higher cost and find that it's less. We'll come in a little softer and maybe hit a little harder if we have to.

And that's about it. Do y'all have any questions?

MR. LECHNER:

For clarification, what trees will be permitted if they're not protected? Like the 16 and over will still need a permit on them.

MR. NOLAN:

You're going to need a permit. Okay. Here anything that gets over 16 inches that's not a water oak, pine trees, Chinese tallow or a pecan, is going to require a permit.

MR. LECHNER:

Okay. And the reason I ask is on this recap here, I think it indicated that you may not need one. It said all other non-protected species

of trees, except pecan, chinese tallow, water oak or pine, so that's -- they're still going to need a permit for 16 and above?

MR. NOLAN:

Anything but the four species that we've exempted, they're going to have to get a permit for over 16 inches.

MR. LECHNER:

Okay.

MR. NOLAN:

And typically what I find is, especially in residential house lots, the majority of trees that we're dealing with at 12 to 14 along fence rows and that kind of stuff -- 16, that's a pretty good size tree. You know it's there. And if it's in a -- not in good shape or not healthy or not in a good position, you know, we can deal with that on a permit basis. I don't think it's going to be a huge amount, though.

MR. DELLENGER:

Are there any other questions?

(None indicated.)

MR. DELLENGER:

Thank you, Eric.

Is there anyone to speak in favor of it.

Please come forward, and please state your name and address and sign in, please.

MS. WYMAN:

Thank you. I'm Tracy Wyman. I'm speaking on behalf of the Biloxi Tree Committee.

As Eric outlined, there are several points that we have in agreement, and so I just reiterate that this has been a -- it's been a long process, right?

MR. NOLAN:

Right.

MS. WYMAN:

And it's been a cooperative process. We've sat down together many times and, you know, we would come up with an iteration and Eric would take it and would, you know, give us the revisions back and that happened back and forth six or more times. And so we are very pleased that the Tree Committee, you know, had the opportunity to have that, those sit-down conversations, with the Director of Community Development and the city arborist. It's been a very collaborative process.

I don't -- let me see if there is anything else. The only thing I want to say in addition to what Eric said on the agreements,

because he outlined those all pretty well -- very well really -- is that once this language is revised or adopted, we'll need to also adopt a revised graphic diagram that shows the process and also need to revise the actual applications that those that apply for a tree removal, you know, will use, but obviously they're not going to -- we're not going to create that animal before, you know -- before the elephant gets sent off.

Anyway, we do have several points of disagreement that Eric alluded to some of them or mentioned some of them. I would like to clarify some of them and I'm happy to sit down and wait to be invited back up for that. Your call, because these go to the disagreement parts.

MR. CREEL:

This is a good time now, so go ahead.

MS. WYMAN:

Okay. On disagreements, the way -- the Tree Committee, as a group, out loud together read every word of the tree ordinance -- or the ordinance as it relates to tree protection. We read through it at least to make sure that we understood it and that we listed all of our questions, and then that's what began all the

sit-down conversations when we began asking questions and so forth.

And to our understanding, the way the ordinance is currently drafted, that residential properties that require more than five trees being -- five or more trees being removed do require a permit. In practice, that's not been happening, I agree. But just to think about how that scenario plays out. A developer can plan a subdivision, bring it to Planning Commission with its proposed tree removals and, you know, maybe there's 100 trees that need to come down to allow for roads to go in and the structure and the entry and all of that. Tree Committee makes recommendations regarding that. The Planning Commission approves it. A few months down the road, the same developer becomes the builder for some of those lots and requires no permits and no Planning Commission review if they want to remove five, six, 10 or 15 or more trees -- protected trees from each of those lots. And it may be hard to keep up with that, but we think that it's necessary. And we also think that the public thinks that it's necessary. So we just want to reiterate that, that point of the disagreement

there.

Also, the fact that -- subdivisions being exempt from mitigation, obviously their whole possession has to come through Planning Commission. But say they're removing 150 trees so that equates to, what, 300 or 450 mitigation trees. 450 mitigation trees times two equates to all those mitigation dollars that the city is no longer going to be able to take advantage of. So it does -- that doesn't seem fair that commercial developers, industrial developers, multifamily developers all contribute to mitigation bank or mitigation, you know, replanting, but the subdivision developers don't.

And the truth is, subdivisions can be developed in a way that there is a lot more trees being saved. So it's a matter of -- a lot of that is a matter of education and -- you know, anyway. That's our point on that.

As far as the mitigation bank, I appreciate that the City is considering just changing the name to mitigation trust. That's easy enough.

We pretty much stand on the fact that it's a huge animal to -- it's a huge machine that

we're getting ready to undertake or to have to operate by taking in those mitigation dollars, spending them responsibly for trees that fit within the guidelines, tracking their location and tracking when they were planted and tracking their health for three years and then replacing them if they don't make it, so that's all on the city. And I think that -- you know, I'm not saying it can't be done. It can be done, but it's a huge staffing undertaking and I think it needs to be seriously analyzed. And actually -- now I'm speaking personally, but that's not true. I am speaking on behalf of Tree Committee, and the committee feels that way.

We think the mitigation trust, the mitigation bank is a great idea because then the city has control over taking care of all those trees and planting all those trees on city property and where they can make sure there is irrigation and make sure they can be maintained and taken care of and pruned with a level of knowledge that the city has control over, but it's a huge undertaking. And that just needs to be considered.

Beautification plan, thanks. I realize

that was probably an oversight, so thanks.

MR. NOLAN:

Uh-huh.

MS. WYMAN:

We've got to, you know, get a little bit more down into the weeds. There's still a little bit more -- too much flipping that has to take place between the ordinance. There's some typos in there. There's some sentences that only half of the sentence is there and the rest just got inadvertently, you know, omitted, so there is just little things like that that needed to be corrected.

Penalties, we get that. But there is now the Community Court process, so we're asking that that process be acknowledged in the ordinance so that people realize that there is a process for taking care of these penalties without having to flip to another part in the ordinance.

Incentives for sustainable development, Eric outlined those really well, but those incentives for sustainable development kind of link back to the first two concerns that we have about subdivisions being exempt from mitigation and new resident building being exempt from a tree

hearing or mitigation. And that -- the incentives for sustainable development offer the city opportunity to really encourage development that will really incentivize, even subdivision owners -- or subdivision developers and even residential property, you know, property builders really. It will really incentivize them to protect more of our protected species.

So I think that's all that I have. Thank you so much for your time, and I will sign in.

MR. DELAHOUSEY:

I have a question. So you brought up a lot of points today. Is it your recommendation that we take action on this today, or is there -- do you think there is potential for the Tree Committee going back to review some of these points where you can gain consensus and come back with a better proposal for us?

MS. WYMAN:

I think the Tree Committee's role has -- is to make these concerns public. And so no, I don't think this language needs to be adopted today. But I think the Tree Committee's role -- and we went through this, you know, meticulously,

so it's to make our concerns public.

But in terms of revising some of the language even further than what we've already suggested, I think that requires a more collaborative process. It requires bringing on, of course, our city arborist and director of community development, maybe a representative or even the entire Tree Committee, but also somebody that's really experienced in sustainable site design that's really got some somewhat local, on-the-ground experience in developing that way, an ecologist, another arborist.

And I think it -- if we just adopt changes, they're not going to be addressed again for another, you know, five or 10 years. And so as we're making these changes, let's make sure that we're making them with -- in the most informed way possible. So that's the Tree Committee's position. Does that answer your question?

MR. DELAHOUSEY:

I think so. I mean, do you think that you could make more progress on -- if y'all were to meet further and come back because the things that you have brought up today, they're not

defined in writing anywhere.

MS. WYMAN:

Right.

MR. DELAHOUSEY:

And so I think that would help us. It would help me to see one version as opposed to another version if you have some other recommended language rather than what's in the fact sheet today. You know, I would be interested in seeing that.

MS. WYMAN:

Well, thank you. I think what might be reasonable for us to do is to perhaps for the Tree Committee to gather some case studies and consult with some professionals to do that and present those to the Planning Commission or to the City Council, whichever is more appropriate, to consider.

But I think we need to find out which ones everybody is interested in and even thinking about. Does that make sense? I think there is some potential for more to happen in the process. And truly, we are trying looking at this in a mindset of balancing economic development, as well as preserving our historical and cultural natural

resource.

MR. DELAHOUSEY:

How many people are on the Tree Committee?

MR. CREEL:

Seven, one from each ward.

MS. WYMAN:

Plus one. So currently we have seven, which is all wards are full -- that's great -- plus I'm an ex officio member.

MR. DELLENGER:

I think we can all agree this is kind of overdue and necessary. This is kind of overdue and necessary.

MR. CREEL:

I'll respond to some of the things that were said. Of course, when the ordinance was originally adopted, the purpose of the ordinance was to make sure that we have balance in the process. In other words, it can't be one extreme or the other. It can't be that protecting the trees would kill development or that development would be allowed to just clearcut all the trees on the property.

So we started off kind of on opposite

ends of the spectrum, but I will say that with all the meetings we've had and everything else, it's much, much better now. We have a good working relationship with the Tree Committee.

And the changes -- some of the changes that were being proposed just made the ordinance a document that no developer is going to sit down and read. I mean, it was just so complicated and so complex. So I asked Eric to go back and simplify, and you know, he met with the Tree Committee again to try to get it down to a point to where it's something we can actually hand to a developer and say, here's what our ordinance says about trees when they're getting ready to design a project. So I think we've accomplished that.

Now, the subject question on the subdivisions, it's not absolutely necessary that subdivisions be exempted, but subdivisions are a different form of development than building a hotel, for example. You've got a piece of property and you're wanting to build a hotel on it, like what we did on Beach Boulevard, and you're amenable to move the building around on the property to put it in the best location possible, to save as many trees as possible and that's

exactly what we did. We -- originally the hotel was supposed to be located on the west side of the property. The developer went to DRC, agreed to move it out east to the side of the property because there were more trees to protect on the west side.

When you're building a subdivision, though, it's just a different type of development because you're essentially going to have houses all over that property for the most part. Yes, you can leave some pockets of landscape in there, but think about the way that a subdivision is done. In most cases, especially what we're doing now, you have to go in and change the grade of the entire piece of property to drain a different way. You also have to go underground and you have to put in sewer lines and you have to put in utility lines all through there. And it's a not case of moving a building from one side to the other. It's a case of getting all the property shaped with the topo so that it drains certain ways to go to the retention ponds, detention ponds that are there.

A compromise could be that, instead of applying the three-to-one ratio to subdivisions,

that maybe what we could do is do a one-to-one ratio on the, you know, protected trees removed in a subdivision development so that, you know, we are getting tree mitigation off of it but, you know, we just -- a property has just been cleared for a subdivision off of Shriner's Boulevard. And we don't want the mitigation to total the amount that it causes a developer to just walk away from a project because they're going to have to spend so much money on mitigation trees.

The subdivision that's -- Natures Trail Subdivision that's being built between Lorraine Road and Jim Byrd Road, we didn't have the tree bank in place at the time when that one went through. So the developer is having to go out there and he's having to put a tree on each lot -- each interior lot that they're putting in there, and then on corner lots, they are having to replace two trees. Well, it, Number 1, gives that subdivision a cookie-cutter look, you know, that a lot of people try to avoid. And, two, people who buy those houses may not necessarily want a tree in that location that the developer is having to put it in.

So there are just more questions that

come up with subdivision development than there is with commercial development projects, so we would not be opposed to maybe a reduced requirement for subdivisions just to help make them work, like maybe a one-to-one mitigation on those. We could leave the three-to-one mitigation on the rest of the development projects that are in there. But just because of the different nature of subdivision development, we think that maybe that would be a workable compromise.

We're going to continue to meet with the tree committee. We're going to work on areas in here that need a little bit more fine-tuning. We're not adversarial anymore like we were in the beginning, and we do have a really good working relationship with the Tree Committee.

They do come to the DRC meetings. They have a representative come to the DRC meetings and they're made aware of any of the Planning Commission meetings so that they can also come here and comment on projects just like what's happening today.

So we think that this needs to be passed today. If there are areas in here that need attention, then we'll continue to meet with the

Tree Committee and discuss those.

MR. TODARO:

I have a question.

MR. CREEL:

Yes, sir.

MR. TODARO:

If, say, it's approved today and we find out down the road that some of the new subdivision developers are -- we've seen abuse of that, the loss of trees, is there a length of time we have to wait before we can revisit or can we revisit it at any time?

MR. CREEL:

No. A Planning Commission member or City Council member always has the right to charge the department with going back and looking at something to see if revisions are needed.

Now, remember, that even subdivisions go through the DRC committee, so -- and the Tree Committee members sat in on the preliminary plat hearings before the DRC committee. So whenever we're looking at a subdivision, for example, one of the things that has to be submitted is a tree inventory to show what trees are going to stay and what trees are going to go. All of that is done

to the DRC level before it even gets to the Planning Commission for consideration. And if there is -- and in most cases when a plat comes before the Planning Commission, there is also going to be a tree hearing at the same meeting to address the trees that are going to be moved.

MR. TODARO:

I would like to move that the proposal be accepted with the alteration, a suggested proposal, that the subdivisions be imposed a one-to-one mitigation ratio. That's the suggestion.

MR. CREEL:

I think that would be a good compromise because it's such a -- subdivisions are such a different animal than any other type of development. There's so much more required. I see Dennis Stieffel in the audience and believe me, he and I have had conversations about the way that these places have to be reshaped and regraded.

MR. TODARO:

So the motion is as written with the suggestion.

MR. DELLENGER:

Before we make a motion, let's see if there is anybody to speak in favor or opposition, and then we will see if there is any further discussion before we make a motion.

MR. TODARO:

Oh, sorry.

MS. WYMAN:

I have an additional comment, but I -- you know.

MR. DELLENGER:

Go ahead.

MS. WYMAN:

So some of the -- one thing that I didn't -- that I neglected to bring up -- it's in writing here, but developers currently owe the city 2,400 trees in mitigation trees that we were not addressing in this language how we're going to -- how the city is going to deal with that.

And then the other point is in terms of the grading for a subdivision. Some of the development practices that we would like to see incentivized, actually look in the topography of the land before the plat -- before the lot lines are placed and before all of that is done so that the subdivision is designed with the existing

topography and with the existing hydrology of the land. So doing that -- I mean, there are ways to do that.

And so we would just like to see some case studies presented to you all even to -- so that we can be insured that that kind of development is what we've hoping for and what we've moving for. Because, I mean, if I was going to move in a subdivision, a new subdivision, I would want there to be some existing trees and shade and whether they're right here at my house or just bordering the properties, between my property and the neighbor, I mean, those are much more desirable properties. And because it's difficult for the developer is not -- in our view, it's not enough of a justification.

I think the one-to-one ratio might be a fair compromise. I don't think that can be decided right now, to be honest with you. And as I understand, an ordinance change has to be read before the City Council anyway, so adopting it here today, that doesn't mean the ordinance is changing immediately. Am I correct?

MR. CREEL:

That's right. What will happen is if

the Planning Commission votes to approve it, then that vote serves as a recommendation to the City Council, and then the City Council will either vote on it or even maybe call for another public hearing on it.

MR. DELAHOUSEY:

Mr. Creel, what is the process for enforcing mitigation trees?

MR. CREEL:

Well, if I understood it correctly, I think what she's talking about is that they probably identified 2,400 trees on existing developments where either the trees were not planted or the trees maybe died and were not replaced.

MR. NOLAN:

I mean, like, the biggest would be Marcus' big project over by the Broadwater where he cleared off and he hasn't done anything. He didn't build-out what he was supposed to, what he was going to build.

MR. DELAHOUSEY:

Is there a time frame that this has to be done or can they just stay in limbo forever? How does that work?

MR. CREEL:

Right now, everything is tied to the development itself. The -- I'm trying to think of the best way to say this. With projects that are underway, the code does take into consideration that, okay, they're doing this development in the middle of summer. But the summer is not necessarily the best time of the year to plant trees, so there is some time given, a grace period given there to get those trees planted that were a part of approved development.

Now, in the case of the Broadwater property there, they did go in and they cleared out a lot of the bad trees. They saved a lot of the good trees, which we've grateful for because, I mean, it's still got a lot of shade and they wanted to keep that in there. But right now, the code doesn't address what happens when a project doesn't move forward, so, you know, that's something, you know, we probably need to consider as one of our next revisions.

MR. CARRON:

Jerry, something else, I know that we seem to have problems going before the court on things that they don't consider to be very

important. So if we have these types of violations, who is going to push for them to go before these courts?

MR. CREEL:

Well, with a violation, you know, we would write up the person that was in violation. It would go to -- before the judge unless it's mitigated beforehand. It would go before the judge. If the judge is aware what the penalties are, which I'm sure she is because she's very conscientious, then she could fine the people for the violation.

MR. CARRON:

It just seems like we have a problem of it ever making it to the judge, is what I'm trying to say.

MR. DELLENGER:

I guess they're asking who's responsible for getting it to that point?

MR. CREEL:

Well, I mean, it would be Eric working with the code enforcement department, you know, to make sure. Because the code enforcement officers are the ones that actually write the citations. So whenever we see a violation or even if the tree

committee sees a violation, you know, in the language here that we're talking about today, they have the right to point that out to me and to Eric and even to the mayor that there has been a violation somewhere and then we would take the appropriate action.

MR. DELLENGER:

Would it be easier, Eric, because it's referenced in here, instead of giving a developer the opportunity to plant three trees per every one they are taking out, to say, look, we're going to charge you X to this bank -- or not the bank, the trust and we're going to do it. Is that what y'all are changing it to?

MR. CREEL:

Yes, that's what we're doing.

MR. DELLENGER:

Just taking it out of their hands and putting it in --

MR. NOLAN:

In theory, you could do that, but you always want to promote giving -- I mean, because if we put it in the trust, it's going on other properties, so it won't be on that commercial property anymore. So if we can encourage them to

plant as much as possible on the commercial property, it will spread everything out and we'll get the coverage that we really are hoping to get in the end.

MR. CREEL:

There are some cases where it's just impossible to replant those trees on the same piece of property because you're going to have root competition and you're going to have all these other things, and it's just physically impossible to do it. So the tree bank, that's why it's such a great idea instead of trying to cram too many trees on there, which most of them are probably not going to make it anyway.

When we originally wrote this information about the role of Tree Committee, one of the responsibilities for the Tree Committee was to select sites that they felt were appropriate for these trees to go, whether it's on old city property, other city properties, whether it's in a park or in a cemetery or along a street right-of-way where we've lost trees. And they have given us a list of recommendations. The Tree Committee has worked hard to put together a list of places that they think are going to be good

sites to put these replacement trees in.
MR. DELLENGER:
Really, you could almost treat it like a wetland mitigation bank. I mean, where a guy strokes a check for whatever and mitigates the wetlands, and they go buy the wetlands somewhere else, you know, wherever they're needed and wherever they're available and they move on. They're not responsible for going to find one and a half acres of wetlands to, you know, do that.
MR. NOLAN:
Sure.
MS. WYMAN:
It is exactly the same, but the -- well, the thinking out of the tree committee is that, yes, that mitigation bank will be helpful. But first, the priority should be to retain as many trees as possible, and then, second, replant, as Eric said, as many on site as possible. And then, third, the overage as Jerry mentioned, if it's not practical to plant on the site, to plant on city property and it spaces them all out like Eric said.
But even with wetland mitigation, it's also best to maintain -- or to preserve the

existing natural wetland which is going to function much, you know, better, much more efficiently than a constructed wetland.
So anyway, that's kind of prioritization. First would be to preserve the existing through creation of buffers and so forth; second would be on-site planting and third would be off-site. But yeah, it's just like a wetland bank.
MR. KING:
So is there anything else?
MS. WYMAN:
No. Thank you.
MR. DELLENGER:
I would like to ask if there's anybody else to speak in favor of this? No one.
Is there anybody speaking in opposition? We have nobody speaking in opposition.
We'll consider this hearing closed.
Mr. Todaro, do you want to make your same motion?
MR. TODARO:
Yes. With the compromise that was suggested that the subdivisions have a one-to-one ratio mitigate.

MR. DELLENGER:
Thank you. We have a motion by Mr. Todaro with a one-to-one.
MR. PARKER:
Second.
MR. DELLENGER:
Seconded by Mr. Parker.
All in favor, please raise your hands.
Mr. Lechner, Mr. Todaro, Mr. Parker, Ms. Magee, Ms. Thompson, Ms. Humphries, Mr. Carron, Mr. King, Mr. Poulos; myself, Mr. Dellenger.
Any opposed?
Mr. Delahousey is opposed.
Motion carries.
The next case will be Case Number 21-059 Maenza Property Management, LLC & Jolene Weill, owners, and Freddie Fountain on behalf of Fountain & Associates, applicant, which is an application for a preliminary subdivision proposal, coupled with a zoning map amendment, to authorize the establishment of a PD-HB, planned development-hospitality business district master plan, for a development to be known as Beach Side Subdivision, said application being submitted as a

planned development-hospitality business district, as authorized within Section 23-3-4(G) of the Land Development Ordinance, for a single property presently split-zoned CB, community business, north half, and SB, sand beach, south half, which the north portion has been submitted for rezoning to PD-HB, hospitality business master plan. The Beach Side Subdivision PD-HB, planned development-hospitality business master plan, as submitted, proposes the creation of 16 lots, which lots will be sold individually for a mixture of residential and visitor accommodations uses, will average 3,800 square feet, plus or minus, in overall size for each lot and all for properties presently identified as 1845 & 1851 Beach Boulevard, Tax Parcel Numbers 1210J-03-016.000 & 1210J-03-017.000. This case was advertised on October 12th, October 19th and October 26th.
Eric, do you have a video?
MR. NOLAN:
I do. The site is to the immediate west of the Shell Station on Beach Boulevard. You can see Sea Breeze in the background. Looking to the east, Big Play to the north, and back to the west.
MR. DELLENGER: