

Ordinance No. 2606

ORDINANCE TO AMEND SELECTED SECTIONS OF THE LAND DEVELOPMENT
ORDINANCE, SPECIFICALLY SECTIONS 23-2-2(G) TREE COMMITTEE; 23-2-4(I)
TREE PERMIT; 23-6-4 TREE PROTECTION; AND ARTICLE 23-10 DEFINITIONS
AND INTERPRETATION

WHEREAS, on Thursday, June 18, 2026, 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. 26-034-PC, a charge initiated by the Director of Community Development, to consider Text Amendments to the Biloxi Land Development Ordinance, specifically to amend Sections 23-2-2(G) Tree Committee; 23-2-4(I) Tree Permit; 23-6-4 Tree Protection; and Article 23-10 Definitions and Interpretation; and

WHEREAS, the Planning Commission members, at their meeting on June 18, 2026, were apprised of the particulars of this case, and determined a workshop was needed before any recommendation could be given; and

WHEREAS, on June 25, 2026, the Planning Commission conducted a workshop to review and discuss in detail the proposed amendments to the Tree Ordinance provisions of the Biloxi Land Development Ordinance; and

WHEREAS, on July 2, 2026, after completing its review and fully considering the proposed amendments, the Planning Commission voted 14-0 to recommend approval of the Text Amendments to the Biloxi Land Development Ordinance as set forth below, with words shown in strikethrough to indicate deletions and words shown in underline to indicate additions.

(G) TREE COMMITTEE

The Tree Committee is hereby established.

(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, groundwater 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 "eCommittee." In making its recommendations, the eCommittee 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 eCommittee shall serve without pay.

(3) Removal and Replacement; Attendance

a. Removal for Good Cause

The Mayor, subject to confirmation by the City Council, may remove and replace any member of the Tree Committee at any time for good cause, including, but not limited to, poor attendance (See b. below), lack of participation, unfitness, malfeasance, and conflict of interest.

b. Removal for Poor Attendance

A member of the Tree Committee shall attend at least 50 percent of regularly scheduled committee meetings held within any 12-month period extending from the date or anniversary of the member's appointment. Any member who fails to comply with this requirement may be removed from the committee by the Mayor, subject to confirmation by the City Council. The Chairman of the Tree Committee shall notify the Mayor and City Council if a member fails to comply with this attendance requirement.

~~(4)(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 simple 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. The Tree Committee will hold regular meetings on the first Wednesday of every month. All meetings shall be open to the public. A designated 'Public Comment' period shall be provided during each meeting. Individual comments shall be limited to three (3) minutes per speaker with a total allotted time of 15 minutes.

a. Notice

Public notice of upcoming Tree Committee meetings will be posted on the City's website each Friday preceding the meeting. Notices of both regular and special Tree Committee meetings will also be posted on the front door of the Community Development building at least 3 days in advance of the meeting. Minutes will be published on the City of Biloxi website following approval by the Committee.

~~(5)(4)~~—Powers and Duties

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

a. Tree Permits

To review applications for permits involving the proposed removal of 5 or more protected trees from a property site as outlined in Section 23-2-4(I), Tree Permit, the City Arborist, acting arborist or the Director of Community Development shall notify all Committee members ~~by email~~ of the content of all ~~applications for~~ Tree Permits issued for the previous month at each committee meeting.

b. DRC and Planning Commission Participation

The Committee may serve as a non-voting member of the Development Review Committee in order to be aware of all projects with potential for removal or ~~alteration~~ major pruning of protected trees. A designated individual from the Tree Committee may serve as the Committee's representative at DRC and Planning Commission ~~M~~meetings, and may be a different designee by the Committee for each ~~permit~~ meeting. ~~The D~~esignee 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~~ applications requiring a Tree Hearing before the Planning Commission, The City Arborist, acting arborist, or the Director of Community Development shall notify the Committee by email of each submitted application ~~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, acting arborist or ~~The~~ Community Development Director, and the Mayor ~~within no less than ten days of receipt of such permits prior to the Planning Commission meeting.~~ The Committee's failure to make a written recommendation on Tree Hearing cases within said ten days will result in the City Arborist making a determination without the Committee's input.

c. Review of Prior Approved Permits

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

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

d. Mitigation Site Recommendation

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

e. Majestic Trees

The Committee receives and reviews applications by property owners for a designation of an individual tree or trees on their property to be designated a "Majestic Tree." If approved by the Committee, such designation will be submitted to the Mayor and City Council for their consideration. If that designation is also approved by the Mayor and

City Council, or if the City Council otherwise designates a tree a Majestic Tree, then any future tree permit involving such Majestic Tree shall require assessment ~~of~~ by 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.

(I) Tree Permit

(1) Purpose

The purpose of a Tree Permit is to support the preservation and replenishment of the native stock of trees, specifically those described as protected trees, to ensure compliance with the standards in Section 23-6-4, Tree Protection, and to ensure that existing trees on vacant or undeveloped lands are not removed without an approved application or site development permit 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 that incentives for ~~s~~Sustainable dDevelopment/HLandscape ~~b~~Bonuses are available in Section 23-6-12(C)

(2) Applicability

A. Single-Family Residential

A Tree Permit is required for the removal, relocation, or major pruning of a Live Oak, Bald Cypress, or Southern Magnolia Tree where the diameter is 8" or greater at breast height. The City Arborist or Director of Community Development may issue these permits after inspection. A Tree Permit is not required for the removal, relocation, or major pruning of any protected tree with a diameter of less than 8" or any non-protected tree with a diameter of less than 16".

1. Application Process

Applicants shall submit a Tree Permit application, accompanied by a site plan, to the City Arborist or the Director of Community Development. An appointed inspector will conduct a site visit, after which a determination will be made.

2. Public Hearings

Public Hearings are not required for Single-Family Residential properties, unless the removal, relocation, or major pruning involves a Majestic Tree.

B. Commercial

A Tree Permit is required for the removal, relocation, or major pruning of four (4) or fewer protected trees with a diameter of 8" or more, which may be issued by the City Arborist or the Director of Community Development upon inspection.

The removal, relocation, or major pruning of five (5) or more protected trees, with a DBH of 8" (eight inches) or more, shall require a Tree Hearing before the Planning Commission prior to the issuance of any permit.

1. Application Process

For four or fewer – removal, relocation, or major pruning of protected trees –

Submit your Tree Permit application, accompanied by a site plan, to either the City Arborist or the Director of Community Development. An appointed inspector will conduct a site visit, after which a determination will be made.

For five or more – removal, relocation, or major pruning of protected trees –

Submit your Tree Permit application, accompanied by a site tree survey, to the Planning Department along with the required Planning Commission Packet for the Public Tree Hearing. Following a decision by the Planning Commission, a permit may be issued after the ten-day appeal period has expired.

C. Development Projects

All Development projects must go to the Development Review Committee, where a tree survey, a landscape plan, and a mitigation plan are required.

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a. Activities Subject to Permitting Process

A Tree Permit ~~tree permit~~ is required for the removal, relocation, or major pruning ~~alterations~~ in any of the following conditions, ~~within any zoning district and on any size lot;~~

1. Four or fewer ~~Any~~ trees of a protected species (Live Oak, Bald Cypress, and Southern Magnolia) that are at least (8") ~~eight inches~~ or greater in diameter at DBH (diameter at breast height — 54 inches above the ground); or
2. Any tree of a non-protected species with a DBH of sixteen ~~or (16")~~ more inches; or greater at breast height.
3. Removal, relocation, or major pruning of five or more protected trees, 8" or greater in diameter at breast height, will require a public hearing before the Planning Commission prior to the issuance of any permit. (Exception: Single-Family Residential properties)

b. Activities Exempt from Permitting Process

A Tree Permit ~~tree permit~~ is not required for the removal, relocation, or ~~alteration~~ major pruning in any of the following conditions:

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

(3) Application Requirements

a. Coordination with Site Plan

When ~~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 the 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-protected~~ trees 8" or greater in diameter and any nonprotected trees 16" or greater, including those proposed for removal and those proposed to remain.
 - c. Groups of trees in close proximity to one another (five feet 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 eight inches or greater, and trees of any non-protected species with a DBH of 16 inches 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 ~~C~~construction.
 - e. A drawing as to grade changes, if proposed, for the lot or parcel and how such changes will affect matters of this ~~C~~chapter, as stipulated in Section 23-6-4, Tree Protection. Grade changes may not occur beneath more than ten percent of the canopy of a protected tree.
 - f. A comprehensive statement identifying the reason for removal of ~~each~~ protected trees.
 - 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 ~~or and the~~ City Arborist. Upon review, they shall determine whether the proposed tree removal requires a public hearing. If a hearing is not required, such information will be provided in a report presented to the Tree Committee at its regular monthly meeting.

~~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~~ major pruning of one to four 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 reported to the Tree Committee at its regular monthly meeting. If the determination is a denial, a letter will be sent from the Director of Community Development or the City Arborist to the applicant.

~~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 the City Arborist.~~

3. For Tree Permits involving removal, relocation, or ~~alteration~~ major pruning of five (5) or more protected trees, ~~the Tree Committee shall review and make a written recommendation to the Planning Commission, and approval rests with the~~ The Planning Commission then holds 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. Note: No trees may be removed, relocated, or major pruned until a site development permit has been issued.

4. In the event of a conflict between the recommendations of the Tree Committee and 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;

- a. Accept the Tree Committee recommendation,
- b. Accept the decision of the Director of Community Development, ~~the Planning Commission~~, or
- c. Modify the decision and the permit, or
- d. Deny the permit.

The City Arborist, Community Development Director, 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~~ Extension, ~~that extension may be~~ which is 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 in Section 23-6-4, Tree Protection, are met. The Review Criteria used by the City Arborist and/or Director of Community Development that allows for the issuance of a Tree Permit ~~is~~ are as follows:

- a. A tree of any species is in danger of falling or damaging structures or utilities, or ~~the to~~ 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 or the Community Development Director provides written verification and photographic documentation that the tree is dead or dying; or
- d. The removal is necessary to comply with stormwater 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 Director of Community Development or the Mayor.

(6) Amendments

For proposed modifications, if the original Tree Permit for the project involved fewer than five (5) protected trees in total, the City Arborist or the Community Development Director may review and approve the modification.

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If the original project involved five (5) or more protected trees overall, any proposed modification must be resubmitted to the Tree Committee, and the Planning Commission shall conduct a second public hearing for review and final decision. All proposed modifications must be described in sufficient detail for the application to be accepted.

~~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-relocation, or major pruning~~ of existing protected trees (not to include single family residential properties) shall be subject to the replacement/mitigation standards of Section 23-6-4(E)(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-property owner or resident~~ may ~~shall have the right to file an~~ appeal of a determination made by the Director of Community Development, Tree Committee, or Planning Commission to the City Council by ~~providing~~ submitting 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~~ Each tree is a separate offense.

4 Tree Protection ARTICLE 23-6-4

(A) Purpose and Intent

The purpose and intent of this section is to:

- ~~(1)~~a. Preserve the cultural heritage and aesthetic qualities of the city;
- ~~(2)~~b. Encourage site design techniques that preserve the natural environment and enhance the developed environment;

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- (3) c. Provide for a separation of uses and establish a sense of privacy;
- (4) d. Minimize the impact of incompatible land uses;
- (5) e. Reduce glare, dust, heat, and noise;
- (6) f. Preserve and enhance air and water quality;
- (7) g. Increase slope stability, and control erosion and sediment run-off into streams and waterways;
- (8) h. Conserve energy by reducing heating and cooling costs;
- (9) i. Maintain and enhance the quality of life in the city; and
- (10) j. Provide protection for Specimen Trees ~~incentives for Sustainable Development/Landscape Credits.~~ (See Section 23-6-4(6G)).

(B) Applicability

(1) General

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

(2) Exemptions

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

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

(C) Tree Permit Required

No removal of existing protected trees 8" in diameter or greater and any nonprotected trees 16" or greater 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~~ ~~a~~ 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

- a. No protected tree may be removed, relocated, subjected to major pruning, pushed over, or intentionally harmed 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. If at all possible, ~~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)(3)(b), Paving or Soil Compaction Prohibited.)

(3) Removal of a Protected Tree

Protected trees may be removed, relocated, or major pruned if the landowner demonstrates to the Director of Community Development that one of the following conditions is met (a or b):

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- a. Removal, relocation, or major pruning of a ~~H~~healthy ~~P~~protected ~~T~~tree. A protected tree is in healthy condition, and all of the following standards under 'a' 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, relocation, or major pruning of a ~~D~~diseased, ~~H~~high ~~R~~risk, or ~~D~~dying ~~P~~protected ~~T~~tree. A protected tree is certified by an arborist or other qualified ISA certified 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

~~These~~ Anyone causing the ~~destruction, or~~ removal, relocation, or major pruning of a healthy protected tree, unless exempted, shall be responsible for the following mitigation:

a. Replacement Trees Required

All healthy protected trees removed, relocated, or major pruned ~~or destroyed~~ shall be mitigated ~~on a two for one basis~~ according to the table below with a ~~tree~~ minimum of two-inch caliper trees and ~~with~~ a minimum height of six feet ~~tall~~ at planting. The replacement trees shall be replanted within six months of the removal or destruction of the protected tree.

See Chart Below

<u>Diameter of tree removed</u>	<u># of mitigated trees</u>
<u>9 – 14 in.</u>	<u>4</u>
<u>15 – 20 in.</u>	<u>5</u>
<u>21 – 26 in.</u>	<u>6</u>
<u>27 – 32 in.</u>	<u>7</u>
<u>33 – 38 in.</u>	<u>8</u>
<u>39 – 44 in.</u>	<u>9</u>

For every additional 6 inches of tree diameter, one additional tree is required for mitigation.

- b. Mitigation Species shall be a protected tree ~~species~~ (Live Oak, Bald Cypress, or Southern Magnolia)

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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~~ City-owned properties 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 ($\text{Purchase Price} \times 2 = \text{Cost of Mitigation Purchase, Planting, Irrigation Watering and Maintenance}$).

1. The City will establish a Mitigation Trust account to receive funds from developer in lieu of off-site mitigation.
2. All ~~m~~Mitigation ~~t~~Trust planting projects shall be planted on city-owned property with protected species, or from approved City of Biloxi tree species list as defined herein, and recommended by Planning Commission and approved by City Council prior to disbursing any funds from the Mitigation Trust account and will be used exclusively for mitigation trees in accordance with the Biloxi Comprehensive Beautification Plan.
3. All ~~m~~Mitigation ~~t~~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 following the issuance of the Certificate of Occupancy. 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 City Arborist/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~~. Certificate of Development Compliance or Certificate of Occupancy has been issued.

(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:

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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.

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

Up to a ten percent 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.

ARTICLE 23-10: - DEFINITIONS AND INTERPRETATION

2 - Terms and Uses Defined

ADVISORY CAPACITY

A role in which an individual or group provides guidance, recommendations, or expert opinions, but does not have decision-making authority or the power to enforce actions. Their input is intended to inform and support those who hold actual authority or responsibility.

ALTERATION, TREE

Any action that changes, damages, or affects a protected or majestic tree's natural state, structure, or health. This may include major, nonstandard pruning, removing limbs or roots, applying chemicals, or any other modification that negatively impacts the tree's growth, stability, or appearance. Minor pruning is not considered an alteration.

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.

DBH (DIAMETER AT BREAST HEIGHT)

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

DEVELOPMENT

The initiation, construction, change, or enlargement of any use or structure, the disturbance of land through the removal of trees or ground cover, or the division of land into two or more parcels. "Development" shall include, but not be limited to, the following:

1. Construction or enlargement of a building or structure;
2. Change in the type of use of a building, structure, or land;

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3. Material increase in the intensity of use of land, such as an increase in the number of businesses, offices, manufacturing establishments, or dwelling units located in a building or structure or on the land;
4. Commencement or expansion of resource extraction, agricultural, horticultural, or forestry activities on a parcel of land;
5. Demolition of a structure or the removal of trees from a parcel of land;
6. Deposition of refuse, solid or liquid waste, or fill on a parcel of land;
7. Alteration, either physically or chemically, of the shore, bank, or channel of any stream, lake, or other body of water or alteration of any wetland; and
8. Any land disturbing activity that adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

GENERAL OFFENSE

Any act, omission, or condition that is contrary to the provisions of this ordinance, zoning regulations, subdivision regulations, or any other adopted planning or land-use requirement of the City. A general offense shall include, but is not limited to, the failure to obtain required permits, the use of land or structures in a manner inconsistent with the zoning classification, or the damage, removal, or major pruning of protected trees.

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. In order to be classified as a Majestic tree, City Council approval is required.

MITIGATION

The process or restoring/replacing of a destroyed natural resource.

REPLACEMENT/MITIGATION

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

MITIGATION TRUST

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

NONSTANDARD PRUNING

A specification for pruning that does not meet the requirements of the ANSI A300 standard. Examples include topping, lion's tailing, stripping branches, or other practices not considered acceptable or consistent with the standard.

STREET TREE

A canopy tree planted or existing within or along either side of a street right-of-way.

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TREE

An evergreen or deciduous upright woody perennial plant that has a single main stem or several main stems and attains a height of at least 15 feet, generally with few or no branches on its lower part.

TREE PERMIT

The term Tree Permit, when not otherwise modified, shall be a general reference to both a Major Tree Permit and a Minor Tree Permit unless the context indicates it is applicable only to one.

TREE PERMIT, MAJOR

A permit involving the proposed removal of one or more protected trees from a property site that is reviewed under the provisions of Section 2-6-4 of this Code of Ordinances.

TREE PERMIT, MINOR

A permit involving the proposed removal of unprotected trees from a property site that is reviewed under the provisions of Section 23-6-4 of this Code of Ordinances.

TREE, PROTECTED

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

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

TREE, NON-PROTECTED

Non-protected trees include: Live Oak, Bald Cypress, and Southern Magnolia that are less than eight inches in diameter at breast height, and all other species of trees.

TREE PRUNING, MAJOR

Removal of greater than 25% of the tree's canopy or disturbance of over 10 % of the root system.

TREE PRUNING, MINOR

Removal up to and including 25% of the tree's canopy or disturbance of 10% or less of the root system.

TREE REMOVAL

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

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TREE, CANOPY

A tree that has an expected height at maturity greater than 30 feet and produces significant shade because it has a crown that is oval, round, vase-shaped, or umbrella-shaped.

TREE, SPECIMEN

A tree—other than a pecan (*Carya illinoensis*), Chinese tallow or popcorn (*Sapium sebiferum*), or member of the pine genus (*Pinus*)—that falls in any of the following categories:

1. Any tree located within a tree protection zone (See Section 23-6-4(F)(5), Establishment of Tree Protection Zone.) with a DBH (diameter at breast height) of eight or more inches;
2. Any oak, magnolia, or bald cypress with a DBH (diameter at breast height) of five or more inches;
3. Any tree within a street right-of-way or on city-owned property; or
4. Any tree with a DBH (diameter at breast height) of 36 or more inches.

TREE, UNDERSTORY

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

UNDERDEVELOPED LANDS

Property that has not been subject to substantial construction or land disturbance and remains in a natural, wooded, or minimally improved state, where existing trees and vegetation have not been significantly altered, removed, or replaced by structures, pavement, or utilities.

TABLE 23-2-3(F)(1): REQUIRED PUBLIC HEARINGS¹S = STANDARD PUBLIC HEARING Q = QUASI-JUDICIAL PUBLIC HEARING²

APPLICATION TYPE	BODY CONDUCTING PUBLIC HEARING			
	ARCHITECTURAL AND HISTORICAL REVIEW COMMISSION	BOARD OF ZONING ADJUSTMENTS	PLANNING COMMISSION	CITY COUNCIL
Text Amendment			S	(S) ³
Map Amendment (Rezoning)			S	(S) ³
Planned Development			S	(S) ³
Conditional Use Permit			Q	(Q) ³
Major Certificate of Appropriateness	Q			
Variance		Q		
Property, Right-of-Way, or Easement Dedication Acceptance			S	(S) ³
Right-of-Way or Easement Vacation or Abandonment			S	(S) ³
Street Name Change			S	(S) ³
Major Subdivision Preliminary Plat Appeal				Q
<u>Tree removal (5 or more protected trees)</u>			<u>S</u>	
All Other Appeals		Q		

NOTES:

1. This table depicts only those applications whose review involves a public hearing.
2. A quasi-judicial public hearing is more formal than a standard public hearing, focusing on the rights of specific parties to present and question evidence and sworn testimony on which subsequent findings of fact, conclusions, and a decision are based.
3. The City Council is not required to hold a public hearing on these applications before deciding the application, but may do so, at its discretion.

TABLE 23-2-3(F)(4): PUBLIC HEARING NOTICE REQUIREMENTS¹			
APPLICATION TYPE	NOTICE REQUIREMENT		
	PUBLISHED	MAILED	POSTED
Text Amendment	Publish notice of the public hearing at least 15 calendar days before the hearing date		
Map Amendment (Rezoning) Establishing Architectural/Historic Overlay District	Publish notice of the public hearing for at least 3 consecutive weeks before hearing date	Mail notice of the public hearing to specified recipients at least 10 calendar days before the hearing date	Post notice of the public hearing at specified sites at least 15 calendar days before the hearing date
Other Map Amendment (Rezoning)	Publish notice of the public hearing at least 15 calendar days before the hearing date		
Major Tree Hearing (5 or more protected)			
Planned Development			
Conditional Use Permit			
Major Certificate of Appropriateness			
Variance	Publish notice of the public hearing at least 15 calendar days before the hearing date		
Appeal²			
Property, Right-of-Way, or Easement Dedication Acceptance			
Right-of-Way or Easement Vacation or Abandonment			
Street Name Change			
NOTES:			
1. Application types not listed do not require public notice.			
2. Mailed and posted notices are required only if the Appeal pertains to application of an Ordinance provision to a specific parcel.			

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.

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NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BILOXI, MISSISSIPPI, THAT THE FOLLOWING SECTIONS OF THE LAND DEVELOPMENT ORDINANCE BE AMENDED, AS FOLLOWS:

(G) TREE COMMITTEE

The Tree Committee is hereby established.

(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, groundwater 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 "eCommittee." In making its recommendations, the eCommittee 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 eCommittee shall serve without pay.

(3) Removal and Replacement; Attendance

a. Removal for Good Cause

The Mayor, subject to confirmation by the City Council, may remove and replace any member of the Tree Committee at any time for good cause, including, but not limited to, poor attendance (See b. below), lack of participation, unfitness, malfeasance, and conflict of interest.

b. Removal for Poor Attendance

A member of the Tree Committee shall attend at least 50 percent of regularly scheduled committee meetings held within any 12-month period extending from the date or anniversary of the member's appointment. Any member who fails to comply with this requirement may be removed from the committee by the Mayor, subject to confirmation

by the City Council. The Chairman of the Tree Committee shall notify the Mayor and City Council if a member fails to comply with this attendance requirement.

~~(4)(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 simple 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. The Tree Committee will hold regular meetings on the first Wednesday of every month. All meetings shall be open to the public. A designated 'Public Comment' period shall be provided during each meeting. Individual comments shall be limited to three (3) minutes per speaker with a total allotted time of 15 minutes.

b. Notice

Public notice of upcoming Tree Committee meetings will be posted on the City's website each Friday preceding the meeting. Notices of both regular and special Tree Committee meetings will also be posted on the front door of the Community Development building at least 3 days in advance of the meeting. Minutes will be published on the City of Biloxi website following approval by the Committee.

~~(5)(4)~~—Powers and Duties

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

a. Tree Permits

To review applications for permits involving the proposed removal of 5 or more protected trees from a property site as outlined in Section 23-2-4(I), Tree Permit, the City Arborist, acting arborist or the Director of Community Development shall notify all Committee members ~~by email~~ of the content of all ~~applications for~~ Tree Permits issued for the previous month at each committee meeting.

b. DRC and Planning Commission Participation

The Committee may serve as a non-voting member of the Development Review Committee in order to be aware of all projects with potential for removal or ~~alteration~~ major pruning of protected trees. A designated individual from the Tree Committee may serve as the Committee's representative at DRC and Planning Commission ~~M~~meetings, and may be a different designee by the Committee for each ~~permit~~

meeting. The ~~D~~esignee 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~~ applications requiring a Tree Hearing before the Planning Commission, The City Arborist, acting arborist, or the Director of Community Development shall notify the Committee by email of each submitted application ~~Tree Hearing~~ and include documents required by the ~~D~~eveloper 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, acting arborist or ~~T~~he Community Development Director, and the Mayor within no less than ten days of receipt of such permits prior to the Planning Commission meeting. The Committee's failure to make a written recommendation on Tree Hearing cases within said ten days will result in the City Arborist making a determination without the Committee's input.

c. Review of Prior Approved Permits

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

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

d. Mitigation Site Recommendation

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

e. Majestic Trees

The Committee receives and reviews applications by property owners for a designation of an individual tree or trees on their property to be designated a "Majestic Tree." If approved by the Committee, such designation will be submitted to the Mayor and City Council for their consideration. If that designation is also approved by the Mayor and City Council, or if the City Council otherwise designates a tree a Majestic Tree, then any future tree permit involving such Majestic Tree shall require assessment ~~of~~ by 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.

(I) Tree Permit

(1) Purpose

The purpose of a Tree Permit is to support the preservation and replenishment of the native stock of trees, specifically those described as protected trees, to ensure compliance with the standards in Section 23-6-4, Tree Protection, and to ensure that existing trees on vacant or undeveloped lands are not removed without an approved application or site development permit 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 that incentives for sSustainable development/landscape ~~b~~Bonuses are available in Section 23-6-12(C)

(2) Applicability

A. Single-Family Residential

A Tree Permit is required for the removal, relocation, or major pruning of a Live Oak, Bald Cypress, or Southern Magnolia Tree where the diameter is 8" or greater at breast height. The City Arborist or Director of Community Development may issue these permits after inspection. A Tree Permit is not required for the removal, relocation, or major pruning of any protected tree with a diameter of less than 8" or any non-protected tree with a diameter of less than 16".

3. Application Process

Applicants shall submit a Tree Permit application, accompanied by a site plan, to the City Arborist or the Director of Community Development. An appointed inspector will conduct a site visit, after which a determination will be made.

4. Public Hearings

Public Hearings are not required for Single-Family Residential properties, unless the removal, relocation, or major pruning involves a Majestic Tree.

B. Commercial

A Tree Permit is required for the removal, relocation, or major pruning of four (4) or fewer protected trees with a diameter of 8" or more, which may be issued by the City Arborist or the Director of Community Development upon inspection.

The removal, relocation, or major pruning of five (5) or more protected trees, with a DBH of 8" (eight inches) or more, shall require a Tree Hearing before the Planning Commission prior to the issuance of any permit.

3. Application Process

For four or fewer – removal, relocation, or major pruning of protected trees –

Submit your Tree Permit application, accompanied by a site plan, to either the City Arborist or the Director of Community Development. An appointed inspector will conduct a site visit, after which a determination will be made.

For five or more – removal, relocation, or major pruning of protected trees –

Submit your Tree Permit application, accompanied by a site tree survey, to the Planning Department along with the required Planning Commission Packet for the Public Tree Hearing. Following a decision by the Planning Commission, a permit may be issued after the ten-day appeal period has expired.

C. Development Projects

All Development projects must go to the Development Review Committee, where a tree survey, a landscape plan, and a mitigation plan are required.

a. Activities Subject to Permitting Process

A Tree Permit ~~tree permit~~ is required for the removal, relocation, or major pruning alterations in any of the following conditions, ~~within any zoning district and on any size lot;~~

1. Four or fewer Any trees of a protected species (Live Oak, Bald Cypress, and Southern Magnolia) that are at least (8") eight inches or greater in diameter at DBH (diameter at breast height — 54 inches above the ground); or
2. Any tree of a non-protected species with a DBH of sixteen ~~or (16") more~~ inches: or greater at breast height.
3. Removal, relocation, or major pruning of five or more protected trees, 8" or greater in diameter at breast height, will require a public hearing before the Planning Commission prior to the issuance of any permit. (Exception: Single-Family Residential properties)

b. Activities Exempt from Permitting Process

A Tree Permit ~~tree permit~~ is not required for the removal, relocation, or alteration major pruning in any of the following conditions:

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

(3) Application Requirements

a. Coordination with Site Plan

When ~~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.

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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 the 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-protected~~ trees 8" or greater in diameter and any nonprotected trees 16" or greater, including those proposed for removal and those proposed to remain.
 - c. Groups of trees in close proximity to one another (five feet 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 eight inches or greater, and trees of any non-protected species with a DBH of 16 inches 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 ~~C~~construction.
 - e. A drawing as to grade changes, if proposed, for the lot or parcel and how such changes will affect matters of this ~~C~~chapter, as stipulated in Section 23-6-4, Tree Protection. Grade changes may not occur beneath more than ten percent of the canopy of a protected tree.
 - f. A comprehensive statement identifying the reason for removal of ~~each~~ protected trees.
 - 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 ~~or and the~~ City Arborist. Upon review, they shall determine whether the proposed tree removal requires a public hearing. If a hearing is not required, such information will be provided in a report presented to the Tree Committee at its regular monthly meeting.

~~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~~ major pruning of one to four 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 reported to the Tree Committee at its regular monthly meeting. If the determination is a denial, a letter will be sent from the Director of Community Development or the City Arborist to the applicant.

~~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 the City Arborist.~~

3. For Tree Permits involving removal, relocation, or ~~alteration~~ major pruning of five (5) or more protected trees, the Tree Committee shall review and make a written recommendation to the Planning Commission, and approval rests with the ~~The~~ Planning Commission then holds 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. Note: No trees may be removed, relocated, or major pruned until a site development permit has been issued.

4. In the event of a conflict between the recommendations of the Tree Committee and 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;

- a. Accept the Tree Committee recommendation,
- b. Accept the decision of the Director of Community Development, ~~the Planning Commission~~, or
- c. Modify the decision and the permit, or
- d. Deny the permit.

The City Arborist, Community Development Director, 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~~ Extension, ~~that extension may be~~ which is 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 in Section 23-6-4, Tree Protection, are met. The Review Criteria used by the City Arborist ~~and/or~~ Director of Community Development that allows for the issuance of a Tree Permit ~~is~~ are as follows:

- a. A tree of any species is in danger of falling or damaging structures or utilities, or ~~the to~~ 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 or the Community Development Director provides written verification and photographic documentation that the tree is dead or dying; or
- d. The removal is necessary to comply with stormwater regulations, or to maintain public health and safety around utilities and infrastructure; or

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- e. The removal is necessary to address extraordinary circumstances such as weather-related emergencies and natural disasters, as determined by the Director of Community Development or the Mayor.

(6) Amendments

For proposed modifications, if the original Tree Permit for the project involved fewer than five (5) protected trees in total, the City Arborist or the Community Development Director may review and approve the modification.

If the original project involved five (5) or more protected trees overall, any proposed modification must be resubmitted to the Tree Committee, and the Planning Commission shall conduct a second public hearing for review and final decision. All proposed modifications must be described in sufficient detail for the application to be accepted.

~~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-relocation, or major pruning~~ of existing protected trees (not to include single family residential properties) shall be subject to the replacement/mitigation standards of Section 23-6-4(E)(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-property owner or resident may shall have the right to file an appeal of a determination made by the Director of Community Development, Tree Committee, or Planning Commission to the City Council by providing submitting 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~~ Each tree is a separate offense.

4 Tree Protection ARTICLE 23-6-4

(A) Purpose and Intent

The purpose and intent of this section is to:

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

(B) Applicability

(1) General

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

(2) Exemptions

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

- a. The removal of dead or naturally fallen trees;
- b. The removal of diseased trees posing a threat to adjacent trees;
- c. The removal of Any Pecan (*Carya illinoensis*), Chinese tallow or Popcorn (*Sapium sebiferum*), Water Oak (*Quercus Nigra*), or member of the Pine genus (*Pinus spp.*);
- d. The selective and limited removal of trees or vegetation necessary to obtain clear visibility at driveways or intersections;

- e. Removal of trees by the public utilities, local, state or federal government as necessary to maintain safe operations;
- f. Silvicultural activities undertaken in accordance with best management practices for forestry in Mississippi established by the Mississippi Forestry Commission; and
- g. Agricultural activities undertaken in accordance with agricultural best management practices for Mississippi established by the Mississippi Department of Environmental Quality.

(C) Tree Permit Required

No removal of existing protected trees 8" in diameter or greater and any nonprotected trees 16" or greater 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~~ ~~a~~ 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

- a. No protected tree may be removed, relocated, subjected to major pruning, pushed over, or intentionally harmed 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. ~~If at all possible, 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(EG)(2)b., Paving or Soil Compaction Prohibited.)

(3) Removal of a Protected Tree

Protected trees may be removed, relocated, or major pruned if the landowner demonstrates to the Director of Community Development that one of the following conditions is met (a or b):

- a. Removal, relocation, or major pruning of a ~~H~~healthy ~~P~~protected ~~T~~tree. A protected tree is in healthy condition, and all of the following standards under 'a' 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, relocation, or major pruning of a ~~D~~diseased, ~~H~~high ~~R~~risk, or ~~D~~dying ~~P~~protected ~~T~~tree. A protected tree is certified by an arborist or other ~~qualified~~ ISA certified 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~~ Anyone causing the ~~destruction, or~~ removal, relocation, or major pruning of a healthy protected tree, unless exempted, shall be responsible for the following mitigation:

a. Replacement Trees Required

All healthy protected trees removed, relocated, or major pruned ~~or destroyed~~ shall be mitigated ~~on a two-for-one basis according to the table below~~ with a ~~tree~~ minimum of two-inch caliper trees and ~~with~~ a minimum height of six feet ~~tall~~ at planting. The replacement trees shall be replanted within six months of the removal or destruction of the protected tree.

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See Chart Below

<u>Diameter of tree removed</u>	<u># of mitigated trees</u>
<u>9 – 14 in.</u>	<u>4</u>
<u>15 – 20 in.</u>	<u>5</u>
<u>21 – 26 in.</u>	<u>6</u>
<u>27 – 32 in.</u>	<u>7</u>
<u>33 – 38 in.</u>	<u>8</u>
<u>39 – 44 in.</u>	<u>9</u>

For every additional 6 inches of tree diameter, one additional tree is required for mitigation.

b. Mitigation Species shall be a protected tree species (Live Oak, Bald Cypress, or 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~~ City-owned properties 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 ($\text{Purchase Price} \times 2 = \text{Cost of Mitigation Purchase, Planting, } \del{\text{Irrigation}} \text{ Watering and Maintenance}$).

1. The City will establish a Mitigation Trust account to receive funds from developer in lieu of off-site mitigation.

2. All ~~m~~Mitigation ~~t~~Trust planting projects shall be planted on city-owned property with protected species, or from approved City of Biloxi tree species list as defined herein, and recommended by Planning Commission and approved by City Council prior to disbursing any funds from the Mitigation Trust account and will be used exclusively for mitigation trees in accordance with the Biloxi Comprehensive Beautification Plan.

3. All ~~m~~Mitigation ~~t~~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 following the issuance of the Certificate of Occupancy. 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.

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d. Inspection

All tree protection measures shall be inspected and approved by the City Arborist/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~~. Certificate of Development Compliance or Certificate of Occupancy has been issued.

(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 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.

ARTICLE 23-10: - DEFINITIONS AND INTERPRETATION

2 - Terms and Uses Defined

ADVISORY CAPACITY

A role in which an individual or group provides guidance, recommendations, or expert opinions, but does not have decision-making authority or the power to enforce actions. Their input is intended to inform and support those who hold actual authority or responsibility.

ALTERATION, TREE

Any action that changes, damages, or affects a protected or majestic tree's natural state, structure, or health. This may include major, nonstandard pruning, removing limbs or roots, applying chemicals, or any other modification that negatively impacts the tree's growth, stability, or appearance. Minor pruning is not considered an alteration.

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.

DBH (DIAMETER AT BREAST HEIGHT)

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

DEVELOPMENT

The initiation, construction, change, or enlargement of any use or structure, the disturbance of land through the removal of trees or ground cover, or the division of land into two or more parcels. "Development" shall include, but not be limited to, the following:

1. Construction or enlargement of a building or structure;
2. Change in the type of use of a building, structure, or land;
3. Material increase in the intensity of use of land, such as an increase in the number of businesses, offices, manufacturing establishments, or dwelling units located in a building or structure or on the land;
4. Commencement or expansion of resource extraction, agricultural, horticultural, or forestry activities on a parcel of land;
5. Demolition of a structure or the removal of trees from a parcel of land;
6. Deposition of refuse, solid or liquid waste, or fill on a parcel of land;
7. Alteration, either physically or chemically, of the shore, bank, or channel of any stream, lake, or other body of water or alteration of any wetland; and
8. Any land disturbing activity that adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

GENERAL OFFENSE

Any act, omission, or condition that is contrary to the provisions of this ordinance, zoning regulations, subdivision regulations, or any other adopted planning or land-use requirement of the City. A general offense shall include, but is not limited to, the failure to obtain required permits, the use of land or structures in a manner inconsistent with the zoning classification, or the damage, removal, or major pruning of protected trees.

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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. In order to be classified as a Majestic tree, City Council approval is required.

MITIGATION

The process or restoring/replacing of a destroyed natural resource.

REPLACEMENT/MITIGATION

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

MITIGATION TRUST

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

NONSTANDARD PRUNING

A specification for pruning that does not meet the requirements of the ANSI A300 standard. Examples include topping, lion's tailing, stripping branches, or other practices not considered acceptable or consistent with the standard.

STREET TREE

A canopy tree planted or existing within or along either side of a street right-of-way.

TREE

An evergreen or deciduous upright woody perennial plant that has a single main stem or several main stems and attains a height of at least 15 feet, generally with few or no branches on its lower part.

TREE PERMIT

The term Tree Permit, when not otherwise modified, shall be a general reference to both a Major Tree Permit and a Minor Tree Permit unless the context indicates it is applicable only to one.

TREE PERMIT, MAJOR

A permit involving the proposed removal of one or more protected trees from a property site that is reviewed under the provisions of Section 2-6-4 of this Code of Ordinances.

TREE PERMIT, MINOR

A permit involving the proposed removal of unprotected trees from a property site that is reviewed under the provisions of Section 23-6-4 of this Code of Ordinances.

Ord. No. 2606

TREE, PROTECTED

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

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

TREE, NON-PROTECTED

Non-protected trees include: Live Oak, Bald Cypress, and Southern Magnolia that are less than eight inches in diameter at breast height, and all other species of trees.

TREE PRUNING, MAJOR

Removal of greater than 25% of the tree's canopy or disturbance of over 10 % of the root system.

TREE PRUNING, MINOR

Removal up to and including 25% of the tree's canopy or disturbance of 10% or less of the root system.

TREE REMOVAL

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

TREE, CANOPY

A tree that has an expected height at maturity greater than 30 feet and produces significant shade because it has a crown that is oval, round, vase-shaped, or umbrella-shaped.

TREE, SPECIMEN

A tree—other than a pecan (*Carya illinoensis*), Chinese tallow or popcorn (*Sapium sebiferum*), or member of the pine genus (*Pinus*)—that falls in any of the following categories:

1. Any tree located within a tree protection zone (See Section 23-6-4(F)(5), Establishment of Tree Protection Zone.) with a DBH (diameter at breast height) of eight or more inches;
2. Any oak, magnolia, or bald cypress with a DBH (diameter at breast height) of five or more inches;
3. Any tree within a street right-of-way or on city-owned property; or
4. Any tree with a DBH (diameter at breast height) of 36 or more inches.

TREE, UNDERSTORY

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

UNDERDEVELOPED LANDS

Property that has not been subject to substantial construction or land disturbance and remains in a natural, wooded, or minimally improved state, where existing trees and vegetation have not been significantly altered, removed, or replaced by structures, pavement, or utilities.

TABLE 23-2-3(F)(1): REQUIRED PUBLIC HEARINGS¹

S = STANDARD PUBLIC HEARING Q = QUASI-JUDICIAL PUBLIC HEARING²

APPLICATION TYPE	BODY CONDUCTING PUBLIC HEARING			
	ARCHITECTURAL AND HISTORICAL REVIEW COMMISSION	BOARD OF ZONING ADJUSTMENTS	PLANNING COMMISSION	CITY COUNCIL
Text Amendment			S	(S) ³
Map Amendment (Rezoning)			S	(S) ³
Planned Development			S	(S) ³
Conditional Use Permit			Q	(Q) ³
Major Certificate of Appropriateness	Q			
Variance		Q		
Property, Right-of-Way, or Easement Dedication Acceptance			S	(S) ³
Right-of-Way or Easement Vacation or Abandonment			S	(S) ³
Street Name Change			S	(S) ³
Major Subdivision Preliminary Plat Appeal				Q
<u>Tree removal (5 or more protected trees)</u>			<u>S</u>	
All Other Appeals		Q		

NOTES:

1. This table depicts only those applications whose review involves a public hearing.
2. A quasi-judicial public hearing is more formal than a standard public hearing, focusing on the rights of specific parties to present and question evidence and sworn testimony on which subsequent findings of fact, conclusions, and a decision are based.
3. The City Council is not required to hold a public hearing on these applications before deciding the application, but may do so, at its discretion.

TABLE 23-2-3(F)(4): PUBLIC HEARING NOTICE REQUIREMENTS¹			
APPLICATION TYPE	NOTICE REQUIREMENT		
	PUBLISHED	MAILED	POSTED
Text Amendment	Publish notice of the public hearing at least 15 calendar days before the hearing date		
Map Amendment (Rezoning) Establishing Architectural/Historic Overlay District	Publish notice of the public hearing for at least 3 consecutive weeks before hearing date	Mail notice of the public hearing to specified recipients at least 10 calendar days before the hearing date	Post notice of the public hearing at specified sites at least 15 calendar days before the hearing date
Other Map Amendment (Rezoning)	Publish notice of the public hearing at least 15 calendar days before the hearing date		
Major Tree Hearing (5 or more protected)			
Planned Development			
Conditional Use Permit			
Major Certificate of Appropriateness			
Variance	Publish notice of the public hearing at least 15 calendar days before the hearing date		
Appeal²			
Property, Right-of-Way, or Easement Dedication Acceptance			
Right-of-Way or Easement Vacation or Abandonment			
Street Name Change			
NOTES:			
1. Application types not listed do not require public notice.			
2. Mailed and posted notices are required only if the Appeal pertains to application of an Ordinance provision to a specific parcel.			

Ord. No. 2606

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

SECTION TWO: Upon unanimous vote of the members of the City Council, this ordinance shall be in full force and effect from and after passage, because it serves the public peace, health, and safety of the citizens of Biloxi, and good cause exists for same. If not a unanimous vote, this Ordinance shall become effective as soon thereafter as is signed, certified, and as is otherwise provided by law.

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

YEAS:	Gray	Tisdale	NAYS:	None
	Marshall	Glavan		
	Nail	Shoemaker		
	Creel			

The President then declared the Ordinance adopted this the 28th day of July, 2026.



ATTEST:

APPROVED:

Kei Campbell
CLERK OF THE COUNCIL

Paul L. Tisdale
PRESIDENT OF THE COUNCIL

Submitted to and approved by the Mayor, this the 28th day of July, 2026.

APPROVED:

[Signature]
MAYOR

1 BILOXI PLANNING COMMISSION MEETING
2 JULY 2, 2026
3 COMMUNITY DEVELOPMENT,
4 DR. MARTIN LUTHER KING JR. MUNICIPAL BUILDING,
5 676 DR. MARTIN LUTHER KING JR. BOULEVARD,
6 BILOXI, MISSISSIPPI,
7 BEGINNING AT 2:00 P.M.

9
10 **PLANNING COMMISSION MEMBERS PRESENT:**

11 Charlie Dellenger, Chairman
12 Ronnie Bogard
13 Kyle Carron
14 Robert Collier
15 Steve Delahousey
16 Dr. Larry Drawdy
17 Joe King
18 Gary Lechner
19 August Parker
20 Jimmy Poulos
21 Shante Shaw
22 John Snow
23 David Stanovich
24 Michael Todaro

25
ALSO PRESENT:

Jerry Creel, Director of Community Development
Felicia Serpas, Senior Planner
Caryle Lena, Planner I
Dr. Paul Tisdale, Councilman Ward 5

REPORTED BY

Melissa Burdine-Rodolfich
Simpson Burdine & Migues

Simpson Burdine & Migues 228.388.3130

1 **CHAIRMAN DELLENGER:**

2 Go ahead and call the Planning
3 Commission meeting to order today.

4 We'll record the members present:

5 Mr. Lechner, Mr. Parker, Mr. Todaro, Ms. Shaw,
6 Mr. Stanovich, Mr. Bogard, Mr. Collier,
7 Mr. Delahousey, Dr. Drawdy, Mr. Carron, Mr. King,
8 Mr. Snow, Mr. Poulos; and myself, Mr. Dellenger.

9 We have Felicia Serpas, Senior Planner;
10 Jerry Creel, Director of Community Development;
11 Caryle Lena, Planner, and Melissa Rodolfich, court
12 reporter, and Paul Tisdale, Councilman, in the
13 audience.

14 Mr. Delahousey, if you can, please, lead
15 us in a moment of prayer.

16 **MR. DELAHOUSEY:**

17 Yes.

18 (Moment of prayer.)

19 **CHAIRMAN DELLENGER:**

20 Please stand for the Pledge.

21 Mr. Stanovich, can you lead us?

22 (Pledge of Allegiance.)

23 **CHAIRMAN DELLENGER:**

24 I would like to thank everybody for
25 coming here today for the Planning Commission

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1 **C-O-N-T-E-N-T-S**

2 **CONTINUED PUBLIC HEARING(S) :** **PAGE:**

3 26-034-PC 5

4 **NEW PUBLIC HEARING(S) :**

5 (None)

6 **FREE HEARING(S) :**

7 (None)

1 meeting. Just to let you guys know, if you will,
2 please silence your cell phones and if you are
3 coming to speak at the podium to please state your
4 name and address for the record and please write
5 it in the book. And, again, please silence all
6 cell phones.

7 Has everyone had a chance to read over
8 the Planning Commission minutes from the last
9 meeting? Do we have a motion to approve?

10 **MR. POULOS:**

11 So moved.

12 **MR. DELAHOUSEY:**

13 Second.

14 **CHAIRMAN DELLENGER:**

15 Moved by Mr. Poulos; second by
16 Mr. Delahousey.

17 All those in favor, state by saying

18 "aye."

19 (Unanimous vote.)

20 **CHAIRMAN DELLENGER:**

21 Any opposed?

22 (None opposed.)

23 **CHAIRMAN DELLENGER:**

24 Motion carries.

25 Jerry, do we have any committee reports

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1 today?

2 MR. CREEL:

3 Yes, sir, we do.

4 Mr. Chairman and members of the
5 Commission, over the past two weeks, the
6 department has issued 132 building permits. The
7 total construction valuation was \$721,000. We
8 collected right at \$12,000 in permit fees. We
9 issued licenses for two new businesses. We also
10 issued six renewals. Certificates of occupancy,
11 there were 11 issued. And that's the report.

12 CHAIRMAN DELLENGER:

13 Of those certificates of occupancy, were
14 any of those for short-term rentals?

15 MR. CREEL:

16 None.

17 CHAIRMAN DELLENGER:

18 Okay.

19 We have one continued public hearing
20 today, which is Case Number 26-034-PC, City of
21 Biloxi, which was a text amendment to update the
22 LDO, specifically Article 23-2(G)&(I), 23-6-4,
23 23-10, Table 23-2-3(F)(1), 23-2-3(F)(4) as it
24 relates to the Tree Committee, tree permit, tree
25 protection and definitions.

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1 that. It gives the Mayor that authority. That
2 language is already in the ordinance for the
3 Planning Commission and AHRC, so we're just adding
4 that to the Tree Committee.

5 Another thing is making sure that we
6 announce the meetings on -- the Tree Committee
7 meetings will be held on the first Wednesday of
8 every month and that there will be public notice
9 given on that.

10 There are several places in here where
11 the ordinance just refers to the city arborist
12 doing this or doing that. We have added the
13 director's position to that in the event that we
14 do not have an arborist that there is someone
15 there to make those decisions.

16 There was some concern that this was
17 giving too much authority to the Director of
18 Community Development, but like I told y'all last
19 week, it's the Director who authorizes the permit
20 to be issued, not the arborist. The arborist
21 basically makes a recommendation to the Director,
22 but the Director is the one that makes the
23 decision about whether the permit is or is not
24 issued. So just because of that addition to the
25 language does not give me any additional

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1 I know we've talked about this and met
2 about it. Jerry, do you want to give us a brief
3 overview on that?

4 MR. CREEL:

5 Yes, sir. We did speak in depth about
6 this at the workshop last week. I'll be happy to
7 answer any questions you have about it, but if
8 you'll recall, the main thing that we're trying to
9 do is to correct a lot of conflicting language
10 that was in here, also to provide more definition
11 to some of the issues that had not been clearly
12 defined.

13 There was some typographical errors in
14 here. Some things like that. I'm not going to
15 get into all that, but the main things, I think,
16 that came out of this -- these revisions is the
17 fact that we are making it consistent -- the
18 ordinance consistent with the Planning Commission
19 and the AHRC, in that we are putting in a place
20 for -- that requires the members to attend at
21 least 50 percent of the meetings. And then giving
22 the Mayor approval -- giving the Mayor the
23 authorization to remove someone who does not make
24 the attendance or who is what we consider unfit,
25 maleficence, conflict of interest, something like

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1 authority.

2 Let's see.

3 CHAIRMAN DELLENGER:

4 And that's in lieu of a city arborist or
5 an arborist not being able to hear that, correct,
6 or see that?

7 MR. CREEL:

8 In other words, if we're in a position
9 like we are right now where the city arborist
10 makes that decision, an argument can be made,
11 well, since the city arborist didn't make that
12 decision, it can't move forward. So we're adding
13 the Director to some of those places in there so
14 that in the event like now where we don't have
15 one, the Director makes the decision and it moves
16 on from there. That's the reason that that's been
17 added.

18 One of the other things that we added,
19 too, is the exception for single-family
20 residential properties. If a single-family
21 homeowner comes in and is wanting to remove trees
22 for whatever reason, be it that their insurance
23 company has directed them to remove the trees for
24 insurance purposes or whatever, that they're not
25 required to come for a public hearing for that.

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Commercial properties will continue to be held to that standard where it's five or more protected trees. They have to come in for a public hearing, but single-family residential homeowners will be exempt.

We've clarified the application process. We've made sure that we're putting in the requirement where a tree survey, a landscape plan, mitigation plan are required as part of a commercial development coming forward.

We made a change in here to make sure that the Director or the city arborist gives a report at each Tree Committee meeting to the members about any trees that were removed or any from the previous month. The language had indicated -- almost seemed to indicate that the arborist was supposed to communicate with all the Tree Committee members before any permit was issued, and that was never the intent.

So what this does is put the requirement in there that at the meeting of the beginning of the month, we hand out a report -- and we're doing this already -- to all the Tree Committee members showing them the trees that were removed for the previous month.

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to make sure that in the definitions section that we removed unprotected trees that are 16 inches or more out of the definitions underneath protected trees.

The argument was, is that because in the definitions section it showed that an unprotected tree that grew to more than 16 inches in diameter now becomes a protected tree. And that was never the intent of the ordinance, so we're removing that language from there.

A protected tree is any cypress -- bald cypress, southern magnolia or live oak that is eight inches or more in diameter and those are the only trees that you have to mitigate for. Permits are required for unprotected trees that are over 16 inches in diameter, and those trees that are unprotected, 16 inches or more, do have to show up on a tree survey for a commercial project, but the developer is not required to mitigate for those, nor are they counted as part of the five protected trees that trigger the public hearing.

One other thing that we wanted to make clear, because we run into this a good bit, is that there was -- whenever we've had tree hearings or tree questions in the past, there was always a

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Let's see. A lot of it was mainly just more clarification on things where there were questions. We did make some changes or made some additions in the definitions section.

The definition -- well, let me back up just a little bit before I get to that. One of the main things that kind of initiated what we're talking about is that there was some concern by Planning Commission members, City Council members that if you took out one major tree, regardless of the size, that you only had to replace it with two trees that were two inches and 54 inches above ground level. And so the feeling was, is that the larger the tree, the more replacement trees or mitigation trees needed to be provided.

So if you look at the table that's on the board up there -- and this is in your packet -- it shows the -- if the diameter -- the diameter is on the left-hand side of that table. Then the number of replacement trees is on the right-hand side. And it starts at four mitigation trees for any tree -- any protected tree that's between nine and 14 inches in diameter and it goes up from there.

One of the other things that we did is

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question that came up about who could file an appeal of that decision and our ordinance already had a definition in it of what an aggrieved person is. And the definition states -- I'll read it because we want to get this on the record. An aggrieved party is a person with a "legally recognized interest, i.e. a fee simple ownership, and standing to appeal that is injuriously affected by a decision from any decision-making body of the City, including any officer or agent of the City."

What we've had in the past is we've had people from one side of town file an appeal about something that happened on the other side of the town where they have absolutely no ownership interest or fee simple interest in anything that's going on. What this would do is eliminate a lot of those appeal applications that we've accepted in the past. And, again, this definition of an aggrieved person has been in our LDO since the LDO was adopted in 2010, so we wanted to make that clear.

So without going into all the detail that we went into last week, this is what we're presenting. It was put together by a committee

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made up of Tree Committee members, Planning Commission members and some other people that were willing to participate that all contributed to the discussion and we spent weeks going over this to make sure that we tried to make it as user friendly and as common sense as possible. We're hoping this will be a document that we'll be able to just hand to a developer and say, here's what you will need to follow and it's easy to understand and we'll go with that.

So I'll stop and answer any questions y'all might have.

CHAIRMAN DELLENGER:

Mr. Delahousey.

MR. DELAHOUSEY:

If it's okay -- we have some members of the Tree Committee here. And, Mr. Chairman, if it's okay, I would like to ask Susan Peterson if she can give -- as long as she speaks loud enough, is it okay if she speaks from her seat over here?

CHAIRMAN DELLENGER:

I'm okay with that. Melissa?

MR. DELAHOUSEY:

Susan, would you tell us your opinion, what you think about -- these are some pretty

tired of raking leaves underneath that 60-inch live oak tree, how do we handle that?

MR. CREEL:

Well, I'll just repeat to you what's been repeated to us several times and it's been a decision that's made in court. Those trees actually belong to that property owner. And if he's insistent on taking them down, he has the legal right to take those trees down.

We don't mitigate -- if this is passed, we do not mitigate on single-family residential property. But, typically, what I would do is go out and look at the trees or have an inspector go look at the trees and if it's something where there's a question about the health of the trees or whatever, we get our consulting arborist to go out there and look at it.

But at the end of the day, the decision falls on that property owner and we've actually had that happen before where people have come in and said, I'm tired of raking leaves and I want this tree to go down and so --

MR. STANOVICH:

We require them to get a tree permit. That's it, right?

substantial changes.

MS. PETERSON:

I think we made the correct changes. We've updated it. We've made it easier for developers and for homeowners to understand what the tree rules are. And we upped the mitigation, which is what the Planning Commission and the Tree Committee wanted all along so that when you take out a bigger tree, you're going to owe more trees depending on the size of the tree. And it goes up significantly depending on the size of the tree.

So I think we've kind of come up with a great balance between the city development and the trees for the City of Biloxi.

MR. DELAHOUSEY:

Thank you.

CHAIRMAN DELLENGER:

Thank you.

Does anybody have questions for Jerry?

MR. STANOVICH:

Jerry, I've got a question.

On the single-family residential, I don't know if it has changed or not. Let's say a guy comes in, obviously, he's not a tree hugger and has nothing to do with insurance and he's just

MR. CREEL:

If it's one of trees that requires a permit. If it's a pine tree or something like, pine tree, palm tree, popcorn tree, those don't require permits. But if it's one of the trees, protected or unprotected, yes, they would have to get a permit to take it down.

CHAIRMAN DELLENGER:

Any more questions for Jerry?

(No response.)

CHAIRMAN DELLENGER:

Okay. Is there anyone in the audience to speak in favor? Is there anyone in the audience to speak in favor?

(No response.)

CHAIRMAN DELLENGER:

Okay. Is there anyone in the audience to speak in opposition?

UNIDENTIFIED SPEAKER:

Are we allowed to comment?

MR. CREEL:

That's what he is asking right now. Is there anyone to speak in opposition to the changes in the ordinance?

MR. TUCEI:

Oh, no. I was going to say this is a great -- Susan did a great job. I've already read this. I've read this, and she has done a great job for y'all, the City.

You know me, Tucei. I'm the guy measuring all the trees all over Southern Mississippi, measured more live oaks than anybody in the South. This is a great step in the right direction. Thank you, Susan and all you guys. I hope you adopt this.

CHAIRMAN DELLENGER:

Is there anyone to speak in opposition in the audience?

There being no one speaking in opposition, we'll consider that hearing closed.

MR. TODARO:

I move that we approve -- the amendments be approved.

MR. PARKER:

Second.

CHAIRMAN DELLENGER:

Moved by Mr. Todaro to approve the amendments; second by Mr. Parker.

Any discussion?

There being no further discussion,

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old business to bring before the Commission?

(No response.)

CHAIRMAN DELLENGER:

Is there any new business?

(No response.)

CHAIRMAN DELLENGER:

Are there any citizens' comments?

Okay. There being no citizens' comments, the next regularly scheduled Planning Commission meeting will be held here at 2:00 p.m., Thursday, July 16th.

And for the Planning Commission, we are adjourned.

(Adjourned at 2:22 p.m.)

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please vote by raising your hand.

Mr. Lechner, Mr. Parker, Mr. Todaro, Ms. Shaw, Mr. Stanovich, Mr. Bogard, Mr. Collier, Mr. Delahousey, Dr. Drawdy, Mr. Carron, Mr. King, Mr. Snow, Mr. Poulos; and myself, Mr. Dellenger. Let the record show that's unanimous.

There are no new public hearings today.

There are no tree hearings.

Jerry, do we have any City Council action to report on?

MR. CREEL:

We had one item at the meeting held on June 23rd. The City Council voted to pass the conditional use approval for auto sales/rental sales for the property located at 1899 Pass Road. If you'll recall, that was the former Classy Chassis to allow him to rent U-Haul vehicles there.

And I will tell you that we sent the inspector out there to inspect it and he has done everything that the Planning Commission asked him to do, so that's all.

CHAIRMAN DELLENGER:

Thank you.

Is there any old business? Is there any

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CERTIFICATE OF COURT REPORTER

I, MELISSA BURDINE-RODOLFICH, Court Reporter and Notary Public, in and for the County of Harrison, State of Mississippi, hereby certify that the foregoing pages, and including this page, contain a true and correct copy of my stenotype notes and/or electronic tape recording of the public hearing(s), as taken by me at the time and place heretofore stated, to the best of my skill and ability.

I further certify that I am not in the employ of, or related to, any counsel or party in this matter, and have no interest, monetary or otherwise, in the final outcome of the proceedings.

Witness my signature and seal, this the 16th day of July, 2026.



Melissa Burdine-Rodolfich
My Commission Expires 4/03/28

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