

ORDINANCE NO. 1444

**AN ORDINANCE TO PROVIDE FOR THE PUBLIC HEALTH,
SAFETY, WELFARE AND AESTHETIC BEAUTY OF THE
CITY OF FAIRHOPE, ALABAMA KNOWN AS THE TREE
ORDINANCE WHICH REPLACES AND REPEALS ORDINANCE
NO. 1193, ORDINANCE NO. 1223, AND ORDINANCE NO. 1351**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE,
ALABAMA, as follows:**

Chapter 20.5. TREES AND LANDSCAPING

Sec. 20.5-1. Statement of Purpose.

The purpose of this ordinance is to define landscaping regulations and protocols for the City of Fairhope. These requirements are for the purpose of protecting existing vegetation and encouraging the planting and maintenance of additional vegetation within the Police Jurisdiction of the City of Fairhope. Plants, particularly trees, benefit the city and its residents by supplying oxygen and absorbing carbon dioxide, by reducing soil erosion and storm water runoff, glare from vehicles, wind, heat, noise and other offensive conditions. Landscaping screens and buffers maintain and enhance the character of neighborhoods and generally create a safer, more attractive and more pleasant living and working environment for all residents of the City of Fairhope.

Sec. 20.5-2. Duties of the Fairhope Tree Committee.

The Fairhope Tree Committee was established with the following duties:

- Determine and make recommendation to the mayor and council on the needs of the municipality in connection with its tree planting program;
- Recommend the type and kind of trees to be planted upon municipal streets, parks and other public places within the municipality;
- Assist the mayor and council in the dissemination of news and information regarding the protection, maintenance, removal and planting of trees on public property;
- Meet with the city planning commission and give advice in the formulation of said plan;
- Recommend to the mayor and council which trees are considered unwanted weed species and identify and recommend removal of dead, dying, diseased or insect infested trees;
- Examine trees proposed to be removed or destroyed upon private property, except on single family lots;
- Make studies and report to the mayor and council with recommendations on matters concerning trees in the municipality as from time to time requested by the mayor and council.

- 1) **Membership.** The city council, shall appoint on this committee one (1) member of the council. The City Horticulturist and the mayor shall serve as advisory members. In addition, the council shall appoint, eight (8) additional persons in the City of Fairhope; two of which shall be appointed for a one-year term, two (2) of which shall be appointed for two-year terms, and four (4) which shall be appointed for three-year terms. Following the initial appointment, all members shall be appointed to serve for a period of three (3) years and thereafter until their successors are appointed and qualified.
- 2) **Vacancies.** Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment.
- 3) **Meetings.** The tree committee shall meet at least quarterly or more often as may be necessary to fulfill this ordinance. In addition, meetings may be called by the mayor, by the one (1) council member, the chair or vice chair, or by three (3) of the eight (8) other members, after giving not less than five (5) business days notice of the date, time and place of the special meeting.

- 4) ***Duties.*** The duties and powers of the Fairhope Tree Committee are as follows:
- Make recommendations to the mayor and council on the city's tree and planting protection programs.
 - Provide public forums and educational outreach programs concerning city development and landscaping.
 - At the request of the city horticulturist, review site development plans and advise the city horticulturist regarding tree protection and landscaping prior to site clearing of any kind.
 - At the request of the City Horticulturist and the Planning and Building Director, review applications for tree pruning or removal permits on public property.
 - Suggest amendments and improvements to this chapter when deemed necessary.
- 5) ***Rules of Procedure.*** The Fairhope Tree Committee shall observe the following procedures:
- Decisions of the Fairhope Tree Committee will be based on a majority approval of five (5) of the eight (8) appointed members.
 - The Fairhope Tree Committee shall elect one (1) of its members as chairman and one member as vice chairman. Each shall serve for one (1) year or until he/she is re-elected or his/her successor is elected.
 - All meetings of the Fairhope Tree Committee shall be open to the public.
 - The Fairhope Tree Committee shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be filed immediately in the office of the city clerk and shall be public record.

Sec. 20.5-3 Planning Submission Steps for Approval

- 1) ***Submission of a Landscape Plan.*** A landscape plan must be submitted for review and acceptance by the City horticulturist and the Planning and Building Director. A landscape site plan shall consist of the following:
- 1) An inventory of all live trees greater than twenty (20) inches in diameter at breast height (DBH) on a site shall be included in the site plan submitted to the City Horticulturist and the Planning and Building Director so that the developer may be advised on tree protection prior to site clearing or development. Such trees will hereinafter be referred to as "Heritage trees".
 - 2) A landscape plan. Landscape plans must comply with the General Landscape Requirements in Section 20.5.4 of this document. It is required that landscape plans be drawn by a licensed landscape architect or a state certified landscape designer. The landscape plan must be in printed and electronic form and shall include:
 - i. Date, scale, north arrow, title, and names and contact information for property owner(s), developer and landscape designer.
 - Location of existing boundary lines; dimensions of building site; location of existing water courses; significant drainage features; existing and proposed streets or alleys; existing or proposed utility easements on or adjacent to the building site; road rights-of-way; required setbacks;
 - location of proposed parking spaces; location of existing or proposed sidewalks.
 - The locations, species and DBH of existing, Heritage trees indicating those to be retained for credit and those to be removed, along with written justification for removal of and any Heritage trees. Common name and botanical name must both be included. The Heritage tree canopies must be shown to full dimension and scale.

- The location(s) and dimension(s) of the proposed landscape area including descriptions and locations of new trees and plant materials to be placed within landscape area(s).
- A tree protection plan, using written and graphic information, to show how the applicant proposes to prevent damage to existing trees and other vegetation to be retained for credit. The plan also shall indicate measures to protect all trees, shrubs, and other landscape vegetation on adjacent public or private land that may be affected by the applicant's construction. Minimum requirements for such protection are described in section 20.5.6. This plan also shall indicate which, if any, Heritage trees (see section 20.5.13) must be pruned and specify the proposed extent of such pruning.
- Statistics verifying that the minimum landscaping percentages set forth under this ordinance are met.
- Location, type and design of any proposed irrigation system(s).
- Location and species of all existing buffer zone vegetation.
- Locations, species, and sizes of all trees, shrubs, and other landscape vegetation (native and/or exotic), on public rights-of-way adjacent to the development.

2) ***Staff Review of the Landscape Plan.***

The City Horticulturist and the Planning and Building Director will review the full landscape plan as certified by the landscape architect/designer. If deficiencies are found, the landscape architect/designer will be required to revise the plan. In cases of plan denial, a written explanation must be given by the City Horticulturist and the Planning and Building Director. A revised plan may be resubmitted for evaluation and shall be reviewed according to the same procedures as the initial submission.

The City Horticulturist and the Planning and Building Director will normally have a period of seven (7) days to review the site plan and reply to the developer in writing. If more than seven (7) days is required, the City Horticulturist and the Planning and Building Director shall notify the developer in writing and specify a definite period for completing the review.

The City Horticulturist, only, is empowered to make decisions regarding tree removal and pruning. Appeal of any decision the City Horticulturist makes is to the City of Fairhope Municipal Court.

The City Horticulturist and the Planning and Building Director are empowered to consult with a Certified Arborist on large and complex site plans. If the City Horticulturist and the Planning and Building Director deems necessary the developer may be required to present a tree protection plan from a Certified Arborist.

3) ***Presentation Of Staff Approved Landscape Site Plan to the Fairhope Planning Commission.***

When every requirement of Section 20.5.3 is met the developer may present his plan to the Fairhope Planning Commission.

4) ***Post-Approval Requirements***

- 1) A building permit will not be issued unless accompanied by a Landscape Plan that has been approved by the City Horticulturist and the Planning and Building Director. [See Section 20.5-3(2)]

- 2) If proposed construction changes cause alteration in the landscape plan, a revised plan must be submitted to the City Horticulturist and the Planning and Building Director for reevaluation.
- 3) Once the approved landscape plan has been implemented on the site, the City Horticulturist and the Planning and Building Director must be contacted for an on-site inspection. The City Horticulturist and the Planning and Building Director normally shall have a period of five (5) working days to inspect the property and confirm that the landscape plan has been implemented properly. If more than five (5) days is required, the City Horticulturist and the Planning and Building Director shall notify the developer in writing of a specific date for completing the re-inspection. It will be the owner's responsibility to maintain and promote the growth to maturity of the landscape material. It will be the responsibility of the owner to notify landscape maintenance firms of those expectations.
- 4) Once the on-site approval has been completed, the property owner will be notified in writing and may apply for final plat approval or an occupancy permit.
- 5) An occupancy permit will not be issued until the submitted and approved landscape plan has been implemented.

20.5-4 General Landscape Requirements.

- 1) ***Applicability.*** All rules, regulations, and requirements set forth in this section are applicable to the following:
 - Any new development or construction, except single family residences and development or construction in the Central Business District (without off-street parking) that falls within the Police Jurisdiction of the City of Fairhope. This includes all public use buildings (i.e. churches, clubs, etc.) as well as city and private property.
 - Any alteration to an existing building or development, excluding single family residences, or construction which changes the amount of gross floor area of a structure or building on a lot by more than thirty (30) percent. The property which undergoes such an alteration shall be required to come into complete compliance with this chapter at that time. This includes all public use and buildings as well as city and private property.
 - Maintenance of plantings established previously under then-existing Fairhope Ordinances shall be continued as required in section 20.5-4.12 e & f of this chapter.
- 2) ***Protection of Existing Trees.*** During development of a site, every effort must be made to protect and retain Heritage trees (see section 20.5-6. Tree Protection Requirements). Retained trees will be credited toward fulfillment of this chapter (see below). If the City Horticulturist determines that alternatives to tree removal exist, the landscape plan will be rejected.
- 3) ***Landscape Percentage Requirements.***
 - On any building site for which an application for a building permit is made, at least twenty (20) percent of the total property (not including right-of-way) shall be landscaped.
 - At least sixty (60) percent of this landscaping percentage requirement shall be located between the building walls and public right-of-ways.
- 4) ***Required Landscaping Adjacent to Public Right-of-Way.***
 - Front perimeter-except at permitted access ways, all interior development and vehicular use areas shall be separated from public right-of-way frontage by a landscaped strip of land at least ten (10) feet in width, adjacent and parallel to the right-of-way line.

- Secondary perimeter-except at permitted access ways, all interior development and vehicular use area located at intersections of the public right-of-way shall be separated by a landscaped strip at least six (6) feet in width and parallel to the right-of-way line.
 - Land occupied by curbs and sidewalks shall not count toward required landscape areas. Vehicles shall not overhang more than two (2) feet onto landscaped areas.
 - The required landscape area between vehicle use area and public right-of-way shall be planted with a solid unbroken visual screen at least forty-eight (48) inches in height at planting, except for four (4) feet each side of permitted access ways. Where non-living material is used for screen, one shrub or vine at least thirty (30) inches in height at planting shall be required on the right-of-way side, for each ten (10) linear feet, or fraction thereof, of screen.
- 5) ***Perimeter Landscaping.*** The front setback must contain at least one (1) required overstory tree for every thirty (30) feet of road frontage, or any portion thereof. These frontage trees must be planted within the first twenty-five (25) feet of the property line. In addition, the site must contain one (1) required overstory tree for every thirty (30) feet of remaining outside lot perimeter, or any portion thereof and one (1) required overstory or understory tree for every twelve (12) parking spaces, or portion thereof. At least half of the required trees must be overstory trees. Trees may be chosen from section 20.5.13 (overstory) or section 20.5.14 (understory). Other tree species may be used if approved by the City Horticulturist.
- 6) ***Interior Landscaping Requirements.*** Where accommodations are provided for parking of fifty (50) or more vehicles, interior landscape areas shall be provided, so located as to break the expanse of pavement and to guide traffic flow. The total area provided for interior landscaping shall be at least ten (10) percent of the total paved area for parking and access. Trees, shrubs, grass and other ground cover shall be planted in the same ratio as required in perimeter landscaping.
- 1) In addition to the foregoing, for parking lots designed to accommodate large volumes of parking such as shopping centers, the following requirements shall apply:
 - 2) A continuous landscape strip of at least seven (7) feet in width at every fourth parking row, with solid protective curbing. Vehicles shall not overhang more than two (2) feet into landscaped areas.
 - 3) No more than twelve (12) continuous parking spaces shall occur without an intervening planting strip at least seven (7) feet wide located adjacent and parallel to the parking spaces.
 - 4) At least one (1) tree (of species listed in section 20.5.13 or 20.5.14) is required for every twelve (12) parking spaces within the parking lot.
 - 5) Where fifty (50) or more vehicles are to be accommodated, solid, raised curbs shall be installed for protection of landscaped areas and to control traffic flow within the parking lot. Openings may be provided as required for pedestrian walks and passages. Alternative designs to aid storm water management (such as rain gardens) may be approved by the City Horticulturist and the Planning and Building Director.
 - 6) To allow flexibility in tree preservation and landscape development and encourage innovative design, the City Horticulturist may approve alternative proposals. Such proposals must provide for landscaping at least ten (10) percent of the total paved area for parking and access.
- 7) ***To Promote Species Richness.*** A minimum of four (4) different tree species is required on each site; at least one (1) species must be an overstory tree.
- 8) ***No Bare Ground Shall be Left Exposed.*** Plant materials, grass, or other approved ground cover or mulch shall cover all non-paved and non-built developed areas. At least fifty (50) percent of such cover must be living vegetation.

- 9) ***Cross-Visibility.*** At the corner of each side of permitted points of access from public right-of-way, or at corners of intersecting streets, landscaping shall be so planted and maintained as to provide unobstructed visibility between the heights of two and one-half (2 1/2) feet and ten (10) feet within an area defined by constructing lines parallel to and twenty-five (25) feet from the point of intersection of curb lines projected.
- 10) ***Vehicular Use Areas.*** Vehicular use areas and areas not occupied by development, located adjacent to side or rear property lines, shall be separated from adjacent property by a strip of land at least five (5) feet in width, adjacent and parallel to the lot line. This strip shall be landscaped and graded to receive rainfall run-off. Surface water run-off shall not be permitted to pass onto adjacent property.

11) ***Buffer Zone Landscaping.***

- Incompatible land use buffers. On any commercial, industrial, planned unit development (PUD) (as approved by the city council) or multi-family development (except duplexes) adjacent to or abutting a residential zoning district, a buffer strip along the incompatible property line(s) of the developing property is required. The buffer shall run the entire length of the abutting lot line(s) and be at least ten (10) feet wide. Under no circumstances shall this buffer impair vehicular flow. The type of buffer may consist of any or all of the following:
- An opaque fence not less than eight (8) feet in height, with horizontal or vertical openings not greater than three (3) inches per one (1) linear foot and a four-foot wide strip of Evergreen Plantings (section 20.5.15) which will grow to at least six (6) feet in height within three (3) full growing seasons on the inside of the fence, or;
- A staggered double row of Evergreen plantings at least six (6) feet in width, and at least six (6) feet in height at the time of planting. Plants shall be spaced in a manner to provide a nearly impervious visual barrier. At no time should the plants be pruned to a height below six (6) feet.
- Natural undisturbed forest, which provides a nearly impervious visual barrier due to the dense nature of the plants and/or trees. If this option is chosen, the width of the buffer zone must be increased to twenty (20) feet in width. The only permitted removals within this buffer will be exotic invasive plants such as those listed in the appendix.
- Parking lot buffer zones. Paving shall not be placed closer than ten (10) feet to any property line. The property line shall be buffered with a landscaped strip of at least ten (10) feet in width. Many properties in the CBD are exempt from this requirement, due to zero lot line development provisions in the Zoning Ordinance. Whenever an applicant for a building permit in the CBD chooses not to build a parking lot up to a property line a buffer shall be installed. The City Horticulturist and the Planning and Building Director shall review and approve all parking lot buffer areas in the CBD
- Screening of storm water detention/retention areas. Storm water detention/retention areas are hereby declared to be incompatible uses and shall be screened from direct view from all abutting properties by installation and maintenance of living plants not less than those required in 20.5.4.11.a & b., thirty-six (36) inches in height at the time of planting, to achieve a height of not less than six (6) feet in three (3) years after planting. Outer slopes of detention shall not be steeper than four (4) feet horizontal to one (1) foot vertical. Where water depth and time of detention is sufficient to require safety fencing, such fencing shall be installed behind required screening, on the pond side. The City Horticulturist and the Planning and Building Director may waive all or part of this requirement for detention areas that are shallow (less than two (2) feet deep) and maintained in permanent living grass cover. The City of Fairhope promotes the use of bio-retention ponds for water detention/retention areas. Requirements for fencing and screening are waived for qualified bio-retention areas approved by the City Horticulturist and the Planning and Building Director.

12) **Planting Requirements.** Any trees planted to meet this ordinance must meet the American Standards for Nursery Stock and the following requirements:

- Overstory trees must have an initial caliper diameter of at least two (2.0) inches and must be at least ten (10) feet in height.
- Understory trees must have an initial caliper diameter of at least one and half (1.5) inches and be at least eight (8) feet in height.
- Multi-stemmed understory trees must be a minimum of eight (8) feet in height and must have at least three (3) stems; each with a minimum caliper diameter of three-fourths (3/4) inches. A multi-stemmed tree only counts as one tree credit.
- Trees must be obtained from a reputable source. Trees that have been dug in the wild will not be accepted.
- Maintenance of new plantings is the responsibility of the property owner. There will be two (2) required conformance reviews to confirm the establishment of the landscape. The first will be in six (6) months and the second in twelve (12) months. Any failures of the landscape must be replaced by a specified date determined by the City Horticulturist.
- Any vegetation planted or retained to fulfill this ordinance, which dies, becomes damaged or diseased, must be replaced by the property owner. The property owner must notify the City Horticulturist when the replacement has been scheduled and planted. Failure to replace trees that die will result in penalties (see section 20.5.9).

13) **Tree Credits.** A major goal of this ordinance is to protect existing trees. Therefore, incentives are offered to retain existing natural vegetation as follows:

- Credit can be taken for a tree if the tree is in good, vigorous, healthy condition. Tree credits may be used towards landscape requirements. However, the front setback must contain one overstory tree for every thirty (30) feet of road frontage, regardless of credited trees. A tree must be at least eight (8) inches DBH (Diameter at Breast Height—4.5 feet above the grade) to be credited. To determine the number of tree credits allowed, divide the DBH of the preserved tree by eight (8) and round downward, not to exceed seven (7) credited trees for any one preserved. Trees listed in section 20.5.14 will not receive credit towards fulfilling this chapter.

Lands Adjacent to the Following Roads: U.S. Highway 98, Alabama Highway 104, North Section Street (Excluding any properties within the Central Business District), South Section Street (excluding properties within the Central Business District), South Mobile Street, Parker Road, Volanta Avenue, Gayfer Road, Gayfer Road Extension, Fairhope Avenue, Morphy Avenue, Nichols Avenue, Middle Street, Twin Beech Road and County Road 32.

All lands within twenty (20) feet of the boundaries of U.S. Highway 98, Alabama Highway 104, North Section Street (Excluding any properties within the Central Business District), South Section Street (excluding properties within the Central Business District), South Mobile Street, Parker Road, Volanta Avenue, Gayfer Road, Gayfer Road Extension, Fairhope Avenue, Morphy Avenue, Nichols Avenue, Middle Street, Twin Beech Road and County Road 32 within the corporate limits of the City of Fairhope, in all zoning districts, are hereby required to be reserved by owners or developers of such land as greenspace and tree protection zones, such lands being required to conform to all applicable provisions of this chapter. Provided, however, that the greenspace shall be landscaped as follows:

- Where no vegetation, other than grass exists, new landscaping and plantings shall be installed within the 20-foot strip as approved by the City Horticulturist; otherwise the following shall apply:
- For front facing structures, the reserved area may be:
- Left in its natural state;
- Natural growth retained, but enhanced with addition of trees and shrubs;

Sec. 20.5-5. Special Provisions for City Properties and Utility Rights of Way.

- 1) **City Right-of-Way.** The City Horticulturist shall have the right to plant, prune, maintain and remove trees, plants, and shrubs within the city rights-of-way and all other public property as may be necessary to insure public health, safety and welfare or to preserve or enhance the beauty and symmetry of such public grounds.
- 2) **City Owned Property.** Development of any city owned property must adhere to this chapter.
- 3) **Unlawful Removal.** It shall be unlawful to remove, prune, or otherwise damage any tree on public property or the right-of-way without written approval from the City Horticulturist.
- 4) **Contractor Requirements.** All work on city property covered under this ordinance must be performed by a licensed, bonded, and insured contractor under the direct supervision of a certified arborist.
- 5) **Permits.** Public utilities that perform routine tree maintenance operations must apply for an annual permit.
- 6) **Standards.** All routine pruning of trees on city owned property and city maintained utility easements must conform to standards set forth by the International Society of Arboriculture and the National Arborist Association. Routine pruning shall be based on a maximum three-year rotation.
- 7) **Permitted Removals.** The City Horticulturist may grant permission for the removal of trees on city-owned property when removal is in the public interest or when the City Horticulturist deems it possible to make reasonable mitigation that will maintain the city's landscapes. Restitution may include planting trees on city property at any location the horticulturist designates or providing replacement funding to be used solely for tree planting within the city. Expenditure of such funds will be under the direction of the city council and administered by the City Treasurer. (see section 20.5-7).
- 8) **State of Emergency.** In the event of a State of Emergency being declared, permits will not be required for emergency pruning or removal of hazardous trees as long as the work is supervised by a Certified Arborist and the process is well documented with digital photographs.

Sec. 20.5-6 Tree Protection Requirements.

The following requirements apply to all properties inside the central business district regardless of use. Outside the central business district, these requirements apply to all properties, regardless of use, except properties zoned R-A, R-1, R-1a, R-1b, R-1c, R-2, R-3 and R-3 PGH. Please see section 20.5-18 (Appendix A - Managing Trees During Construction).

- 1) A "**Heritage Tree**" is defined as any living tree (overstory or understory) with a stem diameter that exceeds twenty (20.0) inches. Such diameter will be measured at four and one-half (4 1/2) feet above ground level in the case of single-stem trees or as the sum of stem diameters at four and one-half (4 1/2) feet above the ground level in the case of multi-stemmed trees. Heritage trees are protected under this ordinance and cannot be cut, pruned or otherwise intentionally harmed without express written permission of the City Horticulturist.
- 2) Any person wishing to remove or relocate a Heritage tree shall, under the provisions of this section, make written application with the City Horticulturist. The application shall include a landscape plan (as defined above). The City Horticulturist must approve or deny the permit within fourteen (14) working days after receipt of the application.
- 3) All tree removal will be at the property owner's expense except for (1) trees on the city right-of-way which are diseased, injured, in danger of falling close to existing structures, or which create unsafe vision clearance, the removal of which shall be funded by the city; or (2) trees beneath utility lines which threaten to damage the utility line, the removal of which is the duty of the utility company.

- 4) *Criteria for issuance of a tree removal permit:*
 - (a) The tree is located in an area where a structure or improvement will be placed according to an approved plan.
 - (b) The tree is diseased or injured, in danger of falling to close to an existing or proposed structure(s), interferes with existing utility service, creates unsafe vision clearance or conflicts with other ordinances or regulations.
 - (c) The tree is, or will be after construction, in violation of federal, state, or local laws, including but not limited to laws and regulations pertaining to government programs for financing the construction.
 - (d) A permit may be denied if the tree is considered vital to the natural heritage of the City of Fairhope and/or the City Horticulturist determines that reasonable alternatives to cutting the tree exist.
- 5) Development on parcels shall comply with the following requirements to protect Heritage trees and other trees that are to be retained for landscape credit on the applicant's parcel:
 - (a) Protective barricades shall be placed around all retained trees, to create a protective radius, and shall remain in place until land alteration, site clearing, and construction activities are complete. Barricades for the protective radius shall be erected with a minimum distance of twenty (20) feet from the trunks of Heritage trees and ten (10) feet of other retained trees. Barricade shall consist of chain link fencing with signage. No entry, storage, temporary parking, or disturbance will be allowed within the barricade.
 - (b) A minimum distance of twenty (20) feet from all Heritage trees and ten (10) feet from all other retained trees shall be maintained when installing underground utilities. If this results in unreasonable hardship, a soil auger shall be used to tunnel under the tree roots.
 - (c) Installation of protective barriers, fences, posts or walls shall not destroy or irreversibly harm the root systems of protected trees. Footers for walls shall end at the point where large roots are encountered, and the roots shall be bridged. Post holes and trenches located close to retained trees shall be adjusted to avoid damage to major roots.
 - (d) All roots to be removed during site clearing and/or construction shall be severed cleanly at the perimeter of the protected radius.
 - (e) A protective dry well and drainage/aeration system shall be provided where a retained tree would be adversely affected by raising the grade at or beyond the perimeter of the protected radius.
 - (f) A protective retaining wall shall be constructed at or beyond the perimeter of the protective radius where a retained tree would be adversely affected by lowering the grade.
 - (g) Paving base placement within the outside five (5) feet of the protective radius may be approved by the City Horticulturist and the Planning and Building Director, provided that effective pervious material/design is used. Such pervious material must be placed on grade, to reduce root system damage.
 - (h) Structural foundations may be located at a distance of five (5) feet from the trunk of a retained tree, provided an effective pervious area radius is extended proportionally in three (3) other directions to allow a minimum of four hundred (400) square feet of pervious area. Additionally, the guidelines in section 20.5-18 (Appendix A) shall be a part of this ordinance.

Sec. 20.5-7 Nuisance Trees

The City Horticulturist may require landowners, inclusive of single family residences, to prune and remove trees, which may endanger public safety or be likely to endanger other trees through the spread of disease or insect infestation.

Sec. 20.5-8 Exotic Invasive Trees

Those trees listed in 20.5-16 will always be permitted for removal. When removed within any described buffer zones, permitted removal must be performed without disturbing surrounding vegetation and with proper permit.

Sec. 20.5-9 Restitution

All monies collected will be used exclusively to plant new trees within city parks and right of ways.

1) **Fines/Penalties.** Violators of the terms of this ordinance may be cited to municipal court by means of a municipal offense ticket issued by any authorized enforcement officer of the city. Such violators may also be brought before the court on issuance of complaint and arrest summons by any such officer. Upon conviction of any provision herein, a violator shall be subject ten days in the Fairhope City Jail, to pay a fine of up to \$500 and restitution as ordered by the Court. Upon a second or subsequent conviction, the violator shall be subject to a minimum of three days and up to six months in the Fairhope city jail, a fine of up to \$500 and restitution as ordered by the Court. The Municipal Judge shall have the discretion to allow community service in lieu of jail time at the rate of five (5) days community service for every one (1) day of jail time.

2) **Restitution.**

(a) Persons who are convicted of causing intentional injury or harm to any tree on city property or on public rights-of-way will be required to make restitution to the City in an amount to be determined by the Municipal Judge. The Tree Committee recommends restitution in the following amounts:

- \$100.00 for each tree 1.0--1.9 inches DBH
- \$500.00 for each tree 2.0--4.9 inches DBH
- \$1,000.00 for each tree 5.0--9.9 inches DBH
- \$2,000.00 for each tree 10.0--14.9 inches DBH
- \$3,000.00 for each tree 15.0--19.9 inches DBH
- \$10,000.00 for each tree 20.0--29.9 inches DBH
- \$20,000.00 for each tree 30.0 plus inches DBH

(b) When the City Horticulturist gives approval for removals of trees on city property or public right-of-way, the person requesting such approval will be required to make payments to the City as follows:

- \$50.00 for each tree 1--1.9 inches DBH
- \$250.00 for each tree 2.0--4.9 inches DBH
- \$500.00 for each tree 5.0--9.9 inches DBH
- \$1,000.00 for each tree 10.0--14.9 inches DBH
- \$1,500.00 for each tree 15.0--19.9 inches DBH
- \$5,000.00 for each tree 20.0--29.9 inches DBH
- \$10,000.00 for each tree 30.0 plus inches DBH

When only stumps are available for measurement, stump top diameter rather than DBH shall apply.

Any restitution set forth in section 20.5.9. may be reduced or avoided when the City Horticulturist determines that requested tree removal is in the public interest.

The City Horticulturist shall use the higher of the above schedules in estimating restitution or mitigation for the unauthorized removal or intentional degrading of Heritage trees at private development sites.

Sec. 20.5-10 Appeal of Grant or Denial of Permit.

Appeals of either a grant or denial of permits pursuant to this requirement shall be to the City of Fairhope Municipal Court and may be made by the applicant or any officer, department, or board of the city aggrieved by any decision of the City Horticulturist with respect to the administration or enforcement of these requirements. The Fairhope Municipal Court Judge shall have the power to grant permits upon a showing by the applicant of clear and convincing evidence that the applicant will suffer an extreme and extraordinary hardship. The Fairhope Municipal Court Judge shall have the power to deny permits upon a showing of an aggrieved party that tree removal is not in the best interest of the City of Fairhope. A party aggrieved by the decision of the Fairhope Municipal Court may appeal to the Circuit Court of Baldwin County.

Sec. 20.5-11 Interference.

No person shall hinder, prevent, delay or interfere with the City Horticulturist or any other duly authorized individual, while engaged in carrying out the execution or enforcement of this ordinance; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the municipality.

Sec. 20.5-12 Definitions.

Caliper: Diameter of a tree trunk. Caliper is used to determine the minimum size of trees planted to fulfill this chapter. For trees less than four (4) inches in diameter, it is measured six (6) inches above the ground. For trees between four (4) inches and twelve (12) inches in diameter, it is measured twelve (12) inches above the ground.

City Horticulturist: Refers to the official appointed by the city council to enforce the City of Fairhope Tree Protection and Landscape Ordinance.

DBH: Diameter at breast height, or four and one-half (4 1/2) feet above grade. Used to measure all existing trees. In the case of multi-stemmed trees, diameters at breast height will be summed for the purposes of this chapter.

Landscape Plan: Detailed drawings of proposed landscaping.

Overstory Trees: Trees which, at maturity, comprise the canopy of a natural forest. These are generally twenty (20) to forty (40) feet and upwards at mature height.

Public Tree: Any tree located on City of Fairhope property. This includes city right-of-ways.

Required Tree: Any of the trees listed in Section 20.5.13 and 20.5.14, or others as approved by the City Horticulturist and the Planning and Building Director.

Heritage Tree: Any living tree (overstory or understory) with a DBH that equals or exceeds twenty (20.0) inches.

Site Plan: Initial drawings or sketches of a proposed development, which are reviewed by staff; and if required are submitted with recommendations to the Fairhope Planning Commission.

Tree Credits: A means of crediting existing trees for trees that would have to be planted if existing trees could not be saved and protected as stated in this chapter.

Understory Trees: Trees which, at maturity are typically 10-30' in height.

Sec. 20.5-13 Required Overstory Trees

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

TABLE INSET:

Acer barbatum	Southern Red Maple
Betula nigra	River Birch
Carya spp.	Hickory (any species native to coastal Alabama)
Celtis laevigata	Hackberry/Sugarberry
Fagus grandifolia	American Beech
Fraxinus spp.	Ash (any species native to coastal Alabama)
Liquidambar styraciflua	Sweetgum/Redgum
Liriodendron tulipifera	Yellow-poplar/Tulip-poplar
Magnolia grandiflora	Southern Magnolia
Nyssa sylvatica	Blackgum
Quercus spp.	Oak (any arborescent species native to coastal Alabama)
Pinus spp.	Pine (any species native to coastal Alabama)
Taxodium ascendens	Pond cypress
Taxodium distichum	Bald cypress
Ulmus alata	Winged Elm

Sec. 20.5-14 Required Understory Trees

The following species are required for planting within the City of Fairhope. Other species that are recognized as suitable for this area may be used *if approved by the City Horticulturist*. Species native to coastal Alabama (Baldwin, Escambia and Mobile Counties) are preferred in most cases.

TABLE INSET:

Amelanchier aboreum	Downy Serviceberry
Carpinus caroliniana	American Hornbeam
Chamaecyparis thyoides	Atlantic White Cedar
Chionanthus virginicus	Fringe-tree/Graybeard
Crataegus marshallii spp,	Parsley Native Hawthorne
Ginkgo biloba	Ginkgo/Maidenhair Tree (use male plants only)
Halesia caroliniana	Carolina Silverbell
Halesia diptera	Two-wing Silverbell
Ilex spp.	Holly/Ilex (arborescent species native to coastal Alabama)
Juniperus virginiana	Eastern Red cedar
Juniperus silicicola	Southern Red cedar
Lagerstroemia spp.	Crape-myrtle (varieties over fifteen (15) feet tall at maturity)
Magnolia spp.	Magnolia (any species native to coastal Alabama plus arborescent deciduous oriental varieties)
Nyssa ogeche	Ogeeche Gum
Ostrya virginiana	Eastern Hophornbeam
Oxydendrum arboreum	Sourwood
Persea borbonia	Redbay
Styrax americanum	American Snowbell
Ulmus parvifolia	Chinese Elm

Sec. 20.5-15 Required Evergreen Plantings

The following species are required for planting within the City of Fairhope. These species may be used in buffer zone landscaping. Other species that are recognized as suitable for this area may be used *if approved by the City Horticulturist*.

TABLE INSET:

Agarista populifolia	Fetterbush
Camellia spp.	Camellia sasanqua, japonica, and related species.
Cliftonia monophylla	Buckwheat tree/Black Titi
Ilex	Hybrids and species adapted to the Gulf coast
Ilex cassine	Dahoon Holly
Ilex myrtifolia	Myrtle Holly
Illicium floridanum	Florida Anise
Illicium parviflorum	Star Anise
Myrica cerifera	Southern Bayberry/Wax myrtle
Osmanthus americanus	American Olive/Devilwood
Rhododendron spp.	Azalea (large evergreen species/varieties adapted to coastal Alabama)
Viburnum spp.	Viburnum (evergreen species adapted to northern Gulf coast)

Sec. 20.5-16 Plants Not Supported By This Chapter

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

TABLE INSET:

Albizia julibrissin	Mimosa
Ailanthus altissima	Tree of heaven
Cinnamomum camphora	Camphor tree
Ligustrum sinense	Chinese Privet
Melia azedarach	Chinaberry
Pawlonia tomentosa	Princess tree
Triadeca sebifera	Chinese Tallotree/Popcorn Tree

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

Sec. 20.5-17 Required Native Plants for Bio Retention/Detention Use**(1) Plants**

Helianthus angustifolius	Swamp Sunflower
Rudbeckia fulgida	Orange Coneflower
Juncus effuses	Soft Rush
Liatris spicata	Blazing Star
Muhlenbergia capillaris	Hairawn Muhly Grass
Stokesia laevis	Stoke's Aster
Iris virginica	Virginia Iris
Aristida beyrichiana	Wiregrass
Osmunda cinnamomea	Cinnamon Fern
Osmunda regalis	Royal Fern
Thelypteris kunthii	Southern Shield Fern
Sisyrinchium angustifolium	Narrowleaf Blue-eyed Grass
Canna flaccida	Bandanna of the Everglades
Lyonia lucida	Fetterbrush
Leucothoe axillaris	Coastal Doghobble
Myrica cerifera	Wax Myrtle
Ilex vomitoria	Yaupon
Ilex verticillata	Winterberry
Cyrilla racemiflora	Titi

(2) Shrubs

Cliftonia monophylla	Black titi/Buckwheat tree
Rhododendron austrinum	Florida flame Azalea
Halesia dipteral	Two-wing Silverbell
Serenoa repens	Saw Palmetto
Sabal minor	Dwarf Palmetto or Bluestem Palmetto

Sec. 20.5-18 Exhibit A "Best Management Practices - Managing Trees During Construction"

Fite, Kelby and E. Thomas Smiley. "Best Management Practices - Managing Trees During Construction" in ANSI A300 Part 5: Tree, Shrub, and Other Woody Plant Maintenance - Standard Practices (Management of Trees and Shrubs During Site Development, and Construction). (A copy is on file in the City Clerk's office)

Severability. The sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, then such ruling shall not affect any other paragraphs and sections, since the same would have been enacted by the municipality council without the incorporation of any such unconstitutional phrase, clause, sentence, paragraph or section.

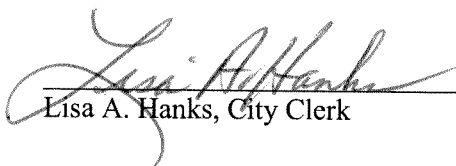
Effective Date. This ordinance shall take effect immediately upon its due adoption and publication as required by law.

ADOPTED THIS 28TH DAY OF FEBRUARY, 2011

Mayor Kant did not sign Ordinance
Timothy Kant, Mayor

ATTEST:

Passed after 10 day waiting period
Per Code of Alabama Section 11-45-4



Lisa A. Hanks, City Clerk