

## ORDINANCE NO. 417-2012

### AN ORDINANCE ESTABLISHING TREE PROTECTION AND LANDSCAPING STANDARDS

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:

#### SECTION 1. Purpose.

The purpose of this Ordinance is to provide minimum standards and procedures for the protection, installation and maintenance of landscape plantings and tree preservation and protection. The intent of such requirements is to improve the overall aesthetic appeal of the community by enhancing the natural environment in order to maintain and increase property values, minimize soil erosion and stormwater runoff, provide adequate screening for noise abatement and to preserve and increase the number and quality of trees within the City as follows:

- Aesthetics:  
Improve the appearance of all areas through the incorporation of open space into development in ways that harmonize, enhance and preserve the natural environment.
- Environmental Quality:  
Improve environmental quality by recognizing the numerous beneficial effects of landscaping and tree preservation upon the environment.
- Land Values:  
Maintain and increase the value of land by requiring landscaping and tree preservation to be incorporated into development.
- Human Values:  
Provide physical and psychological benefits to human beings through the use of landscaping and tree preservation to reduce noise and glare, to break up monotony and soften the harsher aspects of urban development.
- Preservation of Vegetation:  
Preserve existing natural vegetation and incorporation of native plants, plant communities and ecosystems into landscape design, where possible.
- Improved Design:  
Promote innovative and cost-conscious approaches to the design, installation and maintenance of landscaping, encouraging existing tree preservation and water and energy conservation.
- Improved Administration and Enforcement:  
Establish procedures and standards for the administration and enforcement of this Ordinance.

#### SECTION 2. Definitions.

*Caliper*. Diameter of a tree trunk. Caliper determines the minimum size of trees planted to satisfy the terms of this Ordinance. For trees smaller than four (4) inches in diameter, the measurement is made six (6) inches above the ground. For trees from four (4) to twelve (12) inches in diameter, the measurement is made twelve (12) inches above the ground.

*D. B. H. (Diameter at Breast Height)*. Used to measure all existing trees from four and a half (4 .) feet above the grade with a diameter greater than twelve (12) inches.

*Landscape Design Professional*. A registered landscape architect, professional engineer or architect which has the experience required to prepare a landscape plan and make the appropriate certifications in accordance with the provisions of this Ordinance.

*Landscape Plan.* A component of a development plan which includes the following: proposed landscape species, such as number, spacing, size at time of planting and planting details; proposals for protection of existing vegetation during and after construction; proposed treatment of hard and soft surfaces; proposed decorative features; grade changes; buffers and screening devices; and any other information that can reasonably be required in order for an informed decision to be made by the approving authority.

*Overstory Tree.* Trees which, at maturity, comprise the canopy of a natural forest. These trees are generally greater than fifty (50) feet at mature height. See Appendix A for names and types of recommended overstory trees.

*Public/City Tree.* Any tree located on City or public property including City rights-of-way.

*Preservation Tree.* Trees which are native hardwoods (excluding water oaks) with a Diameter at Breast Height of 8 inches or greater and native flowering, understory trees such as Dogwood or Redbud with a D.B.H. of 4 inches or greater.

*Site Plan.* The development plan for one or more lots which includes the following: the existing and proposed conditions of the lot, including topography, vegetation, drainage, flood plains, wetlands and waterways; landscaping and open spaces; irrigation; walkways; means of ingress and egress; circulation; utility services; structures and buildings; signs and lighting; berms and buffers; surrounding development; and any other information that reasonably may be required in order for an informed decision to be made by the approving authority.

*Understory Tree.* Trees which, at maturity, comprise the sub-canopy of a natural forest. These trees are generally under fifty (50) feet at mature height. See Appendix B for names and types of recommended understory trees.

### **SECTION 3. Applicability.**

All rules, regulations and requirements set forth in this Ordinance are applicable to the following:

- (a) Any new development or construction, except single family residences, including, but not limited to, apartments, town homes, condominiums, planned unit developments, subdivisions, businesses, manufactured mobile home parks, commercial and industrial structures.
- (b) Existing landscaping on sites with existing structures or areas suitable for landscaping shall not be reduced below the landscaping requirements established herein. These requirements shall remain with any subsequent owner.

### **SECTION 4. Protection of Existing Trees.**

During development of a site, every effort must be made to protect and retain existing Preservation Trees. Retained trees will be credited toward fulfillment of the requirements of this Ordinance as set forth below. If the Building Official determines that alternatives to tree removal exists, the landscaping plan may be rejected.

### **SECTION 5. Landscape Percentage Requirements.**

(a) On a new building site for which an application for a building permit is made, at least ten (10) percent of the total property (not including right-of-way) shall be landscaped.

(b) In the event the property has frontage on a public street or right-of-way, at least sixty (60) percent of this landscaping percentage requirement shall be located on the building site between the street line and the building wall(s) facing the street.

## **SECTION 6. Perimeter of Landscaping.**

The front setback must contain at least one overstory tree for every thirty (30) feet of road frontage. These frontage trees must be placed within the first twenty-five (25) feet of the property line. In addition, the site must contain one recommended overstory tree for every thirty (30) feet of remaining outside lot perimeter, or any portion thereof, and one recommended overstory or understory tree for every six (6) parking spaces, or portion thereof. At least half of the required trees must be overstory trees. Other tree species may be used if approved by the Building Official. If new trees must be planted to meet the requirements of this Section, they must have a minimum initial diameter of three (3) inches D.B.H., a warranty of at least two (2) years and meet the species specification for Preservation Tree or understory tree under this Ordinance. All such trees shall immediately become Preservation Trees upon planting.

## **SECTION 7. Installation.**

All landscape material shall be installed in a sound and workman like manner and in accordance with the landscape plan, as finally approved.

## **SECTION 8. Maintenance.**

All landscaped areas shall be maintained by the owner of the property at all times. Maintenance shall include the prompt replacement of all dead and damaged landscape material so as to ensure continued compliance with the landscaping requirements of this Ordinance. This applies to right-of-way and median maintenance for developers who elected to take credits toward landscaping requirements. Any subsequent owner of the property whose predecessor in interest took credits for right-of-way and median maintenance must continue to maintain said right-of-way or median in compliance with these landscaping provisions. Any vegetation or trees planted or retained which die, become damaged or diseased must be replaced by the property owner by the beginning of the optimum planting season of the following year.

## **SECTION 9. Irrigation.**

All landscaped areas shall be provided with an adequate water supply through the use of one or more appropriate methods of automatic or manual irrigation. An irrigation plan shall be submitted with the landscape plan.

## **SECTION 10. Site Visibility.**

Landscape materials shall not create an obstruction to visibility at intersections as required by the Zoning Ordinance.

## **SECTION 11. Protection of Landscaped Areas.**

All landscaped areas shall be protected by the use of protective tree grates, concrete curbs, wheel stops, continuance border plants or hedge rows, railroad ties or other suitable barriers to allow sufficient percolation of water and air to the root system of the living landscape material and to protect from damage due to heavy foot traffic or vehicular encroachment.

## **SECTION 12. Tree Credit.**

A major goal of this Ordinance is to protect existing trees. Credit can be taken for a tree if the tree is in good, vigorous and 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 D.B.H. (diameter breast height - 4.5 feet above the grade) to be credited. To determine the number of tree credits allowed, divide the D.B.H. of the preserved tree by eight (8) and round downward, not to exceed seven (7) credited trees for any one preserved. Trees listed in Appendix C may be retained, but will not receive credit towards fulfilling this Ordinance. Credited trees shall be uniformly encircled by a protective ground area of sufficient size to ensure the health of the tree. During any construction on the site, the protected ground area shall be clearly marked in the field. No credit will be allowed for any tree proposed to be retained if there is any encroachment within the protected ground area defined by a circle which has as its

center the trunk of a tree or if the tree is unhealthy or dead. If any preserved tree being used for credit dies or fails to thrive, the owner shall plant new trees equal to the number of credited trees, and the replacement trees will be of the same species or variety as the credited trees lost. In no case shall credits for preserved trees eliminate the requirement that the front setback shall contain a ratio of at least one overstory tree for every thirty (30) feet of road frontage.

### **SECTION 13. Procedure.**

Before a building permit can be issued or preliminary plat approval can be obtained and prior to any clearing of any property for development, a site plan must be reviewed and accepted by the Planning Commission and Building Official. The site plan shall include the following in addition to all other requirements:

(a) An inventory of all live trees with at least 8 inches in D.B.H. on a site shall be included in the sketch plan submitted to the Planning Commission and Building Official so that the developer may be advised on tree protection prior to site plan approval for the development.

(b) A full landscape plan shall be submitted as part of the site plan or preliminary plat and shall be drawn at the same scale and be provided in the same number of copies as the site plan. The landscape plan must be of professional quality and shall include the following:

1. Date, scale, north arrow, title, names and contact information for the property owners, developer and landscape designer.
2. Location of existing boundary line; 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; and location of existing and proposed sidewalks.
3. The locations, species and size of existing, Preservation Trees indicating those to be retained for credit and those to be removed, along with written justification for removal of any Preservation Trees.
4. The locations and dimensions of the proposed landscape area within the parking areas, including descriptions and locations of new trees and plant materials to be placed within landscaped areas. Common name and botanical name must both be included.
5. The location, number, size and name of proposed landscape material.
6. An indication, using written or graphing information, of how the applicant plans to protect from damage, during construction, any existing trees or other vegetation which are proposed to be retained for credit or as required by this Ordinance.
7. Statistics verifying that the minimum landscape percentages set forth in this Ordinance will be met.
8. The proposed irrigation type and design.
9. Location and species of buffer zone vegetation.
10. Certification that the landscape plan has been prepared by one of the following: a registered landscape architect, professional engineer or architect and that it satisfies all purposes, objectives and requirements of this Ordinance.

(c) The Planning Commission will review the full landscape plan as certified by the landscape design professional. If deficiencies are found, the landscape design professional will be required to revise the plan before a building permit will be issued. In cases of permit denial, a written explanation must be given by the Building Official. A revised plan may be resubmitted

for evaluation and shall be reviewed according to the same procedures as the initial submission. In the discretion of the Building Official, minor changes to the Landscape Plan, as determined by the Building Official, may be approved by the Building Official without submission to the Planning Commission.

(d) A building permit will not be issued unless accompanied by a certified landscape plan.

(e) If changes during construction cause changes in the landscape, a revised plan will be submitted to the building official and forwarded to the Planning Commission for re-evaluation.

(f) Once the approved landscape plan has been implemented on the site, the Building Official must be contacted for an onsite inspection. The Building Official normally shall have a period of five (5) days to inspect the property and confirm the landscape plan has been implemented. If more than five (5) days is required, the Building Official shall notify the developer in writing of a specific date for completing the inspection.

(g) Once onsite approval has been completed, the property owner will be notified in writing and may apply for final plat approval or an occupancy permit.

(h) An occupancy permit will not be issued until the submitted and approved landscape plan has been implemented.

(i) The Mayor or the Building Official may designate a city official to act for the Building Official, if necessary. The City will provide written notification of such designation to affected applicants.

#### **SECTION 14. Tree Protection Requirements.**

The following requirements apply to all properties other than single family residences:

(a) Preservation Trees are protected under this Ordinance and cannot be cut or intentionally harmed without the express written consent of the Building Official.

(b) Any person wishing to remove or relocate a Preservation Tree shall, under the provisions of this Ordinance, make written application with the Building Official. The application shall include a landscape plan (as defined above). The Building Official must approve or deny the permit within fourteen (14) working days after receipt of the application.

(c) 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 is the responsibility of the City; or (2) trees beneath utility lines which threaten to damage the utility lines, the removal of which is the duty of the utility company.

(d) Criteria for issuance of tree removal permit:

1. The tree is located in an area where a structural improvement will be placed.
2. The tree is diseased, injured, in danger of falling too close to existing or proposed structures, interferes with existing utility service, creates unsafe vision clearance or conflicts with other ordinances or regulations.
3. The tree is, or will be after construction, in violation of Federal, State, or local laws or regulations, or cause the construction to violate Federal, State or local laws or regulations, including, but not limited to, laws and regulations pertaining to government programs for construction. A permit may be denied upon the determination that an application for tree removal does not meet the criteria set forth above, or reasonable alternatives to cutting the tree exists.

(e) The building official may require landowners, inclusive of single family residences, to prune and remove trees which may endanger public safety or be likely to danger other trees from the spread of disease or insect infestation.

#### **SECTION 15. Tree Protection During Construction.**

It shall be unlawful for any person in the construction of any structures or other improvements to place solvents, material, construction machinery or temporary soil deposits within the critical root zone of any protected tree having a 10 inch or greater D.B.H. above grade. Before development, land clearing, filling or any land alteration, a permit will be required. The developer shall be required to erect suitable protective barriers, and this protection, where required, shall remain until permanent barriers have been erected. Also, during construction, no attachments or wires shall be attached to any of said trees so protected. Except for sidewalks, driveways, and streets, no person shall pave with concrete, asphalt or other impervious material within eight (8) inches per one inch of D.B.H. of any remaining trees, and not less than five (5) feet within any Preservation Trees. The Building Official shall have the discretion to waive this requirement.

#### **SECTION 16. Emergencies.**

In case of emergencies, such as hurricane, wind storm, flood, freeze, or other disasters, the requirements of this Ordinance may be waived by the Building Official upon a finding that such a waiver is necessary for public or private work to restore order in the City.

#### **SECTION 17. Exemptions.**

The provisions of this Ordinance shall not apply to any land recognized by the City upon which bonafide agricultural uses or commercial nursery or tree farm, as defined herein, are being conducted and which land exceeds ten (10) acres.

(a) *Bonafide agricultural*: A land used to derive income from growing plants or trees on land, including, but not limited to, land used principally for timber production, and not including land used primarily for another use and incidental for growing trees or plants for income.

(b) *Commercial Nursery or Tree Farm*: A licensed plant or tree nursery or farm in relation to those trees planted and growing on the premises of the licensee, which are planted and growing for sale or intended sale to the general public in the ordinary course of said licensee's business. This exemption shall not be interpreted to include timber harvesting incidental to imminent development of the land.

#### **SECTION 18. Removal of Public Trees.**

(a) No trees shall be removed from public rights-of-way except as approved by the Mayor.

(b) No public tree located on City property shall be removed without first obtaining written approval from the Mayor. The foregoing provision shall not apply to public trees whose removal is authorized by the Building Official.

#### **SECTION 19. Tree Removal Companies; Construction Companies.**

All provisions of this Ordinance shall apply to any person removing trees on behalf of any other person, including all tree removal companies, construction companies or persons in the business of removing trees or constructing. It shall be unlawful for any person or company to remove or cause to be removed any tree, or undertake any work for which a permit is required pursuant to this Ordinance, unless a valid permit therefore is in effect and is displayed in accordance with the provisions of this Ordinance. If any such work or removal is performed without the permit being displayed as required in this Ordinance, such removal or work shall constitute a violation of this Ordinance and shall subject the person or company violating this Ordinance to all penalties provided for herein.

## **SECTION 20. Display of Permits; Inspection.**

The applicant shall prominently display on the site the permit issued. Such permit shall be displayed continuously while trees are being removed or replaced or work is being done as authorized on the permit, and for ten (10) days thereafter. As a condition for the issuance of the permit, the applicant shall agree in writing to entry onto the subject premises by representatives of the City and all law enforcement officers to inspect the permit at any time, and such entry shall be lawful. Failure to allow such entry shall be unlawful, shall constitute a violation of this Ordinance and shall constitute a failure to display the permit as required under this Section.

## **SECTION 21. Arborists License and Bond.**

It shall be unlawful for any person, individual, corporation or institution, or agent of such, to engage principally in the business or occupation of pruning, fertilizing or removing trees within the corporate limits of the City of Spanish Fort without first applying for and procuring the appropriate business license from the City. Plus, all arborists must abide by all relevant local and state laws.

(a) City employees and public service workers who perform arboricultural duties within the street right-of-way and public parks of the City in protection of the public health, safety and welfare shall not be required to apply for a City business license. However, should such arboricultural work be subcontracted, the City departments and/or public service organization which subcontracts the work shall be responsible for ensuring that their contractors are properly licensed arborists.

(b) Where federal, state and local laws require the certification of any person, individual, corporation, institution or agent of such to utilize the services of workers certified to practice arboriculture, said certification shall apply in addition to having a business license from the City.

(c) Before any permit is issued to a subcontractor for work within the street right-of-way and the public parts of the City, the applicant shall file with the executive director of public works evidence of possession of their performance bonds, either in the amount of \$10,000.00 or the minimum amount specified by the City for the type of development activity being performed, whichever amount is the greater of the two. All of the insurance coverage, such as bodily injury, property damage and general liability coverage, shall comply with the requirements mandated by the City Council. The developer or primary contractor can agree by notarized letter to be the responsible party for damages of subcontractors.

## **SECTION 22. Removal, Abuse or Mutilation of Preservation Trees.**

No person shall damage, cut, carve, transplant, mutilate, abuse or remove any public tree, Preservation Trees or landscaping required by this Ordinance; attach any rope, wire, nails, advertising posters, or other materials to any public tree or Preservation Trees; allow any gases, liquid or solid substance which is harmful to such trees to come in contact with any such tree, including roots damaged by curb cuts, sidewalk and driveway installation and repair.

(a) Utility line clearing in conformance with the International Society of Arboriculture, National Arbors Association Standards and The National Electric Safety Code Clearances does not constitute tree abuse.

(b) No curb cuts which involve public trees or Preservation Trees shall be allowed without prior coordination with the Building Official.

(c) No action of removing trees damaged due to lightning, hurricanes or other natural disasters as approved by the Building Official shall be considered tree abuse.

(d) The removal of trees for which permits have been issued shall not be prohibited by this Section. Notwithstanding the foregoing, Preservation Trees may be removed pursuant to a properly filed and approved landscape plan.

### **SECTION 23. Interference With Building Official.**

No person shall hinder, prevent, delay or interfere with the Building Official, or any other duly authorized individuals, 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 City.

### **SECTION 24. Required Landscaping Adjacent to Public Rights-of-Way.**

(a) Front perimeter, except at permitted access ways, all interior development and vehicle use areas shall be separated from public right-of-way frontage by a landscaped strip of at least ten (10) feet in width, adjacent and parallel to the right-of-way line.

(b) Secondary perimeter, except at permitted access ways, all interior development and vehicle use areas located at intersections of the public right-of-way shall be separated by a landscape strip of at least six (6) feet in width and parallel to the right-of-way line.

(c) The land occupied by curbs and sidewalks shall not count toward required landscape areas. Vehicles shall not overhang more than two (2) feet on the landscaped areas.

(d) The required landscape area between vehicle use area and public right-of-way shall be planted with a solid unbroken visual screen at least 36 inches in height at planting except for 4 feet on each side of permitted access ways. Where non-living material is used for screen, one shrub or vine at least 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.

(e) To promote species richness, a minimum of four (4) different species is required on each site; at least one species must be an overstory tree.

(f) No bare grounds 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.

### **SECTION 25. Cross Visibility.**

(a) At the corner of each side of permitted points of access from public right-of-way, or at corner of intersecting streets, landscaping shall be so planted and maintained as to provide unobstructed visibility between the heights of 2 . feet and 10 feet within an area defined by constructing lines parallel to and 25 feet from the point of intersection of curb lines projected.

(b) Vehicle Use Areas. Vehicle Use Areas and areas not occupied by development, or 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 runoff.

### **SECTION 26. Planting Requirements.**

Any trees planted to meet this Ordinance must meet the American Standards for Nursery Stock and the following requirements:

(a) Large overstory trees must have an initial caliper diameter of at least 2 to 2.5 inches and must be at least 10 feet in height.

(b) Medium or understory trees must have an initial caliper diameter of at least 1.5 inches and be at least 10 feet in height.

(c) Multi-stemmed understory trees must be a minimum of 8 feet in height and must have at least 3 stems; each with a minimum caliper diameter of 1 inch. A multi-stemmed tree only counts as one tree credit.

(d) Shrubs that can be pruned into tree form variations will not be approved for tree credit. These include, but are not limited to, Ligustrum; Indian Hawthorne; Tree Yaupon; and Camilla.

(e) Trees must be obtained from a reputable source. Trees that have been dug in the wild will not be accepted, unless approved by the Building Official.

(f) Maintenance of new or retained plantings is the responsibility of the property owner.

(g) Any vegetation planted or retained to fulfill this Ordinance which dies or becomes damaged or diseased must be replaced by the property owner by the 31<sup>st</sup> day of January, the following year. The property owner must notify the Building Official when the replacement has been planted. Failure to replace trees that die will result in penalties.

#### **SECTION 27. Fees, Fines, Etc.**

The following fines and fees shall be imposed:

(a) Fines/Penalties. Violators of the terms of this Ordinance may be summoned 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 the issuance of a complaint and arrest summons by any such officer. Upon conviction of any provision contained herein, a violator shall be subject to the maximum fine as allowed by statute and/or a sentenced to municipal jail not to exceed 6 months, at the discretion of the Municipal Judge. Upon a second or subsequent conviction, a violator shall be subject to the maximum fine as allowed by statute, and the violator shall be subject to a minimum of 3 days in jail and a maximum sentence of 6 months. The Municipal Judge shall have the discretion to allow community service in lieu of jail time at the rate of 5 days of community service for every 1 day of jail time.

(b) Restitution. Persons who are convicted of causing internal injury or harm to any tree in violation of this Ordinance will be required to make restitution in the following amounts: \$100.00 for each tree 1-2 inches D.B.H.; \$500.00 for each tree 2-5 inches D.B.H.; \$1,000.00 for each tree 5-10 inches D.B.H.; \$2,000.00 for each tree 10-15 inches D.B.H.; \$3,000.00 for each tree 15-20 inches D.B.H.; \$10,000.00 for each tree 20-30 inches D.B.H.; and \$10,000.00 for each tree 30 plus inches D.B.H.

#### **SECTION 28. Appeal of Grant or Denial of Permit.**

Appeals of either a grant or denial of a permit pursuant to these requirements shall be to the City of Spanish Fort Board of Adjustments.

#### **SECTION 29. Supervision.**

The landscape design professional shall be responsible for the supervision of all plantings. Upon completion, the landscape design professional shall certify in writing to the City that the submitted, approved landscape plan has been implemented and is in compliance with the provisions of this Ordinance.

#### **SECTION 30. Certificate of Occupancy.**

A certificate of occupancy shall not be issued until the submitted, approved landscape plan has been implemented or a bond has been posted. If approved, said bond shall be in an amount equal to 150% of the total remaining landscape costs to be implemented which shall be certified by a landscape design professional.

#### **SECTION 31. Severability.**

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

#### **SECTION 32. Effective Date.**

This Ordinance shall become effective upon its adoption or as otherwise required by state law.

**ADOPTED AND APPROVED this 6<sup>th</sup> day of August, 2012.**