

A TEXT AMENDMENT TO THE ZONING ORDINANCE AMENDING  
Article XI – Tree Ordinance

A resolution of the Mayor and City Council of the City of Diamondhead amending Ordinance No. 2012-019 Article 11 – Tree Ordinance.

WHEREAS, the proposed text amendment is to amend the Tree Ordinance to establish requirements to preserve and protect the tree canopy of Diamondhead. The proposed changes are to REPLACE the entire ordinance with Article 11 – Tree Preservation and Protection (attached).

NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY, that the City Council adopted the proposed text amendment as stated above.

I HEREBY CERTIFY THAT THE ABOVE AND FOREGOING RESOLUTION WAS ADOPTED IN THE AFFIRMATIVE BY THE FOLLOWING VOTE OF COUNCIL OF THE CITY OF DIAMONDHEAD ON THE 5<sup>TH</sup> DAY OF SEPTEMBER, 2023.

	Aye	Nay	Absent
Councilmember Finley	_____	_____	_____
Councilmember Liese	_____	_____	_____
Councilman Cumberland	_____	_____	_____
Councilmember Clark	_____	_____	_____
Councilmember Maher	_____	_____	_____
Mayor Depreo	_____	_____	_____

\_\_\_\_\_  
MAYOR NANCY DEPREO

ATTEST: \_\_\_\_\_  
Jeannie Klein, City Clerk

ARTICLE 11. – TREE PRESERVATION AND PROTECTION

11.1. - PURPOSE AND SCOPE.

11.1.1. Aid in stabilizing the environment’s ecological balance by contributing to the processes of energy and soil conservation, air purification, oxygen regeneration, pollutant neutralization, groundwater recharge, and the reduction of stormwater runoff, while at the same time aiding in noise, glare, and heat abatement by preserving the existing canopy.

11.1.2. Ensure that the stock of native trees and vegetation is maintained and replenished; and

11.1.3. Provide visual buffering and enhance the beautification of the city.

11.2. – PRINCIPLES.

11.2.1. Preservation of existing trees shall be the first, best, and standard approach.

11.2.2. If preservation cannot be achieved, on-site mitigation shall next be pursued.

11.2.3. If those approaches cannot be achieved, off-site mitigation shall be next pursued.

11.3. – APPLICABILITY.

11.3.1. Except as noted herein, requirements apply to all land located in the city. Trees may not be cleared from any site for any purpose without a Tree Preservation permit, unless specified otherwise herein.

11.4. – PERMIT REQUIRED. Under this Article, the clearing of any site is permitted only after a tree inventory has been completed and Tree Preservation permit has been issued.

11.4.1. Tree inventory required. An inventory of existing trees is required for any site plan or subdivision. The inventory must be conducted by an International Society of Arboriculture (ISA) certified arborist, a Mississippi licensed tree surgeon, or a Mississippi licensed horticulturalist and submitted to the Building Official for approval.

11.4.2. The tree inventory shall include:

a. The location, size, type, and quality of existing significant, specimen and heritage trees.

b. Which trees are to be removed and which retained.

11.4.3. Exception. If the property owner is notified by their insurance company that a tree is to be trimmed or removed as a condition of insurability, no tree inventory is required. Upon receipt of proof of the condition of insurability, a Tree Preservation permit shall be issued.

11.4.4. Exception. Trees on developed properties that are not heritage, specimen or significant do not require a permit. Pine trees of any size on developed lots do not require a permit.

11.4.5. Exception. Utility companies, public works, and Diamondhead Water and Sewer District are exempt. No tree inventory or permit shall be required.

11.5. – SITE DESIGN GUIDELINES. Design for development shall consider:

11.5.1. Generally. Potential for retaining existing site topography and existing vegetation.

11.5.2. Parking lots. Shall be designed to preserve the maximum number of existing significant, specimen, and heritage trees and other significant vegetation.

- 11.5.3. Curb cuts. All proposed curb cuts shall consider damage to trees and tree groves and shall be placed in areas to provide the least damage to existing trees and tree groves.
- 11.6. – TREE PRESERVATION CRITERIA. The ISA certified arborist, Mississippi licensed tree surgeon, or Mississippi licensed horticulturalist, shall consider the following factors, and any other relevant information, when submitting the Tree Preservation permit application:
- 11.6.1. The desirability of preserving a tree or group of trees by reason of age, location, size, or species.
  - 11.6.2. Whether the size or shape of the lot reduces the flexibility of the design.
  - 11.6.3. The general health and condition of the tree or group of trees, or the presence of any disease, injury, or hazard.
  - 11.6.4. The placement of the tree or group of trees in relation to utilities, structures, and the use of the property.
  - 11.6.5. The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.
  - 11.6.6. Whether roads, utilities and building footprints are designed in relation to the existing topography, and located, where possible, to avoid damage to existing tree canopy.
  - 11.6.7. Construction requirements of on-site and off-site drainage.
  - 11.6.8. The extent to which development of the site and the enforcement of this article are impacted by state and federal regulations.
- 11.8. – TREE PROTECTION. Trees identified on an approved Tree Preservation permit to be retained shall utilize the following protection methods:
- 11.8.1. Install four-foot-high perimeter fencing at the extreme outer edge of the dripline.
  - 11.8.2. Perimeter fencing located within 50 feet of any building footprint, unless approved by the Building Official, shall be constructed of materials equivalent to those used for silt fencing.
  - 11.8.3. There shall be no activity of any kind inside the perimeter other than hand-brush clearing and signage clearly identifying the tree as protected must be placed at or near the perimeter.
  - 11.8.4. No land clearing or building permits shall be issued until the perimeter of all protected trees and tree groves have been properly fenced.
  - 11.8.5. Grates or other pervious surfaces shall be utilized within the dripline of existing trees to allow water and air to reach the tree roots.
  - 11.8.6. Fill (other than soil disturbance) shall be prohibited, as well as any vehicle traffic or material storage in areas under the dripline of trees to be protected.
  - 11.8.7. Drastic changes in drainage patterns which may negatively affect existing trees shall be avoided. Pre and post construction grading plans must be submitted as set forth in the Land Alterations and Disturbances Ordinance.
  - 11.8.8. Any person who intentionally damages a protected tree shall be in violation of this article and subject to the maximum fine allowable by law and/or up to 30 days in jail.
  - 11.8.9. The removal of the protected fencing, or encroachment into the area, without explicit approval of the property owner or his designated agent, shall be punishable by a fine up to the replacement value of the tree(s) involved. Replacement value shall be determined by a method approved by the International Society of Arboriculture (ISA). This applies to any person or entity, public or private.

11.9. – TREE MITIGATION REQUIREMENTS. The intent is to leave undisturbed as many existing significant, specimen and heritage trees as possible. Mitigation is required for removal of significant, specimen, and heritage trees removed.

11.9.1. Each development will have a ten percent credit applied before any mitigation is required. For example, if there were 1,000 inches DBH of existing trees, 100 inches could be removed without mitigation.

11.9.2. For trees that will be removed, the number of trees required for mitigation shall be based upon the existing significant, specimen, and heritage trees removed.

11.9.3. Mitigation may be made through replanting on-site and if not possible, off-site.

11.9.4. Trees in poor health and/or hazard trees will not require mitigation if the condition is so determined by the ISA certified arborist, or a Mississippi licensed tree surgeon, or a Mississippi licensed horticulturalist.

11.9.5. Existing significant trees located within a building footprint, street, driveway, sidewalk, pathway, or utility easement shall generally not require mitigation.

11.9.6. Replanting.

- a. For each significant, specimen, and heritage tree removed, replacement trees shall be planted at one, two-inch caliper tree per five inches of trees removed, measured at DBH.
- b. Smaller trees. The Building Official may approve the use of trees of less than two-inch caliper for the planting of medium tree species (dogwoods and redbuds) and/or greater than two-inch caliper on an equal total caliper basis, e.g., two, three-inch caliper trees equal three, two-inch caliper trees.
- c. Placement of trees. The applicant is expected to plant trees in locations on the site where the environmental benefits of canopy cover are most likely to offset the impact of development. Trees shall not be placed within utility and drainage easements, or in other locations where their future protection cannot be assured.

11.11. – PRIOR TREE REMOVAL.

11.11.1. Prior removal of significant, specimen and/or heritage trees. If a site is cleared or significant specimen or heritage trees removed prior to obtaining Tree Preservation permit approval, then any permit application for the site shall be denied for up to 24 months and a fee of \$500.00 per lot or acre of trees cleared and \$2,000.00 per each heritage tree removed shall be imposed.

11.11.2 Any request for permit approval within the 24-month time frame may, however, be considered if the proposed Application for Tree Preservation permit incorporates a reforestation plan that results in a future canopy coverage of 40 percent of the site. The square foot percentage of canopy area required for reforestation shall be based on the total area of the property less the square footage dedicated to any building footprints, streets, driveways, sidewalks, pathways, or utility easements.

11.12. – HERITAGE TREES.

<u>Common Name</u>	<u>Minimum Diameter at DBH</u>
American holly	12 inches
Bald cypress	8 inches
Black gum	16 inches
Live oak	8 inches
Southern magnolia	8 inches
Sweet gum	16 inches
White oak	16 inches

DEFINITIONS

*Arborist:* A professional in the practice of arboriculture, which is the cultivation, management, and study of individual trees, shrubs, vines, and other perennial woody plants.

*Clearing:* The removal of vegetation, including tree stumps, or the material damage of landscape materials by disturbing, excavating, or removing the underlying soil.

*DBH (diameter breast height):* The diameter of a tree as measured four and one-half feet above grade level.

*Development:* Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operation.

*Dripline:* The periphery of the area underneath a tree, which would be encompassed by the perpendicular lines, dropped from the farthest edges of the crown of the tree.

*Fill:* The placing, storing, or dumping of any materials such as earth, clay, sand, concrete, rubble, or non-decomposable waste of any kind upon the surface of the ground which results in increasing the natural surface elevation.

*International Society of Arboriculture, ISA:* Credentialing organization that promotes the professional practice of arboriculture. ISA focuses on providing research, technology, and education opportunities for tree care professionals to develop their arboricultural expertise.

*Subdivision:* The division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or building development by means of an appropriately recorded legal document. A subdivision which reduces the size of an existing lot may require approval of a new site plan for any existing development on that lot.

*Tree grove:* A stand of native significant and/or specimen trees with understory vegetation cover intact, drainage conditions unchanged, and general slope and grades unaltered. The extent of a grove will extend three feet beyond the dripline of the perimeter trees in the grove.

*Tree, heritage:* Any tree by virtue of its species and/or size included in the heritage tree list. The listed trees are predominantly species native to Hancock County and of size and maturity important to the health and conservation of Diamondhead's urban forest.

*Tree, large:* An evergreen or deciduous upright woody perennial plant having a single main stem or several main stems, which is a minimum of two-inch caliper, 12 to 14 feet with the maximum of 16 feet in height at the time of planting and which attains generally more than 30 feet in height at maturity.

*Tree, native:* A tree that is indigenous to the area.

*Tree, protected:* Any tree which meets the requirements of being classified as a “significant tree” or is declared by the developer, or as required by the Diamondhead Planning Commission, as to be preserved and protected from clearing or infringement by development.

*Tree, significant:* Plant materials which meet the following requirements: Healthy hardwood and evergreen trees, except pines, with a DBH of 15 inches or greater.

*Tree, small:* An evergreen or deciduous upright woody perennial plant having a single main stem or several main stems, which is a minimum of six to eight feet overall height at the time of planting, and which attains a minimum height of 15 feet and a maximum height of 30 feet.

*Tree, specimen:* Any tree identified by the Diamondhead Tree Ordinances’ Master Tree List at least four inches or more DBH that exemplifies a unique color, texture scent, growth habit, outstanding size, or other distinguishing characteristic that makes it unique compared to other trees found on the site in question.

*Vegetation, significant:* Any large shrub meeting or exceeding eight feet in height at maturity.