TREES

ORDINANCE NO. 87**B**

AN ORDINANCE TO PROVIDE FOR THE PUBLIC HEALTH, SAFETY, WELFARE AND AESTHETIC BEAUTY OF THE TOWN OF DAUPHIN ISLAND, ALABAMA KNOWN AS THE TREE ORDINANCE WHICH REPLACES AND REPEALS ORDINANCE NO. **87A**.

WHEREAS, the Town Council of the Town of Dauphin Island may enact ordinances to protect the health, safety, and welfare of Dauphin Island and;

WHEREAS, Dauphin Island is a barrier island that hosts a variety of indigenous species of trees, bushes, and other vegetation that literally hold the island together and;

WHEREAS, depletion of these plants endangers not only the landmass of the island, but is also exceedingly harmful to the wildlife, ecology, natural hurricane resilience, economy, and property of neighbor and;

WHEREAS, migratory bird species depend on our unique vegetation for food, recovery, and nesting before continuing their seasonal migration to other states and countries, and a wide variety of local species depend on these same trees and vegetation for weathering storms, winter cold, and as a food source and;

WHEREAS, our vegetation is equally threatened and is unique from most mainland species, provides predator protection, mating accommodation, nesting for birds, is an important ecological feature for preservation of threatened reptiles and amphibians, and is a critical element in the island's rich history and;

WHEREAS, erosion is a constant threat to the landmass of a barrier island, and when a tree is destroyed, the soil it took to build that tree is forever lost. The absence of the trees lateral root network, usually entwined with the "mat" of surrounding trees, results in the washing away of topsoil and elevation into ditches where it is carried away and;

WHEREAS, since stands of mature trees can reduce the force of hurricane winds by as much as 70% or more, the removal of trees will most certainly expose the Town of Dauphin Island to substantially more risk and damage, increasing insurance costs for the community, reducing property values and, in short, placing the residents of the Town of Dauphin Island in harm's way, economically, physically and aesthetically and;

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Dauphin Island, Alabama that the Tree Ordinance shall be as follows:

TREE AND VEGETATION PRESERVATION

Section A. Purpose

The purpose of this ordinance is to preserve, protect, replace and properly maintain trees and vegetation within the Town as such plantings:

1) Are an important public resource;
2) Preserve and enhance the Town's natural and aesthetic environment, especially its natural and unique atmosphere;

3) Enhance the air quality by filtering air pollutants;
4) Reduce topsoil erosion by the holding effect of the roots, protecting the structural integrity and sustainability of this barrier island;
5) Minimize and reduce storm water runoff;
6) Provide a buffer and screen against noise pollution;
7) Provide a buffer and screen against light pollution;
8) Reduce energy consumption by acting as a windbreak and producing shade;
9) Preserve and enhance nesting areas for birds and other wildlife, which in turn, assist in the control of insects;
10) Protect and enhance property values;
11) Protect and enhance the quality of life and the general welfare of the town;
12) Improve the compatibility of uses by providing privacy and enhancing the aesthetic transition between uses.

For this ordinance, tree is defined as a self-supporting, woody plant, together with its root system, having a well-defined stem or trunk or a multi-stemmed trunk system, a more or less well-defined crown, and a minimum height of eight (8') feet. "Tree" does not include trees in containers or nursery stock trees kept or maintained for resale. "Vegetation" is herein defined as perennial bushes and shrubs.

Section B. Tree Retention, Removal and Mitigation

1) ***Permit required:*** No person shall remove or destroy any tree, that is four inches (4") or greater in diameter at Diameter at Breast Height DBH (4 ½ feet above grade), on any lot without first obtaining a tree removal permit from the Building Inspection or Zoning Enforcement Department in accordance with the procedures set forth in this section. Further, no person shall remove or destroy any such tree located in the common open space of any development or on Town right-of-way without first obtaining a tree removal permit.

2) ***New Construction***

   a) Trees four inches (4") or greater in diameter at DBH, located within the property setbacks shall remain in place and may not be removed except for Exempt Trees as listed in Section F.
   b) Trees four inches (4") or greater in diameter at DBH located within the footprint of the proposed primary structure, a five-foot (5') perimeter (measured from "drip line") around the structure (provided it does not enter into the property setbacks) and a twenty-foot (20') driveway may be permitted to be removed without any required mitigation.
   c) Other than Heritage Trees, trees four inches (4") or greater in diameter at DBH, located in any other area of the lot, will be mitigated at four hundred fifty dollars ($450.00) per tree. This mitigation fee is a non-negotiable fee to be paid when obtaining a tree removal permit prior to the removal of any single tree and the fee shall be deposited in the Town's Environmental Mitigation Fund (noted in Section D herein). Violations of this Section are punishable pursuant to Section G herein.

d) Heritage Trees, as defined in Section H, located in any other area of the lot, will be mitigated at five hundred dollars ($500.00) per tree. This mitigation fee is a non-negotiable fee to be paid when obtaining a tree removal permit prior to the removal of any single Heritage Tree and the fee shall be deposited in the Town's Environmental Mitigation Fund (noted in Section D herein). Violations of this Section are punishable pursuant to Section G herein.

3) ***Vegetation Removal.*** Vegetation removal does not require a separate permit when taking place under a tree removal permit. Vegetation is not mitigated. Replanting of vegetation is strongly suggested and native vegetation is preferred. A brochure entitled '*Desirable Native Plants of Dauphin Island*' by J. McCune Dudley, with listings of desirable native plants for the island, may be obtained through Dauphin Island Town Hall.

   Oversight of the tree removal project will be performed by the Town Building Inspector and/or Zoning/Code Enforcement Officer.

4) ***Developed Land***

   In determining whether to grant or deny a permit the Inspector shall consider:

   a) the effect of the proposed tree removal upon the stabilization of soil;
   b) the intended use of the property and feasible alternatives which would preserve existing trees;
   c) the existing topography, proposed changes in the topography and proposed landscaping;
   d) the hardship imposed, or the reasonable use denied to the applicant as a result of permit denial; Note: economics does not constitute a hardship.
   e) heritage value of the trees;
   f) good horticultural and forestry practices;
   g) the likelihood that the proposed action will adversely affect the control of flooding or soil erosion;
   h) the impact of such action on surrounding property or persons;
   i) the consistency of the proposed action with the purpose of this section.

Section C. Permit Process

Tree removal permits shall be issued only after the Inspector/Officer has received the tree removal application package including, but not limited to, photographs of the property with trees to be removed marked thereon; and a completed application for such permit which has been signed by the property owner. In the case of new construction, the applicant is required to present a survey of the property including the location of the principal structure, the location of the proposed driveway, and the identification and location of existing trees and/or vegetation (4" or greater in diameter at DBH) and vegetation. Neither a tree removal permit nor a building permit will be issued without this survey. Also, in the case of new construction, the mitigation must be accomplished prior to the issuance of a Certificate of Occupancy.

A permit shall expire and become null and void if work authorized is not commenced within six (6) months from the date of the permit or if such work, when commenced, is suspended or abandoned at any time for a period of six (6) months. If work has commenced and the permit becomes null and void or expires because of lack of progress or abandonment, a new permit for the proposed tree removal activity shall be required before proceeding with further work.

Section D. Mitigation Costs

For each tree requiring mitigation, a fee will be paid to the Town of Dauphin Island Environmental Mitigation Fund. These funds will be used in future environmental enhancement projects as determined by the Town Council. The value of each non 'Heritage Tree' to be removed will be Four hundred fifty Dollars ($450.00) with a cap of Ten Thousand ($10,000) Dollars per permit. Separately, the value of each 'Heritage Tree' to be removed will be Five Hundred Dollars ($500.00) with no cap. These mitigation fees are to be paid prior to tree removal when obtaining permits or else the individuals and/or contractors removing said trees will be subject to punishment pursuant to Section G herein.

Section E. Prohibited Acts

The following acts are expressly prohibited by this ordinance. Any performance of these actions is in violation of this ordinance and subject to fines and penalties as set forth herein. A Certificate of Occupancy shall be withheld or a lien on the title shall be filed, as applicable, until the fine is paid according to the fine schedule.

1) ***Clear Cutting*** – Clear cutting of trees and other vegetation from a parcel of property on Dauphin Island is a severe violation of this tree ordinance and is strictly prohibited. A fine of not less than Five Hundred Dollars ($500.00) per tree and not to exceed $10,000 on any parcel of land that is clear cut.
2) ***Removal of Trees on Town of Dauphin Island Right-of-Way.*** Unauthorized cutting of trees located, either partially or wholly within the Town Right-of-Way, is a violation of this tree ordinance and is strictly prohibited. The placement and/or maintenance of public utilities (ex. water, power, telephone, fiber, etc.) by duly licensed public utility companies will be reviewed and approved by the Town Inspection Department to mitigate damage to and loss of trees four inches (4") or greater in diameter at DBH. A permit may be granted by the Town Inspection Department for the authorized removal of trees in the right-of-way for a twenty foot (20') driveway after a tree removal application has been submitted and a Tree Removal Permit issued. This also includes Exempt Trees as listed in Section F.
3) ***Removal or Damaging of a 'Heritage Tree'*** - Large trees, particularly Live Oaks (30" DBH), all other hardwoods (24" DBH), Pines (20" DBH), and Magnolias (12" DBH) or greater are considered 'Heritage Trees' which are particularly important to our history, preservation and the ecology. Unauthorized removal of Heritage Trees either by a property owner or a contractor is in violation of the Tree Ordinance and is strictly prohibited. These trees are only considered for removal or substantial trimming on a case-by-case basis (except for those located within the footprint of the proposed primary structure, a five-foot (5') perimeter around the structure and a twenty foot (20') driveway) by the Town of Dauphin Island Inspection Official or authorized designee.

4) ***Unapproved Removal of Trees*** - Unauthorized removal of trees either by a property owner or a contractor is in violation of the Tree Ordinance. A tree removal application, signed by the property owner, must be submitted to obtain a Tree Removal Permit. The application will be reviewed, and a site visit will be performed by the Building Inspection Department prior to the issuance of a Tree Removal Permit. Both the property owner and the contractor shall be responsible for fines for taking of unauthorized trees, and a Certificate of Occupancy shall be withheld until all fines are satisfied. Repeated violations by contractors could result in cancellation of business license.

5) ***Damaging Unapproved Trees While Removing Approved Trees*** – Accidental and/or collateral damage to trees unauthorized for removal during construction must be avoided. Should an unapproved tree be damaged so as to consider it dying or destroyed, the applicable fine for taking of unauthorized trees shall apply. Both homeowner and contractor shall be jointly responsible for such damage and payment of the fine. A Certificate of Occupancy shall be withheld or a lien on the title shall be filed, as applicable, until the fine is paid in full.

6) ***Destruction of Trees by Other Means*** – Destroying trees by means other than authorized removal (poisoning, destroying the root system, burning, etc.) is strictly forbidden. Doing so will result in the same punishment as tree removal.

7) ***Harvesting Trees for Profit*** - Harvesting of trees for profit (pulp wood, pilings, utility poles, etc.) is strictly forbidden. Dauphin Island tree grain is twisted from hurricanes and unsuitable for most applications.

8) ***Failure to Pay Mitigation Fee when Obtaining Tree Removal Permit*** – When removing trees listed in this Ordinance, a mitigation fee shall be paid per tree when obtaining a tree removal permit. If an individual or contractor does not pay for all mitigation fees prior to tree removal, said individual and/or contractor shall be subject to fines and penalties listed in Section G herein.

Section F. Exempt Trees

The following species, which are difficult to control or otherwise unsuitable for this area, and are exempt from the mitigation requirement of this ordinance:

Triadeca sebifera (also known as *Sapium sebiferum*), Chinese Tallow (Florida aspen, Chicken tree, Popcorn tree, Candleberry tree);
Dead trees;
Diseased and/or Detrimental trees (as determined by a forester/arborist);
Damaged trees (e.g., trees damaged by an act of nature or fire, and determined to be dangerous by the Town Inspection Department);
Trees that pose an eminent threat to life or property.

Note: Consistent with a public utility company Franchise and pole line permit, trees determined by a public utility company to be potential dangers to the safe operation of the public utility system are exempt from the requirements of this ordinance.

Section G. Violations and Penalties

1) It shall be an offense for any person to perform any of the actions listed in Section E, Prohibited Acts, or to remove a tree without having first obtained a Tree Removal Permit and, when applicable, paid tree removal mitigation fees. It shall be an offense for a property owner to employ, authorize, allow or direct any third person or entity to perform any of the actions listed in Section E., or to remove a tree without having first obtained a Tree Permit. A fine of up to Five Hundred Dollars ($500.00) and/or up to six (6) months in jail will be levied each against the property owner and contractor upon such an offense and conviction. A separate offense shall be deemed to have been committed for each tree removed without a Tree Removal Permit in violation of the provisions of this section.
2) In such instances, if the trees have been removed from the property, tree stumps will be used to determine the number and size of trees removed in violation of this ordinance. In the event that the stumps have been removed, the nearest undeveloped, wooded piece of property shall be used to determine an approximation of the number of trees in violation for the purpose of determining a fine assessment and for mitigation. In the absence of a nearby undeveloped, wooded lot, the fine will be up to Five Hundred Dollars ($500.00) per tree with a Ten Thousand Dollar ($10,000.00) cap and up to six (6) months in jail per offense/tree.
3) The fines collected by the municipal court pursuant to this Ordinance, except court costs, will be paid to the Town of Dauphin Island Environmental Mitigation Fund. These funds will be used in future environmental enhancement projects as determined by the Town Council.

Section H. Definitions

DBH: Diameter at breast height, or four and one-half (4 ½) feet above ground. Used to measure all existing trees. In the case of multi-trunk trees, DBH will be summed for the purposes of this ordinance.

Heritage Tree: Large, understory or over story trees - Live Oaks (30" DBH), all other hardwoods (24" DBH), Pines (20" DBH), and Magnolias (12" DBH) or more are considered 'Heritage Trees' which are particularly important to our history, preservation and the ecology.

Over story 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.

Understory Trees: Trees which, at maturity are typically ten (10) to thirty (30) feet in height.

APPROVED AND ADOPTED THIS 21 DAY OF August, 2019.

JEFF COLLIER, MAYOR

ATTEST:

Wanda Sandagger

WANDA SANDAGGER, TOWN CLERK

1st Reading:	
Council Public Hearing:	8-12-19
2nd Reading:	8-20-19
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