

ORDINANCE 349 (ZONING ORDINANCE) TO MAKE AMENDMENTS TO SECTION 408.1 – PRESERVATION OF LIVE OAK AND MAGNOLIA TREES

WHEREAS, the Planning and Zoning Commission of the City of Waveland, Mississippi (the "City") took up for consideration the matter of Amendments to Ordinance 349 (Zoning Ordinance).

WHEREAS, the Planning and Zoning Commission does hereby find, determine, adjudicate and declare as follows:

1. Ordinance 349 of the City of Waveland contains the provisions regarding; Section 408.1 – Preservation of Live Oak (*Quercus virginiana*) and Magnolia (*Grandiflora*) Trees.
2. Ordinance 349 requires amendments to Section 408.1 - Preservation of Live Oak and Magnolia Trees – based upon changes in conditions and circumstances that have occurred since the original adoption of Ordinance 349.
3. Pursuant to Miss. Code Ann. 21-13-1 *et seq*, a municipality is authorized to pass all ordinances and enforce the same.
4. It is the desire of the majority of the Planning and Zoning Commission of the City of Waveland that Ordinance 349 - Section 408.1 – Preservation of Live Oak and Magnolia Trees be amended as provided hereinafter.
5. The amendments to Ordinance 349, have been forwarded to the Mayor and Board of Aldermen and reviewed and revised by the City Attorney.
6. As required by Ordinance 349, a notice of public hearing was published setting the time, place, and content regarding the Amendments to Ordinance Number 349, in a newspaper of general circulation in Hancock County, Mississippi 15 (fifteen) days prior to the public hearing and the Planning and Zoning Commission conducted a hearing for same.
7. At said Planning and Zoning Meeting interested agencies and citizens were given an opportunity to be heard. No public objections were made by or received from the public.
8. The Planning and Zoning Commission has forwarded a Resolution to the Mayor and Board of Aldermen recommending certain amendments to the Ordinance 349, Section 408.1 and the City Attorney after reviewing same has made certain recommendations for changes.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF WAVELAND THAT ORDINANCE 349, SECTION 408.1 – PRESERVATION OF LIVE OAK AND MAGNOLIA TREES IS HEREBY AMENDED AS FOLLOW

SECTION 1. Purpose and intent. The Mayor and Board of Aldermen find that it is necessary to protect the existing Live Oak and Magnolia trees within the City of Waveland in order to maintain air quality, defend ecological integrity and preserve beauty and tranquility of said City and adopt this Ordinance in the interest of the Health, Safety and General Welfare of the residents of said City.

A. The Purpose of this Section of the Ordinance is to regulate, control and promote the planting of trees, to encourage the protection of existing trees in the streets and public grounds within the City, to regulate tree preservation, replacement and indiscriminate removal of trees on private property, both on unimproved lands and on land which has heretofore been improved to any extent whatsoever, and to establish procedures and practices for fulfilling these purposes.

B. The intent of this Section of the Ordinance is to encourage the protection of existing trees and to promote the planting of additional trees in order to facilitate the control of soil conservation, air pollution and noise and to enhance the beauty, health and safety of the environment for the city.

SECTION II. Definition. The trees covered by this Ordinance are defined as "Live Oak (*Quercus virginiana*) and Magnolia trees (*Magnolia Grandiflora*)" of the size hereinafter indicated.

TRUE COPY
OFFICE OF THE CITY CLERK
CITY OF WAVELAND
[Signature] *cmcc*

SECTION III. Removal of live oak and magnolia trees - Permit Required.

- A. Without a permit therefore, it shall be unlawful for any person firm or corporation to cut down, remove, destroy or effectively destroy through damaging any Live Oak Tree of eighteen (18") in Diameter or greater or any Magnolia Tree of eight (8") in diameter or greater, measured at a point three feet above ground level, growing within the City of Waveland. The penalty for any unlawful action is stated in Section 811.2 of the Zoning Ordinance.
- B. A permit for the cutting down or destruction of a Live Oak or Magnolia tree or trees as hereindescribed shall be issued only if the tree or trees proposed to be cut are diseased, injured, in danger of falling and causing destruction or damage to an existing structure, interferes with existing utility service, creates unsafe vision clearance, is currently causing damage to an existing structure or property, is structurally unsound or dangerous, or for such other good cause as shall be determined by the City.

SECTION IV. Permit for cutting of live oak or magnolia trees - Procedure.

- A. **Application.** Any person, firm or corporation desiring to cut down any Live Oak or Magnolia tree or trees as described in Section III shall fill out an application therefore with the City Building Official and later pay an application fee of Seventy-Five Dollars (\$75.00). Each application shall state the legal description of the property on which the tree or trees is located; the mailing address and telephone number of the applicant and the reason for the request. As part of the application, the applicant must provide a report from a certified and licensed Arborist in Mississippi that includes an evaluation of the tree as well as any recommendations regarding the tree or other affected trees on the property. In some cases, it may be required that a second report from a Certified Arborist in Mississippi be submitted. There will be a separate fee of \$50.00 for the permit that will be due when it is issued.

If the application for removal of a tree(s) does not qualify for such removal, relocation or substantial alteration under the condition of the above subsection, or in the event a tree is removed without a permit, then the Building Official or the *Planning & Zoning Board*, as the case may be, shall either require the applicant to relocate on said premises each protected tree being removed, and to keep such tree in a healthy living condition for at least two (2) years following relocation. Alternatively, in the event the tree cannot be relocated, the owner shall be required to compensate the city in an amount equal to the value of the lost protected tree, as determined by a City approved Certified Arborist in Mississippi by reference to the current edition of the *Guide for Plan Appraisal* by the International Society of Arboriculture. Such replacement funds will be administered by the Mayor and Board of Aldermen and used for replacement trees and shrubbery at the

applicant's site or alternate public property locations as may be recommended by the City Approved Certified Arborist in Mississippi.

- B. **Inspection.** Within four working days of the receipt of such application (with weather permitting or such other reasons as shall be outside of his/her control) the Building Official in consultation with the Chairman of the Planning and Zoning Board and a certified arborist from the MS. Extension Service or such other licensed arborist as the City shall designate shall inspect such tree or trees and indicate on said application.
1. The approximate spread and the actual trunk circumference from which shall be calculated, diameter, measured at a point three feet above ground level, of the tree or trees.
 2. The health and physical condition of the tree or trees.
 3. Whether or not in his opinion removal is justified by reason of any of the following:
 - a. The required report from a Certified Arborist in Mississippi.
 - b. The tree or trees proposed to be cut are diseased, injured, in danger of falling and causing destruction or damage to an existing structure, interferes with existing utility service, creates unsafe vision clearance, is currently causing damage to an existing structure or property, is structurally unsound or dangerous, or for such other good cause as shall be determined by the City.
 - c. Construction or other improvements to be made on the property

- C. **Approval or Denial.** If the Building Official in consultation with the Chairman of the Planning and Zoning Board and a certified arborist from the MS. Extension Service or such other licensed arborist as the City shall designate shall deny the application, upon written notice to the applicant the City Planning and Zoning Board shall review the application together with the information gathered under Section IV, B, at its meeting and in accordance with this Section shall recommend approval or denial of the application. If the application is denied by the Planning and Zoning Board, the written notice of such action specifying the date thereof and the reasons therefore shall be mailed to the applicant at the address shown in such application. If the applicant is aggrieved by the decision of the City Planning and Zoning Board, the applicant may file a written request for review of such decision to the Board of Mayor and Aldermen by filing same with the City Clerk's office within fifteen days of the date of such decision. If approved, by the Board of Mayor and Alderman at a Board meeting, the Building Official shall issue

the permit to the applicant. Any person feeling aggrieved at the findings and decision of the Board of Mayor and Aldermen shall have the right to appeal to a court of competent jurisdiction and shall be governed by applicable statutes of the State of Mississippi for such appeals.

D. Permit Non-Transferable: Restricted. Any permit issued herein is not transferable from one tree to another tree or to a different owner of the property, unless provided in the permit. The permit shall expire three months from date of issuance, unless renewed, and shall expire in the event a specific construction project for which it was issued is cancelled.

SECTION V. Remaining Trees to be protected. Prior to cutting down any Live Oak or Magnolia tree, as herein described, and pursuant to a permit issued hereunder, the applicant shall protect all other trees in the vicinity of those to be cut which could be damaged in the process of construction. It shall be unlawful for any person to place material or machinery within the established tree canopy drip line of any live oak or magnolia tree as herein described.

As a condition to the granting of a tree removal permit, the applicant shall be required to:

A. Relocate those protected trees which would otherwise be destroyed to another location upon the site; or
B. To replace those protected trees which will be destroyed with suitable replacement trees elsewhere within the site. In determining the required relocation or replacement of trees, the Building Official and the Planning & Zoning Board, when appropriate, shall consider the needs of the intended use of the property, including all lands dedicated to public use, together with an evaluation of the following:

1. Existing tree coverage on the site and in the immediate surrounding area.
2. The number of trees to be removed on the entire site.
3. The type, size and condition of the tree or trees to be removed.
4. The area to be covered with structures parking and driveways.
5. The feasibility of relocating the particular tree or trees.
6. The topography and drainage of the site.
7. The extent to which the tree or trees contribute to the aesthetic, economic and environmental integrity of the surrounding area.

C. Live Oaks (*Quercus virginiana*) - (Each replacement tree shall have characteristics comparable to those of the proposed tree to be removed and shall be a minimum of one and one-half inch (1½") in diameter nursery stock, eight (8') feet minimum height after planting. The type of replacement trees and location of relocated or replacement trees shall be identified as approved by the Building Official prior to the issuance of a tree permit. Each replacement tree shall enjoy the same protection as any protected trees defined herein. Each protected tree shall be replaced at the following ratios; Live Oaks eighteen (18) inches in diameter shall be replaced at a two (2) to one (1) ratio, Live Oaks twenty-four (24) inches in diameter shall be replaced at a three (3) to one (1) ratio. Live Oaks thirty (30) inches in diameter shall be replaced at a four (4) to one (1) ratio. Live Oaks thirty-six (36) inches in diameter shall be replaced at a five (5) to one (1) ratio. Live Oaks forty-two (42) inches in diameter shall be replaced at a six (6) to one (1) ratio. Live Oaks forty-eight (48) inches or larger in diameter shall be replaced at a seven (7) to one (1) ratio. The applicant will also pay for the cost of planting the replacement of each tree. If the replacement trees cannot be located on the property, they will be donated to the City at the same ratios listed above. The trees determined to be planted on the property must survive for at least twelve (12) months to fulfill the regulations of this section. If any such replacement tree on the property should die within the twelve (12) month period, then it shall be replaced under the same provisions previously stated, but not including trees donated to the City. The applicant will also pay for the cost of planting each replacement tree.

"Magnolia Trees (*Magnolia Grandiflora*). Each protected tree shall be replaced at the following ratios: Magnolias eight (8) inches in diameter shall be replaced at a one (1) to one (1) ratio. Magnolias nine (9) inches in diameter shall be replaced at a two (2) to one (1) ratio. Magnolias ten (10) inches in diameter shall be replaced at a three (3) to one (1) ratio. Magnolias eleven (11) inches or greater in diameter shall be replaced at a four (4) to one (1) ratio. The trees determined to be planted on the property must survive for at least twelve (12) months to fulfill the regulations of this section. If any such replacement tree on the property should die within the twelve (12) month period then it shall be replaced under the same provisions previously stated not including the trees donated to the City. The applicant will also pay for the cost of planting each replacement tree.

SECTION VI. It shall be unlawful for any person to cut or damage any trees on City property. Any person convicted of this offense shall be punished in accordance with Section 811.2 of the current Zoning Ordinance.

811.2 Any person, owner, or tenant of any building, structure, premises or part thereof or separately any architect, agent, or other person who commits, participates in, or assists in, or maintains such violation of Section 408 (cutting down a protected tree without a permit) of the current or amended Zoning Ordinance shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by paying a fine or being subject to any penalties provided herein.

SECTION VII. Method of Appeal shall be as provided in Section 1003, Zoning Appeal Board, specifically Section 1003.2 Appeals, of the current Zoning Ordinance.

SECTION VIII. Amendments to Application. The applicant may amend his application so as to reduce the number of trees to be removed at any time prior to the final determination by the Board of Mayor and Aldermen.

SECTION IX. Adoption. The provisions of this Ordinance shall not apply to the removal of trees from City owned property by order of the Mayor and Board of Aldermen or by public utility companies for reasons of public safety.

SECTION X. Penalties. Violation of this Ordinance shall be a misdemeanor punishable by a fine not to exceed One Thousand (\$1,000) per tree illegally removed or damaged, or imprisonment for not more than thirty (30) days, or both, and in addition, payment of all costs of prosecution and expenses involved in the case may be recovered by the City and allowed by law.

SECTION XI. Validity. That if for any reason, any portion, part, section, or paragraph of this Ordinance be held to be invalid or unconstitutional, it shall not affect the remainder thereof.

SECTION XII. Effective Date. That this Ordinance shall become effective thirty (30) days from the date of its adoption and shall be published and posted as required by law and placed in the Ordinance Book of the City of Waveland, Mississippi, and said Ordinance shall repeal and supersede any other Ordinance on said subject.

THE ABOVE AND FOREGOING ORDINANCE AMENDMENT, having first been reduced to writing and was submitted to the Board of Mayor and Alderman, and having been adopted by the following vote:

Alderman Piazza made a motion to adopt the foregoing Ordinance, Alderman Burke seconded the motion and the question being put to a roll call vote, the results were as follows:

Alderman Jeremy Burke	voted: <u>Nay</u>
Alderman Bobby Richardson:	voted: <u>Yea</u>
Alderman Shane LaFontaine	voted: <u>Yea</u>
Alderman Charles Piazza	voted: <u>Yea</u>

The motion having received the affirmative vote of the majority of the members present, the Mayor declared the motion carried and the Ordinance Amendment adopted on this the 16 day of February, 2022.

Mike Smith

Mike Smith, Mayor

Attest


Tammy Fayard, City Clerk