

**Ordinance No. 2007 -**

**ORDINANCE AMENDING APPENDIX B (LANDSCAPE ORDINANCE) OF THE LAND DEVELOPMENT CODE ESTABLISHING TREE PRESERVATION STANDARDS FOR CERTAIN DEVELOPMENT, ESTABLISHING A TREE ESCROW ACCOUNT AND FOR OTHER MATTERS FOR THE CITY OF OXFORD, MISSISSIPPI**

**BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF OXFORD, MISSISSIPPI AS FOLLOWS:**

**SECTION I** That Appendix B (Landscape Ordinance) of the Land Development Code, Code of Ordinances, Oxford, Mississippi, is hereby amended to read as follows:

**SECTION 9 ½-21 TITLE**

This ordinance shall be known as the "Landscape Ordinance" for the City of Oxford, Mississippi.

**SECTION 9 ½-22 PURPOSE**

The purpose of this ordinance is to protect and to promote the public health, safety and general welfare of the citizens of the City of Oxford; to provide landscaping requirements to protect the public from the effects of erosion, flooding and obstruction of vehicular and pedestrian traffic; to aid in stabilizing the environment's ecological balance by contributing to the processes of energy and soil conservation, air purification, oxygen regeneration, wastewater neutralization, ground water discharge, and storm water runoff retardation, while at the same time aiding in noise, glare and heat abatement by preserving the existing tree canopy; to ensure that the local stock of native trees and vegetation is maintained and replenished as necessary; to assist in providing adequate light and air and in preventing overcrowding of land; to provide visual buffering and to enhance the beautification of the city; to safeguard and to enhance property values and to protect public and private investment; to preserve and protect the unique identity and environment of the City of Oxford; to preserve the economic base attracted to the City of Oxford by such factors; to provide an area devoted to landscaping of no less than 5% of the total developed area in the relevant zoning district.

**SECTION 9 ½-23 DEFINITIONS**

Unless specifically noted otherwise, the following definitions are standard throughout this ordinance:

**Access way:** An area intended to provide entrance or exit for vehicular traffic from a public or private right-of-way to an off-street parking or loading area.

**Berm:** Mounds or walls of earth that are molded into landforms in a landscaped area. When berms are used for screening, buffering or any other purpose, the berm shall be constructed such that soil erosion is prevented and sight triangles are unobstructed. The surface of the berms shall be completely covered with plant material or durable mulch so that the bare soil is not visible. Allowance for soil settlement shall be calculated at ten (10) percent after the berms are compacted.

**Buffer:** The use of landscaping, berms, walls, fences or any combination thereof, that at least partially blocks, in a continuous manner, the view from one area to another.

**City:** The City of Oxford, Mississippi.

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

**Common Development:** A commercial development consisting of three or more businesses, which operates as a unit and shares common access and common parking areas; or a multi-family residential development consisting of three or more residences, which operates as a unit and shares common amenities.

**DBH (Diameter Breast Height):** The diameter of a tree as measured four and one half (4 ½') feet above grade level.

**Deciduous:** Of or referring to a plant which tends to shed its leaves each year.

**Development:** The act, process, or result of developing. A developed site.

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

**Encroachment:** The act of advancing beyond the usual or proper limits, as in the encroachment of a motor vehicle beyond the limits of the parking area, in to the landscaping.

**Encroachment Barrier:** The protective barriers which shall be provided, positioned, and secured to prevent any part of an automobile or other vehicle from extending into live landscaping, fences, or walls. Curbing, wheel stops, landscape timbers, railroad ties or bumper rails shall provide protection for all landscaping from vehicular encroachment.

**Evergreen:** Of or referring to a plant which tends to retain its leaves all year round.

**Existing Tree:** Any tree indicated on an approved site plan to be retained.

**Fence:** An enclosure or barrier intended to mark a boundary, screen a view, or prevent intrusion.

**Front Building Line:** A building wall fronting on the street. Such building wall line shall follow and include the irregular indentations of the building. Steps and unenclosed porches shall be excluded for the purpose of this ordinance.

**Grass:** Low growing plants which creep along the earth's surface to form a solid mat or lawn. Only perennial grasses (those which live for more than one growing season) shall qualify to satisfy the requirements of the ordinance.

**Groundcover:** Low growing plants which grow in a spreading fashion to form a more or less solid mat of vegetation, and which are generally included in landscaped areas to prevent soil erosion by providing permeable cover for bare earth.

**Hedge:** Shrubs planted in a continuous line, which will block at least eighty (80) percent of a view in a maximum of two (2) growing seasons after installation.

**Interior Landscaped Area:** That area inside the perimeter of a site, which is permeable and capable of being, planted with live landscape materials.

**Irrigation:** An adequate supply of water, which can be made available to landscape plant materials including, but not limited to, underground sprinkler systems or hose bibs.

**Landscaped Area:** That area within the boundaries of a given site, which is devoted to and consists of landscape material.

**Landscape Material:** Plant materials including but not limited to live trees, shrubs, ground covers, grass, flowers, and native landscape materials; also including but not limited to inorganic features such as planters, stone, brick, and aggregate forms, water, and other landscape elements when used to enhance live plant materials; provided, however, that the use of inorganic materials or grass in combination with inorganic materials shall not predominate over the use of live, organic plants. Artificial plants do not qualify as landscape material.

**Large Tree:** An evergreen or deciduous upright woody perennial plant having a single main stem or several main stems, which is a minimum of 2 inch caliper 12 to 14 foot 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.

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

**Owner:** The person who has legal title to the property in question, or lessee, agent, employee or other person acting on behalf of the titleholder with written authorization to do so.

**Perimeter Landscape Area:** That area surrounding the vehicular use area which is devoted to and consists of landscape materials.

**Protected Tree:** Any tree which meets the requirements of being classified as a "Significant Tree" or is declared by the developer, or required by the Oxford Planning Commission, as to be preserved and protected from clearing or infringement by development. (*Ord. No. 2001-3, 7-17-01*)

**Refuse Storage:** Any area used for the storage of trash or garbage. No refuse storage shall be permitted as part of the landscaped area, but refuse storage is otherwise permitted adjacent to vehicular use areas.

**Remodeling:** The act of reconstructing a building or site for the purpose of making improvements. Any change or modification in existing exterior construction.

**Screening:** Landscaping, berms, fences, walls, or any combination thereof used to block or significantly obscure, in a continuous manner, the view from one area to another.

**Shrub:** Woody or semi-woody perennial plants that are customarily included in landscape designs to provide for lower scale buffering and visual interest.

**Sidewalk:** A hard-surface, all-weather area of a minimum of four (4) feet in width designed for the convenience of pedestrian access, which is normally located immediately within the public right-of-way.

**Sight Triangle:** The area on either side of an access way at its junction with a street, forming a right-triangle shape within which clear visibility of traffic and pedestrians, shall be maintained.

**Significant Tree:** Plant materials which meet the following requirements: Healthy hardwood and evergreen trees, except pines, with a DBH of 15" or greater; healthy pines with a DBH of 24" or greater measured at four and a half (4 ½ ') feet above grade level.

**Significant Vegetation:** Any large shrub meeting or exceeding eight (8) feet in height at maturity.

**Soil:** The medium in which plants will grow.

**Small Tree:** 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 (6-8) feet overall height at the time of planting and which attains a minimum height of fifteen (15) feet and a maximum height of thirty (30) feet.

**Specimen Tree:** Any tree identified by the Oxford Tree Ordinances' Master Tree List at least four (4") 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. Examples include Flowering

Dogwood (*Cornus florida*), Red Bud (*Cercis spp.*), Southern Magnolia (*Magnolia grandiflora*), Maples (*Acer spp.*), Cherry (*Prunus spp.*), and native hardwoods, as so designated by the Oxford Tree Board.  
(Ord. No. 2001-3, 7-17-01)

**Tree Grove** – Existing stand of native significant and/or specimen trees with their understory vegetation cover intact with drainage conditions unchanged and general slope and grades unaltered. The extent of the grove shall extend three (3) feet beyond the dripline of the perimeter trees in the grove.

**Turf:** Low growing perennial grasses which creep along the earth's surface to form a solid mat or lawn.

**Value:** Value shall be determined as the true value as provided by the tax assessor for tax purposes or the property owner may provide a current appraisal from a certified licensed appraiser.

**Vehicular Use Area:** That area of development subject to vehicular traffic, which is required to be a hard surface, all-weather area, including access ways, loading and service areas, areas used for parking, storage or display of vehicles, boats or portable construction equipment, and all land which vehicles cross over as a function of primary use.

**Vines:** Herbaceous or semi-woody plants requiring support upon which to grow and used to provide some screening or buffering effects.

**Wall:** An enclosing structure made of brick, stone, earth or other materials intended to mark a boundary, screen a view, or prevent intrusion.

**Walkway:** A hard-surface, all-weather area intended for pedestrian circulation within a development.

### **SECTION 9 ½-24 APPLICABILITY AND EXEMPTIONS**

A. Except as otherwise provided below, this ordinance shall apply to all land located in the City zoned RC, SC, PB, GB, NB, DB, I, and approved and designated P.U.Ds; however, all residential subdivisions, as defined by the Land Development Code, when three (3) or more lots are under common ownership within a residential subdivision, and residential site plans of three or more units, shall comply with Section 9 ½ - 34. All rules and regulations shall apply to any applicant applying for a building permit and shall also be required to submit a landscape plan to accompany the application for a building permit. These requirements shall remain and continue with any and all subsequent owners.

B. As to new developments and vehicular use areas, a common development which includes more than one lot shall be treated as one lot for the purposes of satisfying these landscape regulations. Split ownership, planning in phases, construction in stages, and/or multiple building permits for a project shall not prevent it from being a common development as referred to in the definitions. Each phase of a phased project shall comply with these requirements.

C. Any development or vehicular use area in existence before adoption of this ordinance shall comply with the requirements set forth herein under any of the following circumstances:

1. Any change requiring a thirty (30) percent or more increases in the number of parking spaces.
2. Parking lots with over one hundred (100) spaces must be in compliance with Section 9 ½ - 29 when they are resurfaced, but no later than the end of 2012.
3. Any additions, exterior renovations or remodeling which increase the square footage of a development by more than fifty (50) percent.
4. When exterior renovations or remodeling is less than (C1) or (C3) above, 5% of the total permitted cost for projects costing \$10,000 dollars or more shall be utilized for landscaping in a manner that complies with this ordinance.
5. For purposes of subparagraphs (1) and (2) above, a common development shall be considered as a whole rather than as individual properties.

D. Exceptions: The requirements for landscaping shall not apply to the following, unless otherwise noted:

1. Building permits for buildings located on property zoned A, CE, RE, RA, RA1 and RB.
2. Building permits for buildings less than 100 square feet on an out-parcel within a shopping center.
3. Clearing of trees for forestry or agricultural purposes, and for safety and the protection of property.
4. Building permits for the restoration of a building when restoration is required as a result of damage and/or destruction by fire or natural causes provided said permit is applied for within twelve (12) months of the occurrence of fire or natural causes.
5. Multi-storied parking or covered parking structures shall be exempt from providing interior landscaping.
6. Property identified, platted and under development or under an existing contract for sale and development at the time of adoption of this ordinance. (Ord. No. 2001-3, 7-17-01)
7. Commercial sites less than one acre (43,560 sq. ft.) in size are recommended, but not required, to comply with Section 9 ½ -34 (C) Tree Preservation Requirements.

## **Section 9 ½ - 25 BUFFER AREA**

A. Buffer Relating to Abutting Properties: There shall be a fifty (50) foot buffer (to include the applicable setback requirement) between commercial or manufacturing properties and any single family residential zone which will include landscaping and/or fences, so that there will be an unbroken screen to limit visibility between the zones. A buffer area unbroken by vehicular access way of the minimum width shall be located parallel to the abutting property line. All easements, including utilities, may be included in the buffer area or be used or otherwise employed to meet the lot requirements of the zoning area if it is calculated as part of the 5% landscaped area.

B. Types of Materials Used in Buffer Areas:

1. Walls and/or Fencing: Walls and fencing may be utilized within the buffer area. Where utilized, a six (6) foot masonry wall or solid chain link fence or a fence of approved wood of natural decay resistance shall be placed along the property line or along the inside perimeter of the buffer so as to provide one hundred (100) percent visual screening at time of the issuance of the Certificate of Occupancy.

2. Trees and other Vegetation: Trees and other vegetation shall be used to enhance the buffer and may be used in any landscape coverage ratios or requirements. Trees and vegetation shall be planted so as to provide an eighty (80) percent year round visual screening at maturity. Maturity of planting shall be reached within two (2) years. Staggered planting may be required to achieve this thicket effect, but the buffer area must be 50 feet wide

## **SECTION 9 ½-26 PLAN APPROVAL/CONDITIONAL OCCUPANCY**

This section shall apply to all developments that are required to submit a site plan:

A. Existing Inventory: General location, size, type, and quality of existing significant trees and whether or not it is to be removed or retained and the general location, size, type, and quality of existing specimen trees and any significant vegetation to be retained. Site design shall consider site topography and existing vegetation. Off-street parking areas shall be designed to preserve the maximum number of existing significant and specimen trees and other significant vegetation. All curb cuts to all points of ingress/egress 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. (*Ord. No. 2001-3, 7-17-01*)

B. The clearing of any site under this ordinance in conjunction with the Storm-water Retention and Detention Ordinance and the Erosion Control Ordinance shall be permissible only after a permit has been acquired. (*Ord. No. 2001-3, 7-17-01*)

C. A Landscape Plan is required at the time of site plan review. The landscape plan shall contain the following information: the date, scale, north arrow, title and name of the property owners; the approximate location of existing boundary lines, set-back lines and rights-of-way; proposed building foot prints and dimensions of the building coverage, existing and proposed; and location of existing and proposed streets, parking spaces and driveways; the location and size of paved and landscape areas, in square feet; the center-line of adjacent streets; the zoning of the site and adjacent properties; location of available water for irrigation; existing and proposed utilities overhead and underground (gas, telephone, water, sewer, cable, etc.); general location and labels for all proposed plants; plant lists or schedules with the botanical and common name, quantity, and spacing of all proposed landscape materials at the time of planting, and planting and installation details, as necessary, to ensure conformance with all required standards; the location, size, species, and health of all significant and specimen trees and significant vegetation to be retained; the location size, species and health of all tree groves to be retained; the location, size, species, and health of all significant trees to be removed; proposed retention walls; floodplains and floodways; the species, size, and location of new trees to be planted; clearly depict the limits of soil disturbance to include all areas to be graded; all credit and mitigation calculations; the measures to be implemented during construction for the protection of trees and vegetation to be retained and shall include, but not be limited to fencing, limits of root pruning and restriction on traffic and materials storage.

E. No building permit shall be issued unless such landscape plan complies with the provisions hereof. A Certificate of Occupancy shall not be permitted until landscaping is complete, and it shall be unlawful to occupy or use the premises or a vehicular use area unless the landscaping is installed in accordance with the approved landscape plans and the requirements hereof. Phased development projects must have all mitigation (see Section 91/2 – 34 D.) completed in the phase that has been approved before the issuance of a Certificate of Occupancy.

F. The Building Permit Department may allow Conditional Occupancy valid for a period of thirty (30) days with extensions not to exceed an accumulation of one hundred eighty (180) days if all of the following conditions exist;

1. Except for the completion of landscaping installation, occupancy would normally be allowed.
2. Completion of the required landscaping before a permanent Certificate of Occupancy is issued would result in hardship to the applicant, as applied in this case.

3. At the time the Conditional Occupancy is requested, the developer/owner shall make financial arrangements (by certificate of deposit, or letter of credit) satisfactory to the City in the amount of one dollar (\$1.00) to three dollars (\$3.00) per square foot of required landscaping not yet in place to ensure that it shall be installed. Any owner/developer wishing to make such financial arrangements must also grant the City access to the land to install or complete the required landscaping in the event the landscaping installation has not been completed at the end of the required extension period. Such financial arrangements shall be released when the required landscaping is completed.

#### **SECTION 9 ½-27 INSTALLATION AND MAINTENANCE OF LANDSCAPING**

The standards for the installation and maintenance of landscaping shall be as follows:

- A. All landscaping shall be adaptable to climate conditions of the area, and special consideration shall be given where underground or overhead utilities restrict or prohibit the enforcement of this ordinance; all landscaping shall be maintained in good condition and in accordance with all provisions of this ordinance.
- B. All landscaping soil and fill shall be maintained and reasonably free from weeds, refuse, and debris at all times.
- C. Landscaping elements such as walls and fences shall be constructed in a sound workmanlike manner with adequate support or footings and shall be repaired or replaced, as needed, to preserve an attractive appearance and to function as intended.
- D. Any dead plant material or material which fails to show healthy growth during a three year period following Installation which the Planning Director determines has failed to show healthy growth must be removed within sixty (60) days, dependent upon seasonal variations, after being identified.
- E. Replacement of removed plant material must take place within ninety (90) days of removal or notification by the City, whichever occurs first.
- F. Any replacement plant material must meet the size and other characteristics of newly planted material as required in this ordinance.
- G. Maintenance of all landscaping is the responsibility of the owners, jointly and severally.
- H. Trees and large shrubs shall be adequately supported, when necessary, to insure proper growth.
- I. Any landscaped area required by this ordinance shall not be encroached upon by any type of vehicle. All landscaped areas must be protected by an approved encroachment barrier, or bumper stop. A vehicle may overhang a landscaped area, provided that a minimum width of three (3) feet in landscaped area remains.
- J. The maximum growth height of any landscaping within the corner sight triangle shall be limited to three (3) feet in height.

#### **SECTION 9 ½-28 LANDSCAPING AND SIDEWALKS WITHIN STREETS RIGHT-OF WAY**

Owners are encouraged to landscape and to maintain the area within the non-paved street right-of-way abutting their land. Provided, however:

- A. Although the City shall adhere to a general policy of preservation of any such landscaping, the City shall not be responsible or liable in the event any landscaping is required to be removed. Such later removal by the City shall not be counted against the 5% requirement.
- B. Any landscaping in a street right-of-way shall not impede or obstruct visibility of any vehicles.
- C. Any underground sprinkler systems, planters or other permanent structures placed in the right-of-way shall require a permit from the City.
- D. No landscaping shall be placed in an area of right-of-way where a Capital Improvement Project has been funded for such location, unless and until such project has been completed.

#### **SECTION 9 ½-29 VEHICULAR USE AREAS INTERIOR REQUIREMENTS**

- A. If soil and design conditions permit, landscaped areas shall be located in such a manner as to divide and break up the expanse of paving. Each unused space resulting from the design or layout of parking spaces, which is over twenty-four (24) square feet in area, shall be landscaped.
- B. Canopy trees shall be required for all interior parking areas with twenty (20) or more parking spaces in such a manner that, at the maturity of ten (10) years, the minimum tree canopy coverage of all parking spaces shall be forty (40) percent. This shall be accomplished by planting trees (selected from a list approved by the Tree Board and available from the Planning Director) at a maximum spacing of one tree per forty (40) linear feet with a minimum of one tree per five (5) parking stalls. No parking stall shall be more than fifty (50) feet from a tree and all trees shall have a caliper of two (2) inches or greater. All newly planted canopy trees shall be in at least one hundred (100) square feet of total permeable area. Additional permeable area may be required by the City if necessary to ensure adequate growth of trees. Each tree planting area shall have a three (3) foot depth of quality, root growing soil. (See SECTION 9 ½-32) (Ord. No. 2006-6, §1, 5-16-06)

### **SECTION 9 ½ -30 VEHICULAR USE AREAS PERIMETER REQUIREMENTS**

Except as provided in SECTION 9 ½-31. A landscaped buffer of at least five (5) feet in width, consistent with the requirements of SECTION 9 ½-27(l) of this ordinance, shall be installed around the perimeter of all vehicular use areas that abut the public right-of-way. The planting of one (1) large tree shall be required, in accordance with the provisions of this ordinance, every fifty (50) linear feet or fraction thereof, or one (1) small tree every thirty-five (35) linear feet or fraction thereof within the perimeter landscaped area. All newly planted trees shall be planted in a permeable area. At least twenty-five (25) square feet of total permeable area for small trees and at least sixty (60) square feet or total permeable area for large trees. Additional permeable area may be required by the City if necessary to ensure adequate growth of trees.

*(Ord. No. 2006-6, §1, 5-16-06)*

### **SECTION 9 ½-31 FRONT SETBACK REQUIREMENTS**

All sites to which this ordinance applies shall provide landscaping for the front setback. The landscaped area may be immediately adjacent to the public right-of-way or the proposed public right-of-way if said site is not designated for improvements in the City's Comprehensive Plan or the Master's Transportation Plan. This landscaped area may contain a minimum of one (1) large tree per fifty (50) linear feet of road frontage or one (1) small tree per thirty-five (35) linear feet of road frontage. Not more than fifteen (15) percent of the total landscaped area shall be an impervious surface, which shall be allowed only for landscape amenities such as paved walks, walls, fountains, signs, public art, etc. The landscaped area shall not be encroached by vehicles except as specified in SECTION 9 ½-27 (l). See also SECTION 9 ½-27 (A) for specific consideration in utility area.

### **SECTION 9 ½-32 COMPOSITE SITE REQUIREMENTS**

If all heretofore mentioned landscape requirements are met and the total square footage of the landscaped or green areas do not equal five (5) percent of the total site, additional landscaped or green areas shall be required, so that a minimum of five (5) percent of the total site is landscaped. Any adjacent public right-of-way if planted and maintained by the developer shall be included as a credit to the five (5) percent. Such additional landscaped area may be in the form of additional landscaped vehicular use areas, green areas, additional front setback landscaped areas or foundation planting around buildings and structures. At a minimum, all additional landscaped areas shall be completely covered with live turf or ground cover, or seasonal seeding.

### **SECTION 9 ½-33 LOADING AND UTILITY SERVICE AREA LANDSCAPE REGULATIONS**

All loading and utility service areas not screened by an intervening building, established after the application of this section, and all pre-existing areas which are required to comply by SECTION 9 ½-24 shall be screened from view from any public street right-of-way for their entire length except for necessary access. Screening for loading and utility service areas may be accomplished by either of the following:

- A. A closed fence or wall which is at least six (6) feet high and is compatible with materials and color of the principal building; along with additional natural evergreens, shrubs or trees so that no more than two-thirds (2/3) of the surface area of the closed fence or wall is visible from the street within three (3) years of erection of the structure.
- B. The screening may be accomplished with natural evergreen shrubs or trees which can be expected to reach six (6) feet or a greater height within three (3) years of planting.

### **SECTION 9 ½ - 34 TREE PRESERVATION AND PROTECTION**

**A. Principles.** This section shall be enforced according to the following principles:

1. Preservation of existing trees shall be the first, best, and standard approach.
2. If preservation cannot be achieved, on-site mitigation shall next be pursued.
3. If neither of the above approaches can be achieved, payment shall be made to the tree escrow account.

**B. Tree Preservation Criteria.** The Planning Director shall consider the following factors, and any other relevant information, when evaluating tree preservation as shown on the Landscape Plan:

1. The desirability of preserving a tree or group of trees by reason of age, location, size, or species.
2. Whether the size or shape of the lot reduces the flexibility of the design.
3. The general health and condition of the tree or group of trees, or the presence of any disease, injury, or hazard.
4. The placement of the tree or group of trees in relation to utilities, structures, and the use of the property.

5. The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.
6. Whether roads, utilities and building footprint are designed in relation to the existing topography, and located, where possible, to avoid damage to existing tree canopy.
7. Construction requirements of on-site and off-site drainage.
8. The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations.

**C. Tree Preservation Requirements.** The intent is to leave undisturbed as many existing significant and specimen trees as possible. Further, the number of trees required for mitigation shall be based upon the existing significant trees to be removed:

1. For each existing significant tree removed, the rate of mitigation is as follows:
  - a. Replacement trees shall be planted at rate of one two inch (2") caliper tree per five (5") inches of trees removed, measure at DBH.
2. For each existing significant and/or specimen tree retained, the following credits shall be available:
  - a. For each significant and/or specimen tree retained, extra credit shall be available for one two (2") caliper tree equal to the total DBH of all significant and/or specimen trees retained divided by the rate of mitigation (5").
  - b. For each tree grove retained, extra credit shall be available for one two (2") caliper tree equal to the total DBH of all significant and/or specimen trees retained within a tree grove divided by the rate of mitigation (5").
3. The Planning Director may approve the use of trees less than two inch (2") caliper for the planting of medium tree species (dogwoods & red buds) and/or greater than two inch (2") caliper on an equal total caliper basis, e.g. two 3" caliper trees equals three 2" caliper trees.
4. Each development will have a 10% 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.
5. Trees in poor health and/or hazard trees will not require mitigation if the condition is so determined by a designated city official, and in the event of a dispute, an International Society of Arboriculture (ISA) certified arborist will make a determination at the expense of the developer.
6. Existing significant trees located within a building footprint, street, driveway, sidewalk, pathway or utility easement shall not require mitigation.

**D. Tree Escrow Account.** Any Applicant unable to achieve on-site mitigation shall make a payment to the City of Oxford's Tree Escrow Account for each tree required to meet the mitigation requirements set forth above. The amount of money to be paid shall be based on the fair market value of materials and labor at the time of planting. The Applicant shall submit cost estimates to the Planning Director for approval.

- a. Money contributed in lieu of on-site mitigation shall be paid prior to issuance of a Building Permit and/or prior to Final Plat approval by the Board of Aldermen for all Residential and Non-Residential Subdivisions.
- b. Money contributed under this section:
  - i. May be used for tree canopy management, replacement, and preservation including, but not limited to, tree acquisition and planting promotions; canopy replacement site identification, acquisition, and preparation; tree acquisition, planting, and maintenance utilizing either City Staff or contract labor;
  - ii. Shall not revert to the general fund for ongoing operations.
- c. If the development is a sub-division and it is not possible to plant street trees within the subdivision, planting locations will be sought in appropriate sites within a one (1) mile radius of where the development is located, but if this cannot be achieved, the moneys shall be used to plant the trees in the City Park closest the development, and if that cannot be achieved, anywhere in the City limits. The location of appropriate planting spaces is to be derived from Oxford's Master Tree Plan.
- d. The City of Oxford shall refund the portion of the money contributed under this section, including the accrued interest that has not been expended seven (7) years from the date of the contribution. Interest shall be based on the rate of return the City has experienced over the period.
- e. Refunds shall be paid to the Applicant who made the original contribution.
- f. Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the Applicant no later than thirty (30)

days after the date which the refund becomes due. The sending by regular mail of the notices to the Applicant shall be sufficient to satisfy the requirement of notice.

- g. The refund shall be made on a pro rata basis, and shall be paid in full no later than ninety (90) days after the date certain upon which the refund becomes due.
- h. At the time of the contribution to the Tree Escrow Account, the Planning Director shall provide the Applicant with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any contribution to the Tree Escrow Account under this Ordinance.
- i. The Tree Escrow Account shall be managed by the City Clerk. The City Clerk will consult with the Planning Director, the Superintendent of Buildings and Grounds, and the Oxford Tree Board to ensure that all tree management and planting efforts undertaken by the City are fully coordinated.

**E. Prior Tree Removal.** If a site is cleared or significant trees removed prior to obtaining site plan approval, then any development application for the site shall be denied for up to 24 months from the date of the requested development application. However, a request for site plan approval within the 24 month time frame may be considered if the proposed site plan incorporates a re-forestation plan that results in a future canopy coverage of 40% of the site or the applicant agrees to contribute to the Tree Escrow Account equal to the cost of implementing the re-forestation plan or a combination of both. The square foot percentage of canopy area required is based on the total area of the property less the square footage dedicated to the building footprint, street, driveway, sidewalk, pathway or utility easement.

**F. Preferred Species.** All trees to be planted shall be species native to the region and/or selected from a list of preferred tree species developed and maintained by the Oxford Tree Board.

**G. 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 easements, or in other locations where their future protection cannot be assured.

**H. Tree Protection.** Trees identified on an approved site plan to be retained, shall utilize the following protection efforts:

- (a) Install four foot (4') high perimeter fencing at the extreme outer edge of the drip line. Perimeter fencing located within fifty feet (50') feet of any building footprint, unless approved by the Planning Director or the Building Official, shall be constructed of wood or metal materials. The fencing must carry durable signs designating the area as a "Tree Protection Zone" and shall remain in place throughout the construction period. Such signs shall be placed around the perimeter of all tree protection zones with a maximum spacing of twenty five (25) feet and be a minimum of 80 square inches in size and shall be firmly affixed to the tree protection fence. There shall be no activity of any kind inside the perimeter other than hand brush clearing. No land clearing or building permits shall be issued until the perimeter of all protected trees and tree groves have been properly fenced.
- (b) Grates or other pervious surfaces shall be utilized within the drip line of existing trees to allow water and air to reach the tree roots.
- (c) Fill (or other soil disturbance) shall be prohibited, as well as any vehicle traffic or material storage in areas under the drip line of trees to be protected.
- (d) Drastic changes in drainage patterns which may negatively affect existing trees shall be avoided.
- (e) Any person who intentionally damages a protected tree shall be in violation of this ordinance and subject to the penalties prescribed in Section 9 ½-38. (*Ord. No. 2001-3, 7-17-01*)
- (f) 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.

## **SECTION 9 ½-35 ADMINISTRATIVE INTERPRETATION OF ORDINANCE**

In the event there is a question concerning the general intent or meaning of any provision of this ordinance text, the Planning Director shall have the right to make such administrative decisions or interpretations. Any aggrieved person may submit a written appeal of an administrative decision or interpretation to the Board of Adjustment. Said Board shall affirm, reverse or modify the administrative interpretation rendered by the Planning and Building Official of the City. An interpretation from which an appeal is made must be in writing, and must be in response to a written request for an administrative decision or interpretation. It is expressly intended that such administrative decision or

interpretation shall in no manner be construed to permit or to grant exceptions or variances to the provisions of this ordinance. Every decision of said Board shall be final, subject, however, to such remedy as any aggrieved party may have at law or in equity.

#### **SECTION 9 ½-36 VARIANCES AND HARDSHIPS**

The Landscape Ordinance does not intend to create undue hardship on affected properties.

Where there are unusual circumstances peculiar to the site being developed and where a literal application of specific provisions of this ordinance would unnecessarily restrict the development of a site and result in undue hardship to the owners or other interested persons, a variance from specific provisions of this ordinance may be requested. The application requesting a variance from the requirements of this ordinance shall include a description of the property, the exact nature of the proposed variance, and the grounds upon which it is requested. The applicant shall further demonstrate that the granting of such variance will not adversely affect the surrounding properties nor otherwise be detrimental to the public welfare. The application shall be filed with the Planning Director for the City. Upon receiving an application for a variance, in which all required information is supplied, the Planning Director shall make a recommendation within (10) working days and forward said application to the Board of Adjustment for their consideration. Within ten (10) working days after the Board's receipt of a recommendation by the Planning Director, the Board shall meet to consider said request.

Within ten (10) working days after the Board's meeting, the Board shall grant or deny said variance in whole or in part. If the Board fails to take action on the request for the variance within the specified time period, such inaction shall be deemed to grant the variance.

Every decision of said Board shall be final, subject, however, to such remedy as any aggrieved party may have at law or in equity.

#### **SECTION 9 ½-37 MINIMUM REQUIREMENTS**

The provisions of this ordinance are for the promotion of the public health, safety, morals and general welfare for the City of Oxford, Mississippi and are considered to be minimum requirements. Wherever the requirements of any other lawfully adopted rules, regulations, ordinances, and deed restrictions or covenants filed of record are not in conflict with the intent and purpose of this Ordinance, but impose more restrictive or higher standards, the more restrictive or higher standards shall govern.

#### **SECTION 9 ½-38 ENFORCEMENT**

- A. Violation by any person of the provisions of this ordinance or failure to comply with any of its requirements, specifically including the proper placement and maintenance of protective fencing, after written notification including e-mail by the Planning Director or the Building Official of the City of the type, nature, and extent of the violation of this ordinance, shall, upon conviction thereof, constitute a misdemeanor.
- B. Any person who violates the provisions of this ordinance or fails to comply with any of its requirements within ninety (90) days after having been duly notified in writing, by certified mail, return receipt requested, by the Planning and Building Director of the City, shall, upon conviction, thereof, be fined not more than one hundred (\$100.00) dollars. Each day such violation continues shall be considered a new and separate offense. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.
- C. Any person who violates the provisions of this ordinance regarding the preservation of existing trees shall be guilty of a misdemeanor and, upon conviction, be punishable by a fine not to exceed one thousand dollars (\$1,000) per tree removed or damaged. (*Ord. No. 2001-3, 7-17-01*)
- D. If the approved Landscape Plan is not being complied with, the Planning Director or the Building Official may issue a stop work order directing the parties involved to cease and desist all work until a corrective action plan is submitted and approved and any penalties applicable under C. above are paid. However, any person who removes or damages a significant tree shown on an approved Landscape Plan shall be required to replace the tree on a one to two basis (e.g. one removed or damaged 16" DBH tree shall be replaced by one 8" caliper tree) within six months from the date of written notification by the Planning Director.

#### **SECTION II. REPEALING CLAUSE**

All ordinances or parts of ordinances in conflict herein shall be, and the same are hereby repealed.

**SECTION III. EFFECTIVE DATE**

The Board of Aldermen finds that in the absence of restrictions on the removal of significant trees and the threat of the removal of significant trees during the period of time the amended Landscape Ordinance was passed and the Ordinance's effective date constitutes good cause for this Ordinance to become effective at once. Therefore, the effective date of this Ordinance shall be immediately from and after its passage by a unanimous vote of all members of the Board of Aldermen.

The above ordinance having being first reduced to writing and read and considered section by section at a public meeting or the governing authorities of the City of Oxford Mississippi on motion of Alderman \_\_\_\_\_, seconded by Alderman \_\_\_\_\_, and the roll being called, the same by the following votes:

Alderman Patterson	voted
Alderman Oliver	voted
Alderman Antonow	voted
Alderman Howell	voted
Alderman Taylor	voted
Alderman Fisher	voted
Alderman Baker	voted