

ORDINANCE NO. 2293

ORDINANCE TO ESTABLISH A BILOXI TREE COMMITTEE AND AMEND CERTAIN SECTIONS OF THE BILOXI LAND DEVELOPMENT ORDINANCE

WHEREAS, on Thursday, January 15, 2015, the Biloxi Planning Commission held a public hearing in the Auditorium of the Dr. Martin Luther King, Jr., Municipal Building, 676 Dr. Martin Luther King, Jr., Boulevard, Biloxi, Mississippi, to hear Case No. 15-001-PC, City of Biloxi, with respect to a request initiated by the City of Biloxi City Council to commence establishment of a Tree Committee - to be composed of seven (7) citizens - one from each of the City's seven (7) Wards - which committee would function to serve in an advisory capacity, providing an outlet for citizen input with respect to tree-related concerns for large-scale development projects proposed within the City of Biloxi; and,

WHEREAS, the Planning commission members were apprised of the particulars of this case, being made cognizant of the fact that as per Section 23-2-4(A)(2)(b) of the Biloxi Land Development Ordinance, the City Council suggested that the City of Biloxi Code of ordinances be amended, specifically to establish a Tree Committee, as outlined within Case No. 15-001-PC; and,

WHEREAS, On January 15, 2015, after some discussion, the specific modification proposed by the Biloxi Planning Commission is as follows:
Sec. 2-6-1. Established.

In order to make adequate provision, preparation, adoption and revision of the city plan to guide, direct and coordinate the beautification of the city in an orderly, efficient, healthful and economic manner, there is hereby created a committee to be known as the Biloxi Tree Committee, referred to in this article as the committee.

Sec. 2-6-2. Membership; term of office; compensation of committee.

The Biloxi Tree Committee shall be composed of seven (7) members, one individual from each of the City's seven (7) Wards, all of whom shall be resident citizens of the City and qualified electors therein. The members will be selected by the Mayor and ratified by the City council. Each member shall be appointed for a period of three (3) years. Vacancies shall be filled in
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accordance with this section, and appointments to fill vacancies shall be for the unexpired terms only. Each member shall be eligible for reappointment, and all members of the committee shall serve without pay.

Sec. 2-6-3. Officers; rules of procedure.

The Biloxi Tree Committee shall elect from among its members its own chairman, vice chairman, and secretary, and provide from time to time such rules and regulations, not inconsistent with the ordinances of the City, for its own organization and procedure, as it may

deem appropriate.

Sec. 2-6-4. Powers and duties.

The Biloxi Tree Committee shall advise city officials, agencies and civic groups with regard to the development of a comprehensive city beautification plan, shall work under the direction of the City Arborist, and shall serve in an advisory capacity to perform the following functions:

- (a) To offer comments and advice with respect to any application submitted to the Planning Commission involving the removal of more than five (5) protected trees from a property site;
- (b) To identify and suggest potential suitable sites (i.e. public land or other locations that have been determined to have a demonstrated need for additional landscaping/tree replacement measures as a result of a previous tree adjudication process resulting in tree displacement, or due to a loss of trees and greenery from some previous storm event or act of nature) to help promote the appropriate replenishment of trees and landscaping throughout the city; and,
- (c) To designate a single individual from this newly established Tree Committee to serve as a liaison (i.e. as a non-voting member) to the Development Review Committee (DRC) to interface with that review body as it determines the terms and conditions necessary to effect final disposition of fixture large-scale development projects.

WHEREAS, the City Council has taken under advisement the recommendations of the Biloxi Planning Commission, the Community Development Department staff, and the many citizens' comments received at public hearings both before the Planning Division and before the City Council, prior to developing the following changes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILOXI, MISSISSIPPI, AS FOLLOWS:

SECTION 1: The Biloxi Land Development Ordinance of the City of Biloxi, Mississippi (1992), is hereby amended to include the following sub-sections to read as follows:

ARTICLE 23-2-2 - REVIEW AND DECISION-MAKING AUTHORITY

(G) TREE COMMITTEE

The Tree Committee is hereby established.

- (1) Tree Committee; purpose and intent.

The purpose and intent of this article is to establish a body to assist the City in promoting the preservation and replenishment of the native stock of trees, conservation, ground water recharge, storm water runoff retardation, oxygen regeneration, and noise abatement, and to make the city a healthier, more beautiful, and safer place to live. This committee is to be known as the Biloxi Tree Committee, referred to in this article as the "committee". In making its recommendations the committee is charged with using its best efforts to balance those public goals with the public need for economic development while respecting the rights of individuals to develop their property in a meaningful yet

responsible way within the confines of the law.

(2) Membership; term of office; no compensation of committee.

The Biloxi Tree Committee shall be composed of seven (7) members, one individual from each of the City's seven (7) Wards, all of whom shall be resident citizens of the City and qualified electors therein. The members will be selected by the Mayor and ratified by the City council. Each member shall be appointed for a period of three (3) years and shall continue to serve until a successor is appointed and ratified. Vacancies shall be filled in accordance with this section, and appointments to fill vacancies shall be for the unexpired terms only. Each member shall be eligible for reappointment, and all members of the committee shall serve without pay.

(3) Officers; rules of procedure.

The Biloxi Tree Committee shall elect from among its members its own chairman, vice chairman, and secretary, and provide from time to time such rules and regulations, not inconsistent with the ordinances of the City, for its own organization and procedure, as it may deem appropriate. Meetings may be held by telephonic or other electronic means, and any official action shall only require a majority of the members participating in the meeting. A quorum shall consist of a majority of the members appointed and ratified, and vacancies shall not be considered in the determination of a quorum.

(4) Powers and duties.

The Biloxi Tree Committee shall advise city officials with regard to the development of a comprehensive city beautification plan, and when undertaking those tasks shall work under the direction of the City Arborist. With the assistance of the City Arborist the committee shall serve in an advisory capacity to perform the following functions:

(a) Major Tree Permits.

To review applications for tree permits required under Chapter 23 of this Code of Ordinances with respect to permits involving the proposed removal of one (1) or more protected trees or specimen trees (Major Tree Permit) from a property site;

(b) Mitigation Recommendation.

To identify and suggest potential suitable sites (i.e. public land or other locations that have been determined to have a demonstrated need for additional landscaping/tree replacement measures as a result of a previous tree adjudication process resulting in tree displacement, or due to a loss of trees and greenery from some previous storm event or act of nature) to help promote the appropriate replenishment of trees and landscaping throughout the city and provide mitigation sites for developers where such mitigation is required and not suitable for the developed site; and,

(c) DRC Participation.

The City Arborist shall notify all committee members by email of the content of all applications for Major Tree Permits. The Committee shall review and make a written recommendation (by email or other writing) to the City Arborist, the Director of Community Development and the Mayor within ten (10) days of receipt by all committee members of each proposed Major Tree Permit, and if the committee shall fail to meet and make a recommendation within said ten (10) days, then the City Arborist shall make the determination without its input. The committee shall report its recommendations in writing (by email or other writing) to the City Arborist, the Director of Community Development and the Mayor. A designated individual from the Tree Committee (a different individual may be designated by the committee for each permit) shall serve as a non-voting member of the Development Review Committee (DRC) and shall have the authority at any meeting of the DRC to modify any recommendation or approval of the Tree Committee. The Director of Community Development shall notify the Tree Committee by email or other writing of all tree permit applications and all meeting times and dates of the DRC and shall provide each member of the Tree Committee a copy of the tree permit application, with the site's tree inventory attached and with information regarding tree canopy on the site to facilitate evaluation of the impact of tree removal on erosion, storm water runoff, and other impact.

(d) Review of Prior Approved Permits.

To periodically review previously issued Tree Permits, both Major and Minor, to determine compliance with replacement and establishment provisions during the terms of those permits, and to provide resulting reports to the Mayor, the Director of the Department of Community Development and the City Council when requested, but at least annually. The committee shall report any perceived violation to the Mayor and Department of Community Development for follow up and enforcement. The Director of Community Development shall provide the committee with the information and data necessary to carry out these follow-up tasks.

(e) Majestic Oaks.

To receive and review applications by property owners for a designation of an individual live oak tree on their property to be designated a "Majestic Oak". If approved by the Committee, such designation will be submitted to the Mayor and City Council for their consideration. If that designation is also approved by the Mayor and City Council or if the City Council otherwise designates a tree a Majestic Oak, then any tree permit involving such Majestic Oak shall be considered a Major Tree Permit and shall require approval of the Tree Committee.

(5) Appeals.

Any tree permit applicant may appeal a determination by the Director of Community Development or the Mayor to the City Council by providing written notice to the Clerk of Council of such appeal within ten days of the receipt by the applicant of notice of the

determination.

(6) Penalties.

The provisions of Chapter 23 of this Code of Ordinances relating to the protection of trees and Tree Permits are hereby incorporated herein by reference, and it is the intent of the City that violation of the terms of any of those provisions relating to the protection of trees or the terms of any Tree Permit is a General Offense. Any one so convicted shall be subject to the provisions of Section 1-8-1 of this Code of Ordinances. Each day a violation continues to exist constitutes a separate offense.

SECTION 2: The Biloxi Land Development Ordinance of the City of Biloxi, Mississippi (1992), is hereby amended by adding Subsection 23-2-4 (I)(3)(c) to read as follows:

(c) Staff Review

1. The Director of Community Development shall request and consider comments and recommendations from the City Arborist on all applications for Minor Tree Permits, and may delegate decision making authority to the City Arborist.
2. All applications for Major Tree Permits shall be submitted to the Biloxi Tree Committee in accordance with the procedure set out in Section 23-2-2 (G)(4) 3. of this Code of Ordinances. The Director of Community Development shall review the recommendations of the Tree Committee, the DRC, and the Planning Commission before deciding to grant or deny the permit application.
3. In the event of a conflict between the recommendations of the Tree Committee, the decision of the Development Review Committee, the Planning Commission and/or the decision of the Director of Community Development, the Director shall report the conflict to the Mayor within two (2) days and submit the entire application, including all photographs of the site, along with the Tree Committee recommendation, the DRC and Planning Commission recommendation, and the decision of the Director of Community Development to the Mayor for his review. The Mayor may accept the Tree Committee recommendation or the decision of the Director or modify the decision and the permit or deny the permit.
4. The City Arborist shall provide the Tree Committee a monthly written status report on compliance with the Land Development Ordinance regarding replanting to insure that the required number, size and species of trees. The City Arborist shall also provide the the Mayor and City Council an annual written status report, with copy to the Tree Committee, regarding the status of require replanting and health of replanted trees.
5. All of the departments of the City and all City contractors performing work for the City must apply for and receive a tree permit before cutting or removing trees, and shall comply with all of the tree permit requirements of the Biloxi Code of Ordinances and the Land Development Ordinance.

SECTION 3: The Biloxi Land Development Ordinance of the City of Biloxi, Mississippi (1992), is hereby amended by revising Table 23-2-1, Summary of Development Review Responsibilities, in the following manner:

- (1) By adding the Biloxi Tree Committee to the row of "Review and Decision-Making Authorities";
- (2) By replacing "Tree Permit" with "Major Tree Permit" and "Minor Tree Permit" in the column "Application Review Procedure";
- (3) By designating that the Major Tree Permit is reviewed (R) by the City Arborist, reviewed (R) by the Biloxi Tree Committee, (D) decided by the Director of Community Development, and appealed (A) to the City Council;
- (4) By designating that the Minor Tree Permit is reviewed (R) by the City Arborist, reviewed (R) by the Biloxi Tree Committee, (D) decided by the Director of Community Development, and appealed (A) to the City Council.

SECTION 4: The Biloxi Land Development Ordinance of the City of Biloxi, Mississippi (1992), is hereby amended by revising the definition of "Tree Permit" in Section 23-10-2 to read as follows, and by adding to Section 23-10-2 the two additional definitions stated as follows:

TREE PERMIT

The term Tree Permit, when not otherwise modified, shall be a general reference to both a Major Tree Permit and a Minor Tree Permit unless the context indicates it is applicable only to one.

TREE PERMIT, MAJOR

A permit involving the proposed removal of one (1) or more protected trees from a property site that is reviewed under the provisions of Section 2-6-4 of this Code of Ordinances.

TREE PERMIT, MINOR

A permit involving the proposed removal of unprotected trees from a property site that is reviewed under the provisions of Section 23-6-4 of this Code of Ordinances.

SECTION 5: The Biloxi Land Development Ordinance of the City of Biloxi, Mississippi (1992) is hereby amended by adding a subsection to Section 23-9-6(B) and by revising and re-designating Section 23-9-6(B)(3), both of which shall read as follows:

(3) Pursuant to Mississippi Code Section 21-13-1, any person convicted of removing or damaging existing trees without a Tree Permit or in violation of any Tree permit will be subject to the provisions of Section 1-8-1 of this Code of Ordinances. Each day a violation continues to exist constitutes a separate offense.

(4) Pursuant to Mississippi Code Section 17-1-27, any person convicted of

violating provisions of this Ordinance other than those references in Sections 23-9-6(B)(1)-3, above shall, on conviction, be guilty of a misdemeanor and subject to a fine of up to \$100.00. In the case of continuing violations without a reasonable effort on the part of the violator to correct the violation, each day the violation continues thereafter shall be a separate offense.

SECTION 6: The purpose of this Ordinance is to enable the City of Biloxi to provide for the orderly conduct of government as it specifically relates to the conservation of trees. Due to this purpose, the City Council hereby finds that this Ordinance is essential to the efficient operation of government; therefore, this Ordinance shall become effective as soon thereafter as is legal, provided this ordinance is certified, signed, and published as provided by law.

The foregoing Ordinance having first been reduced to writing, was read by the Clerk and moved by Councilmember Glavan, seconded by Councilmember Tisdale, and was adopted by the following vote:

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|-------|----------|---------|-------|------|
| YEAS: | Lawrence | Tisdale | NAYS: | None |
| | Gines | Glavan | | |
| | Newman | Fayard | | |
| | Deming | | | |

The President then declared the Ordinance adopted this the 26th day of January, 2016.

ATTEST:
/s/ Karen Brashier
CLERK OF THE COUNCIL

APPROVED:
/s/ Robert L. Deming III
PRESIDENT OF THE COUNCIL

Submitted to and approved by the Mayor, this the 27th day of January, 2016.

APPROVED:
/s/ Andrew "FoFo" Gilich
MAYOR