

ORDINANCE NO. 2009-03

**AN ORDINANCE TO REGULATE THE REMOVAL AND/OR
DESTRUCTION OF TREES WITHIN THE TOWN LIMITS OF
MAGNOLIA SPRINGS**

**Town of Magnolia Springs, Alabama
Tree Preservation Regulations**

**BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MAGNOLIA
SPRINGS, AS FOLLOWS:**

These provisions are intended to regulate the removal and/or destruction of trees within the community for the purposes of:

- a. Preserving the existing character of the town, part of which is derived from existing live oaks and other species of trees;
- b. Reducing the effects of noise and air pollution;
- c. Preventing soil erosion and the siltation of drainage improvements and waterways;
- d. Protecting and enhancing the aesthetic qualities of the community;
- e. Adding an element of landscape maturity to new developments in the town thereby enhancing buffering, privacy and increasing the value of property; and
- f. Promoting municipal planning.

Section 1. Applicability

These regulations shall apply to each Protected Tree within the corporate limits of the Town of Magnolia Springs.

Section 2. Definitions

- a. Caliper: The measurement of the diameter of a tree trunk four (4) feet above existing grade.
- b. Magnolia Springs Tree Committee ("Committee"): the Town of Magnolia Springs Tree Committee as established herein.
- c. Protected Tree: Any Live Oak, Southern Magnolia or Long Leaf Pine tree that has a caliper of at least twenty four (24) inches.
- d. Incidental trimming or pruning: Cutting no more than 10% of the Protected Tree.
- e. Town Official: Any member of the Town Council of the Town of Magnolia Springs, the Magnolia Springs Tree Committee or the Mayor of Magnolia Springs.
- f. Horticulturalist: a trained horticulturalist as appointed by the Mayor and approved by the Town Council of the Town of Magnolia Springs.

Section 3. Establishment of the Magnolia Springs Tree Committee

- a. There is hereby created a Committee to be known and designated as the "Town of Magnolia Springs Tree Committee." The Committee shall be composed of three (3) members, consisting of two (2) council members and one (1) trained horticulturalist.
- b. The members of the Committee shall be appointed by the Mayor with approval of the Town Council and shall be appointed as follows: the two (2) Town Council Members shall serve concurrently with their term of office and, upon leaving office, resign their membership to the Committee; the horticulturalist shall be appointed for four (4) years. All members shall serve until their successors are duly appointed by the Mayor and approved by the Town Council.

- c. All members of the Committee, with the exception of the horticulturalist, shall serve without pay. The Mayor and Town Council shall set the horticulturalist's compensation upon his appointment.
- d. The horticulturalist shall serve as Chairman of the Committee. The Committee shall meet from time to time when necessary to consider a permit application filed under this Ordinance or as otherwise set forth herein.
- e. The Town Clerk or her designee shall record a journal of proceedings and activities at Committee meetings.

Section 4. General Regulations

No Protected Tree as defined in this article shall be removed, relocated, destroyed or otherwise directly or indirectly injured unless and until a permit under this ordinance has been issued. The Town is authorized to issue an annual permit to public utility companies exempting them from this requirement with respect to the trimming or pruning of Protected Trees that may interfere with utility lines located within public right-of-way, upon such terms and conditions as may be determined by the Town. No tree permit shall be required for the incidental trimming or pruning, less than 10% removal, of a Protected Tree located on private property by the owner of the property or the owner's agent.

Section 5. Tree Permit

- a. Any person wishing to remove, relocate, destroy, or otherwise prune or trim a Protected Tree shall first make written application to the Committee. The application shall be available at Town Hall and require the applicant to adequately explain the nature of their request and provide all information regarding the Protected Tree(s) as deemed necessary by the Committee. The Committee shall review the application and submit a recommendation of approval or denial to the Town Council no later than thirty (30) days following proper filing of the completed application. If approved by the Town Council, a permit shall be issued authorizing the proposed activity.
- b. The permit required by this ordinance shall be in addition to any land disturbance permit, building permit, site plan or plat required or requested by the Town.
- c. The costs for each tree permit application shall be \$20.00, provided, however, that said fee shall not be charged for the removal, relocation, destruction, pruning or other trimming of trees that are damaged, diseased or in danger of falling. Applicants requesting a determination as to such damage, disease or danger shall provide sufficient evidence thereof to the Committee prior to taking any action, unless immediate action is required to prevent imminent and serious harm to persons or property. Any immediate action taken to prevent harm to persons or property must be submitted to the Town for review by the Committee within twenty-four hours of such action commencing. The Committee shall then recommend approval or denial of the submission to the Town, and the Town may thereafter accept the Committee's recommendation or determine that the action taken was a violation of this ordinance and subject the applicant to the penalties set out herein.
- d. The Mayor of the Town of Magnolia Springs may declare and impose a temporary Moratorium on the enforcement of this ordinance, following severe storm events within the town.

Section 6. Criteria for Issuance of a Tree Permit

A permit for the removal, relocation, destruction, pruning or other trimming of a protected tree shall be issued for any of the following reasons:

- a. The tree is located in an area where an approved structure or improvement is to be placed according to a site plan, building permit, plat or land disturbance permit approved by the Town; or
- b. The tree is diseased, damaged, in danger of falling close to existing or proposed essential utility services, creates unsafe vision clearance or conflicts with other ordinances or regulations of the Town; or
- c. Removal of the tree will not result in any adverse material affect to the appearance of the site, since other Protected Trees of similar age, height and species are present on

- the site and/or a sufficient number of replacement trees are proposed to be planted on the site in appropriate locations and of sufficient size to prevent such adverse affect.
- d. The tree is to be removed and relocated as part of the bona fide thinning of growth from undeveloped property for the purpose of the maintenance of the overall health of the trees and growth on such property.

If the application does not meet the above criteria, the permit shall be denied and the reasons for denial shall be communicated to the applicant within ten (10) working days of the Town Council's decision.

Section 7. Enforcement and Penalties

Whenever a Town Official, or his designee, shall determine that a violation of this Article has occurred, any of the following actions may be initiated singly or in combination:

- a. On any new construction site, a Stop Work Order may be immediately issued to the contractor or property owner. Upon receipt of such Order, construction may not be resumed until an approved permit authorizing the removal, relocation, destruction, pruning or other trimming of the Protected Tree(s) is presented to the Committee or a remediation proposal is presented and approved by the Committee as provided in subsection C below.
- b. On an existing developed site, depending upon the circumstances of the violation, a formal citation may be issued to the violator as determined by the Town Official, or his designee. A Stop Work Order shall specify the nature of the violation and require that any work not permitted under this Article immediately cease and desist. The property owner shall, within two (2) weeks, present a remediation proposal to the Committee for correcting the violation.
- c. Each remediation proposal shall be reviewed by the Committee which shall present the proposal to the Town along with a recommendation for acceptance or rejection, or modification thereof.
- d. Any person, firm or corporation violating or failing to comply with any of the provisions of this Ordinance is guilty of a misdemeanor and may be fined not more than five hundred dollars (\$500.00) for each offense and subject to imprisonment not exceeding six (6) months or both. Each violation of this article shall be a separate offense, and in the case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense. The Town of Magnolia Springs shall have jurisdiction to enjoin a violation of this article. All costs, fees (including without limitation, reasonable attorney's fees), and expenses in connection with such action shall be assessed as damages against the violator.
- e. This Ordinance shall not be construed to impair: (1) the right of eminent domain granted by the State laws to utilities, whether public or private; (2) their right to design, locate, erect, construct, re-construct, alter, protect or maintain utility poles, towers, lines, conduits, pipes or mains reasonably required in the public service or (3) their right to exercise authority conferred by statute, certificate of convenience and necessity, license or easement. Provided, however, that this ordinance shall apply to all other work done by public or private utilities, their employees, agents and contractors.

Section 8. Severability

If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance which shall continue in full force and effect notwithstanding such holding.

Section 9. Public Utility Exemption

This Ordinance shall not apply to incidental trimming, pruning or other necessary right-of-way maintenance by public or private utility companies.

Section 10. Conflict

The terms and provisions of this ordinance shall apply in the event of any conflict with a franchise agreement with the Town of Magnolia Springs.

Section 11. Indemnity

The Town of Magnolia Springs shall not be liable or responsible for any acts or damages that may occur in the performance of any work by the holder of a permit, and the issuance of a permit by the Town of Magnolia Springs shall be deemed an agreement on the part of the permittee to indemnify the Town and hold it harmless against any and all liability, loss, cost, damage or expense that may accrue to the Town because of the negligence or misconduct in the performance of any work by the permittee.

Section 12. Effective Date

This Ordinance shall become effective immediately upon its approval, adoption and publication as required by law.

ADOPTED and APPROVED this 25th day of August, 2009



Charles S. Houser - Mayor


ATTEST:



Karen S. Biel - Town Clerk

Town of Magnolia Springs, Alabama, certificate of publication. This is to certify that Ordinance No. 2009-03, Town of Magnolia Springs, Alabama, was published by posting on at least three (3) bulletin boards in the Town from August 27, 2009 to August 31, 2009.

- 1) Town Hall
- 2) Magnolia Springs Post Office
- 3) United Bank – Magnolia Springs



Karen S. Biel - Town Clerk