

AN ORDINANCE OF THE TOWN OF CINCO BAYOU, FLORIDA, REGULATING LANDSCAPING IN THE TOWN; PROVIDING DEFINITIONS; SETTING THE STANDARDS FOR PUBLIC AND PRIVATE USE AREAS; ESTABLISHING LANDSCAPING REQUIREMENTS; ESTABLISHING REQUIREMENTS FOR LANDSCAPE PLANS AND PERMITS; ESTABLISHING STANDARDS FOR THE MAINTENANCE OF LANDSCAPE AND VEGETATION; DEFINING PROTECTED TREES; ESTABLISHING POLICIES REGARDING PROTECTED TREES; ESTABLISHING PROCEDURES FOR ENFORCEMENT; ESTABLISHING PENALTIES; PROVIDING FOR THE SEVERABILITY OF ANY PORTION DECLARED INVALID; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CINCO BAYOU, FLORIDA, that:

1. The landscaping requirements, procedures and actions described herein are adopted for the purpose of establishing protective regulations for trees and landscaped areas within the Town. Such areas preserve the ecological balance of the environment, control erosion, sedimentation and stormwater runoff, provide shade and reduce heat and glare, abate noise pollution, buffer incompatible land uses, and enhance the aesthetic value of the community.
2. The intent of this ordinance is to encourage preservation of existing trees and landscaped areas and to promote the planting of new vegetation within the Town in order to maintain and enhance the immediate and long-term health, safety and general welfare of the present and future citizens of the Town of Cinco Bayou.

SECTION 1 - Title

This Ordinance shall be known as the Landscaping Ordinance for the Town of Cinco Bayou.

SECTION 2 - Definitions

The following words and phrases, when used in this ordinance, shall have the meanings respectively ascribed to them.

Crown - means the main point of branching or foliage of a tree or the upper portion of a tree.

Developable area - means the total area of a lot or parcel, excluding public rights-of-way.

Dripline - means the circumference of the tree canopy extended vertically to the ground.

Ground cover - means low growing plants planted in such a manner as to form a continuous cover over ground, e.g., confederate jasmine; English ivy, or other similar plants.

Irrigation system - means the water supply system used to irrigate the landscaping consisting of underground watering systems, outlets for manual watering, or other appropriate technology.

Landscape material - means living material including but not limited to, trees, shrubs, vines, lawn grass, ground cover; landscape water feature; and nonliving durable material commonly used in landscaping, including, but not limited to polypropylene and jute mesh, brick pavers, earthen mounds, but excluding impervious surfaces for vehicular use. Fifty percent (50%) of all ground cover shall be living.

Parking lot - means a paved area or plot of land used for the storage and/or parking of vehicles.

Planting area - means any area designed for landscape material installation.

Protected tree - means native trees protected by this ordinance as identified by species and size in Appendix A of this ordinance.

Right-of-way - means a dedicated area identified on the plat of the Town, County or State wherein a street, highway, thoroughfare, parkway, road, avenue, alley, other vehicular use facility is constructed for public use.

Shade tree - means any species of tree identified in Appendix A and Appendix B of this Ordinance as a shade tree.

Tree - means any self-supporting woody plant which normally grows to any overall height of at least fifteen (15) feet.

Tree removal - means any act which causes a tree to die within a period of two (2) years; such acts including, but not limited to, cutting; inflicting damage upon a root system by machinery, storage of materials, or soil compaction; changing of the natural grade above or below a root system or around a trunk; inflicting damage on a tree; permitting infection or pest infestation; excessive pruning; or paving with concrete, asphalt or other impervious material so as to be harmful to a tree.

SECTION 3 - Applicability

The provisions of this Ordinance shall be applicable to all zoning districts of the Town of Cinco Bayou.

SECTION 4 - Landscaping Requirements

The following landscaping requirements apply in the Town of Cinco Bayou.

(1) Landscape area requirements - Unless otherwise specified in this ordinance, fifteen percent (15%) of the total developable site shall be devoted to landscaping.

(2) Off-street parking and vehicle use areas - Off-street parking facilities and other vehicular use areas shall meet the following requirements:

(a) Perimeter requirements. A ten-foot wide strip of privately owned land, located along the front property line adjacent to the public right-of-way shall be landscaped. A driveway entrance not exceeding twenty (20) feet wide may be placed in this area. In no case shall this strip be less than ten (10) feet wide. This perimeter landscape requirement shall be credited toward the percentage required for the total developable site in Section 4 (1) above.

1. Material requirements in perimeter area.

i. One tree for each fifty (50) feet of linear front footage along the right-of-way shall be preserved or planted. The remaining area within the perimeter strip shall be landscaped with other landscape materials.

ii. Trees and other landscaping required in the perimeter strip shall be maintained to assure unobstructed visibility between three (3) and nine (9) feet above the average grade of the adjacent street and the driveway intersections through the perimeter strip.

(b) Interior planting areas. Interior planting areas within parking lots shall be determined by subtracting the area set aside in the ten-foot perimeter strip from the total minimum area required to be landscaped (15%). This remaining percentage shall be allocated throughout the parking lot or in areas which are adjacent to the parking lot other than the perimeter strip. Interior planting areas shall be located to most effectively accommodate stormwater runoff, provide shade in large expanses of paving and contribute to the orderly circulation of vehicular and pedestrian traffic.

1. Size of interior planting areas.

i. A minimum of fifty (50) square feet of planting area shall be required for each new species Type A tree identified in Appendices A and B.

ii. A minimum of one hundred (100) square feet of planting area shall be required for each new species type B and type C tree identified in Appendices A and B.

iii. A minimum planting area of fifty (50) percent of the dripline area of the tree shall be required for all existing trees. If conditions warrant that an area greater than fifty (50) percent is needed to preserve the tree, additional areas may be negotiated between the applicant and the Town Council.

iv. In no case shall be minimum planting area be less than fifty (50) square feet.

(c) Vehicle overhang. Vehicles shall not be permitted an overhang into any interior planting area or perimeter strip.

(d) Where landscaping is installed in interior or perimeter strip planting areas, a continuous curb or other acceptable means of protection shall be provided to prevent injury to the vegetation. Such curb shall be designed to allow percolation of water to the root system of the landscape material. Where existing trees are preserved, tree wells, tree islands or a continuous curb shall be utilized to protect the trunk and root system from alterations to surrounding grade elevations and damage from automobiles. A drainage system sufficient enough to allow percolation into permeable soil shall be provided in the area defined by the dripline of the trees.

(3) Buffer yards between incompatible land uses.

(a) The following relationships between land uses shall be considered incompatible and require a buffer yard:

1. Public and institutional land uses adjacent to single-family or duplex land uses.

2. Townhouse and multiple family land uses adjacent to single-family or duplex land uses.

3. Commercial land uses adjacent to single-family, duplex, townhouse and multiple family land uses.

(b) Where such incompatible land uses abut, a ten (10) foot buffer strip shall be required. Said buffer strip shall extend the entire length of the common incompatible boundaries. The planting area within this required buffer yard shall not be allowed to be credited as part of the required minimum landscaped area specified in Section 4, 1.

(c) Buffer material requirements shall be as follows:

1. Within the buffer strip, one tree for each twenty-five (25) linear feet of required buffer strip, or

majority portion thereof shall be required, with a minimum of fifty (50) percent of said trees being shade trees. Trees must be spaced so as to allow mature growth of shade trees.

2. Grass or other ground cover shall be planted on all sides of the buffer strip required by this section which are no occupied by other landscape material.

3. A visual screen of vegetation or a solid fence (six (6) feet in height) running the length of all common boundaries shall be installed within the buffer strip, except at permitted driveways or access points. Where vegetation strips are used, such strips shall provide a minimum of seventy-five (75) percent opacity for that area between the finished grade level at the common boundary line and six (6) feet above said level and horizontally along the length of all common boundaries within three (3) years of planting. Appendix C lists species and size of vegetation that are recommended to meet this requirement.

4. For buffers between incompatible land uses, developments adjacent to a vacant parcel shall not be responsible for providing a buffer. The development creating the incompatible land use shall be responsible for providing the buffer strip and required landscaping.

5. If the Town Council determines that the construction of a landscape buffer area required by this Ordinance would create a hardship for the renovation of existing structures or vehicular use areas, the Council may approve a buffer area with a width of less than ten (10) feet, provided such buffer area meets the visual screening requirements of this Ordinance.

SECTION 5 - Landscape Plan

A landscape plan shall be required as a condition of obtaining any building permit for all single-family, townhouse, multifamily and commercial construction within the Town as outlined in Section 3. The landscape plan shall be submitted along with the plat, building construction plans and specifications for the Town Council's review and approval.

(1) The landscape plan shall include the following information:

(a) Location by species and size of all trees, shrubs, and landscape material to be retained or placed on the site.

(b) Location of proposed structures, driveways, parking areas and other improvements to be constructed or installed.

(c) Location of irrigation system to be provided, if any, or manual outlet for watering.

(d) Landscape and tree protection techniques proposed to prevent damage to vegetation during construction and after construction is completed.

(2) All landscape materials and trees depicted on the approved landscape plan shall be installed within one year of the date of the issuance of the building permit for the site.

(3) A certificate of occupancy shall not be issued until it has been determined that landscaping has been installed in accordance with the approved landscape plan. In the event it is impractical to meet the requirements of the landscaping plan at the time the building is ready for occupancy, a certificate of occupancy may be issued provided a performance bond or other

security in an amount equal to the cost of the required landscaping improvements is posted. In this event, a time period for completion of the landscaping will be specified.

SECTION 6 - Maintenance

The property owner, agent or lessee shall be responsible for the maintenance of all landscaped areas so as to present a healthy, neat and orderly appearance at all times. Maintenance shall include the replacement of all dead plant material. Dead plant material shall be replaced at a time appropriate to the growing season of the species in question, not to exceed one year.

SECTION 7. Protected Trees

(1) Where protected trees are identified on a site proposed for clearing within the applicable areas identified in Section 3, the number of said trees which shall be required to be preserved shall be based on a ratio of one tree for each three thousand six hundred (3,600) square feet of impervious surface area or fraction thereof. The perimeter and interior landscaped areas required in Section 4 shall be located on the site to incorporate the preservation of said trees, where possible.

(a) Tree credits. Any existing protected tree located on the subject private property with crown extending over the planned paved parking area, perimeter or interior landscaped areas shall be eligible for credit against the number of protected trees required to be preserved on the site. The following schedule may be applied for preserving existing trees on-site:

Diameter of Existing Crown Spread of Preserved Tree	or	Diameter of Tree Trunk of Preserved	=	Number of Trees
90' or greater		36" or greater		7
60-89'		30-35"		6
50-59'		26-29"		5
40-49'		20-25"		4
30-30'		13-19"		3
20-29'		8-12"		2
16-19'		4-7"		1

Crown spread measurements shall be rounded to the nearest whole foot, and tree trunk diameter measurement shall be rounded off to the nearest whole inch. Diameter of a tree shall be measured at a height of four (4) feet above the natural grade.

The Town Council may allow a reduction in the number of required parking spaces for a particular type structure when the reduction would result in the preservation of a protected tree with a trunk of twelve (12) inches in diameter or greater. The following reduction schedule shall apply:

Number of Required Parking Spaces	Reduction of Required Parking Spaces Allowable
1-4	0
5-9	1
10-19	2
20 or above	10% of total number of spaces (total reduction regardless of number of trees preserved)

(b) Relocation, removal and replacement of protected trees. Where a proposed site plan cannot be designed to accommodate existing protected trees on the site, a permit shall be required to remove any such protected tree as specified in Section 8.

Where practical, when proposed improvements necessitate removal of protected trees, said trees shall be relocated on the site in the required perimeter or interior landscaped areas. If the relocation of said trees is impractical, the owner or his agent shall replace the removed protected tree with a protected tree species or a species identified on the "tree replant list" in Appendix B. The replacement tree shall measure a minimum of three (3) inches in diameter, four (4) feet above grade in order to comply with Section 7 (1) above. A replacement ratio of 1:1 shall be applied. Trees identified as diseased or dead shall not be required to be replaced.

(c) New planting of protected trees. On sites proposed for development where no existing protected trees are identified, the owner or his agent shall be required to plant one new tree species identified in the protected tree list (Appendix A) or the tree replant list (Appendix B), a minimum of three (3) inches in diameter measured four (4) feet above grade for each three thousand, six hundred (3,600) square feet of impervious surface area. New trees or replacement trees shall be planted within a time appropriate to the growing season of the species in question, not to exceed one year.

(2) For new residential single family dwellings, the property owner of each lot shall plant one tree in the front yard within ten (10) feet of the right-of-way, provided there is no existing tree in the front yard.

(a) Where a protected or replant tree species is required to be replanted, such tree shall be a minimum of three (3) inches in diameter, measuring four (4) feet above the grade.

(b) The location of an existing protected tree on the lot or the proposed location of a new protected or replant species, when required in Section 7 (2), shall be identified on the landscape plan and the plat submitted as part of the information required for the approval of a building permit.

(3) No person or agency shall cut, remove, trim or in any way damage any protected tree in any street right-of-way or create any condition injurious to any such tree without first obtaining a permit.

(a) An annual permit may be issued to public utility companies exempting them from the provisions of this subsection concerning tree preservation. In the event of flagrant or repeated disregard for the intent and purpose of the Ordinance, the permit may be revoked. The offender will be provided a written notice stating the reason for the revocation.

(b) In no case shall the utility company be permitted to prune more than thirty (30) percent of the existing tree canopy.

(4) All lands within ten (10) feet of the right-of-way of the following described roads are hereby declared to be canopy tree protection zones:

1. Opp Boulevard.
2. Troy Street - from Yacht Club Drive south to Kelly Avenue.
3. Yacht Club Drive - from Eglin Parkway east to the Town limits.

4. Kidd Street - from Lucile Street to Frances Park.

No person or agency shall cut, remove, trim or in any way damage any protected tree in any canopy tree protection zone or create any condition injurious to any such tree without first obtaining a permit, except as provided for in Section 8 of this Ordinance. The exemption for utility companies noted in Section 7(3)(a) of this Ordinance shall also apply to the canopy tree protection zone.

SECTION 8 - Tree Removal Permit

Unless exempt from the provisions of this Ordinance, no person shall cut, remove, trim, or in any way damage any protected tree within the applicable zones identified in Section 3, the road right-of-way, and canopy road tree protection zone identified in Section 7, without first obtaining a permit. In addition to the information required for the permit, a written statement shall be included noting the reason why tree removal is requested.

(1) The following information shall be provided to the Town Council before a tree removal permit shall be issued:

(a) Prior to commencing any residential or commercial development or activity, including removal of any vegetation for site preparation in any residential or commercial zone identified in Section 3 herein, the owner, developer or agent shall submit an accurately scaled drawing by a registered land surveyor, landscape architect, engineer, architect or landscaper that includes the following information:

1. Location of all protected trees noting species, general condition and size.
2. Location of proposed structures, driveways, parking areas, required perimeter and interior landscaped areas, and other improvements to be constructed or installed.
3. Identification of trees to be preserved, and trees to be removed, including dead trees, and trees to be replanted.
4. Proposed grade changes which might adversely affect or endanger trees with specifications on how to maintain trees.

(a) Prior to cutting, removing, trimming or in any way damaging a protected tree in the canopy road tree protection zone or in the road right-of-way tree protection zone, an owner, developer or agent must submit a copy of an accurately scaled drawing prepared by a registered land surveyor, landscape architect, engineer, architect or landscaper that included the following information:

1. Location of the subject protected tree, noting species, size and general condition.
 2. An annual permit may be issued to public utilities exempting them from this requirement as specified in Section 7.
 3. Private property owners shall be exempt from this provision for normal pruning activities, with the condition that such pruning shall not remove more than thirty (30) percent of the existing tree material.
- (2) Prior to the issuance of a tree removal permit, an on-site inspection must be conducted.

(3) A permit may be approved if one or more of the following conditions is present:

(a) Safety Hazard - Necessity to remove trees which pose a safety hazard to pedestrians or vehicular traffic or threaten to cause a disruption of public services; or which pose a safety hazard to persons or buildings.

(b) Diseased or weakened trees - Necessity to remove diseased trees, or trees weakened by age, storm, fire, or other injury.

(c) Good forestry practices - Necessity to observe good forestry practices.

(d) Necessity to remove trees in order to construct proposed improvements as a result of:

1. Need for access immediately around the proposed structure for construction equipment.

2. Need for access to the building site for construction equipment.

3. Essential grade changes.

4. Surface water drainage and utility installations.

5. Location of driveways, buildings or other permanent improvements.

(e) Necessity for compliance with other Town of Cinco Bayou codes, e.g., building, health provisions, zoning, etc.

(4) The Town Council shall have thirty (30) days after receipt of a completed application filed pursuant to this Ordinance in which to approve or deny the requested permit. In the event an application is denied, the reason shall be specified in writing. If no action with respect to a completed application is taken within the required thirty (30) days, the application shall be deemed to have been approved.

SECTION 9 - Enforcement

(1) Whenever it is determined that a violation of this Ordinance has occurred, the following actions shall be initiated:

(a) A written notice will be hand carried or sent by certified mail to the person violating the Ordinance. The notice will state the nature and location of the violation and specify the remedial steps necessary to bring the project into compliance. Such person shall immediately, conditions permitting, commence the recommended remedial actions and shall have ten (10) working days after receipt of said notice, or such longer time as may be allowed, to complete the remedial action set forth in such notice.

(b) If a subsequent violation occurs during the ten (10) working days referred to in (A)(1) above, or if remedial work specified in the notice of the violation is not completed within the time allowed, or if clearing and development of the land is occurring without a permit, then a stop work order shall be issued immediately. Said stop work order shall contain the grounds for its issuance, and shall set forth the nature of the violation. The stop work order shall be directed not only to the person owning the land on which the clearing and/or developing is occurring, but also a separate stop work order shall be directed to the person or firm actually performing the physical labors of the development activity or the persons responsible for

the development activity, directing him forthwith to cease and desist all or any portion of the work upon all or any geographical portion of the project, except such remedial work as is deemed necessary to bring the project into compliance. If such person fails to complete the recommended action after the issuance of such stop work order, then a stop work order may be issued on all or any portion of the entire project.

(2) Penalties.

(a) The fine for removing a tree without a permit shall be based on the size of the tree removed and is established at fifty dollars (\$50.00) per diameter inch. The measurement to establish said fine shall be based on the remaining tree material left intact on the site. Each protected tree removed without a permit or in violation of a permit shall be considered a separate offense.

(b) Fines for violation of a stop work order will be in accordance with the fines stated in Section 1-8, General Penalty, of the Town's Code of Ordinances. Each day a violation of a stop work order continues shall constitute a separate offense.

SECTION 10 - Severability

If any word, sentence, phrase, clause, section or portion of this ordinance shall be held invalid or unconstitutional by a court of competent jurisdiction, such portion or word shall be deemed a separate and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 11 - REPEAL OF CONFLICTING ORDINANCES AND RESOLUTIONS

All ordinances and resolutions of the governing body in conflict herewith are repealed.

SECTION 12 - EFFECTIVE DATE.

This ordinance shall become effective immediately upon its final passage and adoption.

Adopted this 8th day of January, 1991.



APPROVED:

Charles R. Szymanski
Mayor

ATTEST:

Annunzio Pomarici
Town Manager/Clerk

APPENDIX A

Protected Tree List

Species Type A--(Small, 4"--7"diameter trunk):

Dogwood (*Cornus florida*)
Redbud (*Cercis canadensis*)

Species Type B--(Medium, 8"--13" diameter trunk):

American holly (*Ilex opaca*)
Southern magnolia (*Magnolia grandiflora*)*
Eastern red cedar (*Juniperus virginiana*)*
Southern red cedar (*Juniperus silicicola*)*

Species Type C--(Large, 14" + diameter trunk):

Live oak (*Quercus virginiana*)*
Laurel oak (*Quercus laurifolia*)*
Sweet gum (*Liquidambar styraciflua*)*
Sycamore (*Platanus occidentalis*)*
Pecan (*Carya illinoensis*)*
Water oak (*Quercus nigra*)*
Red maple (*Acer rubrum*)*

*Shade trees.

APPENDIX B

Tree Replant List

In addition to the three (3) categories of trees identified in the "Protected Tree List," the following trees may be planted to meet the minimum tree replanting requirements in section 12-6-7(A)(2).

Species Type A (Small):

Dahoon holly (*Ilex cassine*)*
Fringe tree (*Chionanthus virginicus*)
Ashe's magnolia (*Magnolia ashei*)*
Red Bay (*Persea palustris*)*
Smooth red bay (*Persea borbonia*)*
Sassafras (*Sassafras variifolium*)
Yaupon (*Ilex vomitoria*)
Wild olive (*Osmanthus americana*)
Scrubby post oak (*Quercus margaretta*)
Wild crabapple (*Malus angustifolia*)
Hop hornbeam (*Ostrya virginiana*)
Wax myrtle (*Myrica cerifera*)*
Crape myrtle (*Lagerstroemia indica*)

Species Type B (Medium)

Cherry laurel (*Prunus caroliniana*)*
Large-leaved magnolia (*Magnolia macrophylla*)*
Hornbeam (*carpinus caroliniana*)
River birch (*Betula nigra*)*
Florida maple (*Acer banbatum floridanum*)*
Sweetbay (*Magnolia virginiana*)*

Species Type C (Large):

Tulip tree (*Liviodendron tulipifera*)
Willow tree (*Quercus phellos*)
Sour gum (*Nyssa sylvatica*)
Southern red oak (*Quercus fulcata*)*
Shumard's red oak (*Quercus shumardii*)*
Hackberry (*Celtis laevigata*)
White oak (*Quercus alba*)*
Bald cypress (*Taxodium distichum*)*

*Shade Trees.

APPENDIX C

Recommended Vegetation List
for Buffer Yard Visual Screen

Ligustrum (Ligustrum japonicum)
Azalea (Rhododendron indicum, Rhododendum simsii, Rhododendron obtusum)
Red top (Photinia glabra and Photinia froseri)
Cleyera (Cleyera japonica)
Wax myrtle (Myrica cerifera)
Pampas grass (Cortaderia selloana)
Thorny elaeagnus (Elaeagnus pungens)
Silberberry (Elaeagnus macrophylla)
English holly (Ilex aquifolium)
Chinese holly (Ilex cornuta)
Japanese holly (Ilex crenata)
Yaupon holly (Ilex vomitoria)
Oleander (Nerium oleander)
Chinese juniper (Juniperus chinensis)
Savin juniper (Juniperus sabina)
Rocky Mountain juniper (Juniperus scopulorum)

Suggested planting sizes:

One-gallon plant--Approximately 15-24 inches in height.
Three-gallon plant--Approximately 24-36 inches in height.