

**ORDINANCE NO. 2005 - 366**

**AN ORDINANCE PROVIDING FOR LANDSCAPING REQUIREMENTS FOR ALL LAND LOCATED WITHIN THE CITY OF MAGNOLIA AND PROPOSED FOR DEVELOPMENT OTHER THAN SINGLE-FAMILY OR DUPLEX DEVELOPMENT; AND PROVIDING FOR ENFORCEMENT AND PENALTIES FOR VIOLATIONS.**

**WHEREAS**, unlandscaped surfaces and parking lots visually intrude in a negative way upon the beauty and aesthetic appeal of an area; and

**WHEREAS**, it is recommended that all existing and proposed parking lots and developments of a certain size include planting areas for tree and shrub screening around lots and tree canopies among car spaces; and

**WHEREAS**, the following minimal regulations controlling the landscape design criteria for surface parking lots and developments of a certain size implement substantial governmental interest in safety, aesthetics and environmental quality and directly advances said interest by regulating, through specific standards and design criteria, and landscaping of said surface parking lots and developments by these identified public interests; and

**WHEREAS**, said following regulations will minimize adverse public safety, visual, aesthetic affects and environmental affects through implementation of aesthetic pleasing and environmentally enhancing landscaping; and

**WHEREAS**, all notices and hearings required by law as a prerequisite to the passage, approval, and adoption of said landscaping ordinance have been timely and properly given and held; and

**WHEREAS** the City Council, upon full consideration of the matter, is of the opinion that this landscaping ordinance hereinafter set forth is proper and should be approved and adopted.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS:**

**Section 1.** The facts and matters set forth in the preamble of this Ordinance are found to be true and correct and are hereby adopted, ratified, and confirmed.

**Section 2. Scope and purpose.**

Landscaping is hereafter required of all development that requires a full site plan review except single-family, patio home, townhouse, and duplex uses.

### **Section 3. Application of Ordinance.**

(a) The landscaping requirements of this Ordinance shall apply to all land located in the city and proposed for other than single-family or duplex development. Such landscaping requirements shall become applicable as to each individual lot at such time as an application for a building permit on such lot is made. All landscaping requirements under this section shall run with the land and its application shall apply to any owner or subsequent owner.

(b) Each phase of a phased project shall comply with the requirements of this Ordinance. The portion left for subsequent phases shall remain of developable size and quality. No certificate of occupancy for the current phase or no building permit shall be issued for a subsequent phase of a project until all requirements of this section have been met. In order to issue a certificate of occupancy on a project in which landscaping improvements are required, the developer may either install the landscaping to the approval of the city or submit a letter of credit. In addition to the letter of credit, the owner shall provide a letter granting the city the right to install the required landscaping.

(c) When the requirements of this Ordinance conflict with requirements of other ordinances, this section shall prevail; provided, however, that the provisions of this section shall be subordinate to regulations pertaining to traffic and pedestrian safety.

## **REQUIREMENTS**

### **Section 4. Site plan requirements.**

(a) When a full site plan review by the planning commission is required, the site plan shall additionally contain the landscaping information listed below and also be referred to as the landscape plan:

- (1) The location, quantity, size, common name, and scientific name of proposed landscaping in proposed landscaped areas;
- (2) The location, quantity, size, common name, and scientific name of existing trees that will be kept;
- (3) The location of the proposed irrigation system or hose connections; and
- (4) Information necessary for verifying whether the minimum required landscaping requirements have been met.

(b) Old Town Magnolia. These regulations shall not apply to development located within Old Town Magnolia. All landscape and streetscapes shall be in accordance with any approved downtown master plan.

## **Section 5. Landscaping requirements.**

### **(a) *Building site.***

#### **(1) Area requirements.**

a. An area equal to fifteen (15) percent of the developed area (building site) shall be required to be landscaped. A lot shall not exceed a total of ninety (90) percent impervious lot coverage. The developed area shall include the main structure(s), any accessory structure(s), parking lots, equipment lots, and outside storage areas. Landscaping shall be located to the front and sides of the parcel in those portions of the developed area facing public rights-of-way. Where screening is required along a public street, landscaping shall be placed between the screening and the street. The combination of trees, shrubs, and groundcover shall be used in fulfilling the landscaping requirements.

Where open storage of materials, commodities, or equipment are permitted and encompass one (1) acre or more, not including any structures, the area to be landscaped shall be reduced to five (5) percent of the developed area. Landscaping shall be placed to the exterior of the screening fence, or be an integral part of the screening fence, and to the front and sides of the parcel in those portions of the developed area facing public rights-of-way. The combination of trees, shrubs, and groundcover shall be used in fulfilling the landscaping requirements.

b. Not less than fifty (50) percent of the area to be landscaped shall be planted in trees.

c. Not less than fifty (50) percent of the trees planted in the area to be landscaped shall be canopy trees or the Southern Magnolia tree. Canopy trees shall include those species whose mature crown height is thirty (30) feet or more in height. Noncanopy trees shall include those species whose mature crown height is at least fifteen (15) feet in height.

#### **(2) Trees.**

a. Trees to be planted shall be six (6) feet or more in height and measure a minimum of one and one-half (1 1/2) inches in caliper when measured twelve (12) inches from the base of the trunk or top of the ball. If smaller caliper trees are desired, fifteen (15) square foot points shall be granted for each. This requirement also applies to all future building additions.

b. Existing trees used for landscape credit must have a minimum trunk diameter of four and one half (4 1/2) inches or larger and be in a healthy physical state. Should existing trees used for landscape credit die, they shall be replaced with new trees according to the requirements of subsection c below. Existing trees with a trunk diameter less than four and one half (4 1/2) inches may be given the same landscape credit as that given newly planted trees with similar characteristics.

c. Square feet of coverage shall be granted in the following amounts for container trees. If noncontainer trees are to be used, subtract fifty (50) points.

TABLE INSET:

Existing canopy trees and Southern Magnolia trees protected during construction.	350 sf
Newly planted canopy trees--1 1/2 inches to 3 inches	200 sf
Newly planted canopy trees--Greater than 3 inches	350 sf
Existing noncanopy trees protected during construction	225 sf
Newly planted noncanopy trees--1 1/2 inches to 3 inches	150 sf
Newly planted noncanopy trees--Greater than 3 inches	225 sf

(3) Shrubs and planting beds.

- a. Less than 2 gallons . . . 5 sf
- 2 gallons--Up to 15 gallons . . . 10 sf
- 15 gallons and larger . . . 15 sf

b. Planting beds used and maintained for the purpose of rotating live decorative planting materials shall be granted a credit of one (1) square foot for each square foot of bedding area.

(4) Grasses and groundcovers.

Complete coverage by grass, live groundcover, and/or nonvegetative groundcover approved by the city is required in those areas not covered by trees or shrubs. Ten (10) square feet will be granted for every one-hundred (100) square feet of grass or live groundcover. This amount shall not exceed fifteen (15) percent of the overall landscaping required.

(b) *Parking areas.*

(1) Trees. Trees are required for any parking lot islands regardless of the number of trees required by this section. Other appropriate landscape materials may replace trees in some parking islands. Substituted trees must be planted elsewhere on site. Trees to be planted shall be a minimum of two (2) inches in caliper when measured twelve (12) inches from the base of the trunk or top of the ball.

(2) Shrubs, grasses, and live groundcovers. The remainder of all parking lot islands shall be fully landscaped with shrubs, grass, live groundcovers, and/or nonvegetative groundcover approved by the city. When grass is used, one hundred (100) percent live grass groundcover and/or live groundcover is required, whether by solid sod overlay or preplanting and successful takeover of grass and/or planting of live groundcover. Any shrubs used shall constitute partial fulfillment of the requirements of this section.

(3) Screening. A decorative wall or landscaped earth berm at least two (2) feet in height, or dense shrubbery having year-round foliage at least three (3) feet in height, is required as a visual buffer along street frontages in the following circumstances:

- a. Where outdoor parking areas are located within thirty (30) feet of any street right-of-way, except for driveway openings providing access from the street to the parking area.
- b. Where fuel pumps are located in any parking area, driveway, or maneuvering area between the principal building and any street.
- c. Where a vehicle drive-up window faces a street.

(c) *General.*

(1) Trees recommended for use are identified on the tree species list and may be used to meet these requirements. Other species may be used upon review and approval of a landscape plan. Native species that conserve

water and have reduced maintenance requirements are suggested for use in landscaping plans.

(2) All required landscaping shall be irrigated by either an underground sprinkler system, or hose attachment within one hundred fifty (150) feet of all landscaping.

(3) Parking of vehicles shall not be allowed on approved landscaped areas or on landscaped areas for projects which were built prior to this article. Parking of vehicles on landscaped areas shall be considered a violation of this article, subject to the general penalty provisions of this article.

(4) Artificial plant materials are prohibited.

(5) Landscaping plans utilizing special or unusual arrangements of plants and other landscaping materials as part of an overall site design, shall prepare an alternative landscape plan including reasons supporting the need for an alternative plan.

(6) Nonvegetative groundcover permitted by this article may include but is not limited to washed gravel, bark mulches, lava rock, sand, rock, or other decorative covers used in landscaping.

(7) Credit may be given for landscaping placed in the public right-of-way only with the approval of the site review committee and, in the case of right-of-way controlled by the state, the approval of the Texas Department of Transportation. Landscaping placed in the public right-of-way shall conform to the generally accepted provisions regarding sight distance or determined by the Texas Department of Public Safety and not create a safety hazard.

(8) Variations to the requirements of this article may be approved if the landscape plan is sealed by a registered landscape architect. Such plans must show reasonable evidence that the requirements as set forth in this article were used as a guide.

## **Section 6. Redevelopment.**

Any development existing, occupied, and in use at the time of passage of this article may continue to be so until such time the site undergoes a voluntary improvement, change of use, or expansion. At that time, an area equal to eight (8) percent of the developed area (building site) shall be required to be landscaped. All square foot points shall follow [section 5 of this article].

## **Section 7. Tree policy.**

No trees other than those species listed as a noncanopy tree on the approved tree list may be planted under or within ten (10) lateral feet of an overhead utility wire, or over or within five (5) lateral feet of any public underground water line, sewer line, or other utility.

## **Section 8. Completion and extension.**

(a) The city engineer and/or other designee shall review all landscaping for compliance with this section and approve the landscape plan. Landscaping shall be completed in compliance with the plan before a certificate of occupancy is issued. In the event placement of landscaping materials is not practicable at the time the certificate of occupancy is requested, a placement schedule will be submitted for approval prior to issuance of the certificate of occupancy. Failure to meet the placement schedule and place the required landscaping materials as shown on the approved landscape plan shall constitute a violation of this Ordinance subject to the general penalty provisions stated in Section 12 of this Ordinance.

(b) Replacement of dead landscaping must occur within ninety (90) days of notification. Replacement material must be of similar character as the dead landscaping. Failure to replace dead landscaping, as required by the city official, or his/her designee, shall constitute a violation of this section of this Ordinance subject to the general penalty provisions stated in Section 12 of this Ordinance.

## **VARIANCES**

### **Section 9. General.**

(a) The City Planning Commission may recommend a variance from these regulations when, in its opinion, undue hardship will result from requiring strict compliance. In recommending a variance, the City Planning Commission shall prescribe only conditions that it deems necessary to or desirable in the public interest.

(b) No variance shall be granted unless the City Planning Commission finds that all of the following are met:

(1) That there are special circumstances or conditions affecting the land involved such that the strict application at the provisions of this article would deprive the applicant of the reasonable use of his land; and

(2) That the variance is necessary for the preservation and enjoyment of substantial property rights of the applicants; and

(3) That the granting of the variance will not be detrimental to the public health, safety or welfare or injurious to other property in the area; and

(4) That the granting of the variance will not have the effect of preventing the orderly development of the applicant's land and/or land in the vicinity in accordance with the provisions of this article.

(c) Such findings of the City Planning Commission, together with the specific facts upon which findings are based, shall be incorporated into the official minutes of the City Planning Commission meeting at which such variance is recommended. Thereafter, the recommendation with findings and minutes are to be submitted to the City Council for final approval or disapproval. Variances may be granted only when in harmony with the general purpose and intent of this article so that the public health, safety and welfare may be secured and substantial justice done. Pecuniary hardship to the developer, standing alone, shall not be deemed to constitute undue hardship.

(d) All requested variances from this article shall be made in writing at least ten (10) working days prior to the date on which consideration is to be given by the City Planning Commission. Submittal shall be made in the development services office. A filing fee of \$150.00 is required to be paid at the time of filing.

#### **Section 10. Appeals.**

If the applicant should disagree with the action of the Planning Commission in not recommending a variance, the applicant may appeal by requesting that same be put on a future agenda of City Council. If the applicant should disagree with the action of the City Council, he/she may further appeal same by filing a civil action in any court of competent jurisdiction.

### **TREE LIST**

#### **Section 11. Adopted.**

Canopy Trees ("Shade Trees")

TABLE INSET:

Common Name	Botanical Name
River Birch	Betula nigra
Pecan	Carya illinoesis
Southern Catalpa	Catalpa bignonioides



Hackberry	<i>Celtis occidentalis</i>
Ash	<i>Fraxinus</i> sp.
Eastern Red Cedar	<i>Juniperus virginiana</i>
White Mulberry	<i>Morus alba</i>
Chinese Pistache	<i>Pistacia chinensis</i>
Sycamore	<i>Platanus occidentalis</i>
Cottonwood	<i>Populus deltoides</i>
'Bradford' Pear	<i>Pyrus calleryana</i> 'Bradford'
Bur Oak	<i>Quercus macrocarpa</i>
Water Oak	<i>Quercus nigra</i>
Willow Oak	<i>Quercus phellos</i>
Live Oak	<i>Quercus virginiana</i>
Weeping Willow	<i>Salix babylonica</i>
Bald Cypress	<i>Taxodium distichum</i>
American Elm	<i>Ulmus americana</i>
Cedar Elm	<i>Ulmus crassifolia</i>
Lacebark Elm	<i>Ulmus parvifolia</i>
Chinese Elm	<i>Ulmus pumila</i>

- Canopy trees ("shade trees") should achieve a mature crown height greater than twenty (20) feet.

- Other species not listed above may also satisfy canopy tree requirements. Any tree selected must be regionally acclimated and perform well under local conditions (i.e.: soil, water, climate, etc.)

Noncanopy Trees ("Ornamental Trees")

TABLE INSET:

Common Name	Botanical Name
Mimosa	Albizia julibrissin
Texas Buckeye	Aesculus arguta
Red Bud	Cercis Canadensis
Desert Willow	Chilopsis linearis
Possumhaw	Ilex decidua
Golden Raintree	Koelreuteria sp.
Crape Myrtle	Lagerstroemia indica
'Little Gem' Magnolia	Magnolia grandiflora 'Little Gem'
Crabapple	Malus sp.
Vitex (Chastetree)	Vitex agnus-castus

- Noncanopy trees ("ornamental trees") should achieve a mature crown height less than twenty (20) feet.
- Other species not listed above may also satisfy noncanopy tree requirements. Any tree selected must be regionally acclimated and perform well under local conditions (i.e.: soil, water, climate, etc.)

## **Section 12. Compliance and Enforcement.**

(a) On behalf of the city, the city attorney shall, when directed by the city council, institute appropriate action in a court of competent jurisdiction to enforce the provision of this Ordinance or the standards referred to herein with respect to any violation thereof which occurs within the city.

Whenever the city manager or his/her designee determines that there are reasonable grounds to believe that there has been a violation of any provision of this Ordinance, he/she shall give notice of such alleged violation to the person to whom the permit or license was issued, as herein provided. Such notice shall:

- (1) Be in writing.
- (2) Include a statement of the reason for its issue.
- (3) Allow a reasonable time for the performance of the act if required.
- (4) Be served upon the owner or his agent as the case may require, provided that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been served with such notice by any method authorized or required by the laws of this state.
- (5) Contain an outline of remedial action which, if taken, will effect compliance with the provisions of this section.

At the end of such period as noted in subsection (3) above, the city manager or his/her designee shall reinspect the site and, if such conditions or practices have not been corrected they shall suspend any permits or certificates and give notice of such suspension, and such person shall cease activities.

(b) Whenever in this Ordinance an act is prohibited or is made or declared to be unlawful for an offense or a misdemeanor, the violation of any such provision of this Ordinance shall be punishable by a fine not to exceed two hundred dollars (\$200.00); provided that no penalty shall be greater or less than the penalty provided for the same or a similar offense under the laws of the state. Each day or fractional part thereof any violation of this Code or of any ordinance shall continue shall constitute a separate offense.

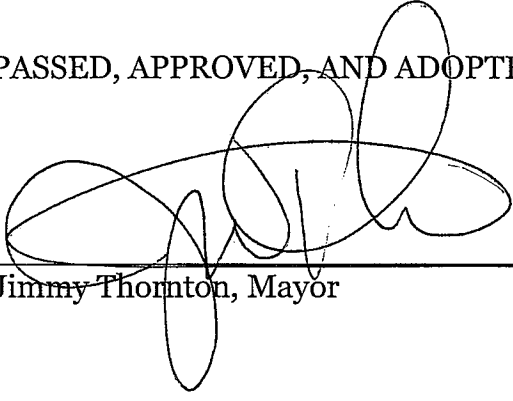
### **Section 13. Severability.**

It is the intention of the City Council of the City of Magnolia that if any phrase, sentence, section, or paragraph of this Ordinance shall be declared unconstitutional or otherwise invalid by final judgment or a court of competent jurisdiction such unconstitutionality or invalidity shall not affect any of the remainder of this Ordinance since the same would have been enacted by the City Council without the incorporation of the unconstitutional or invalid phrase, sentence, section or paragraph.

### **Section 14. Compliance Clause and Effective Date.**

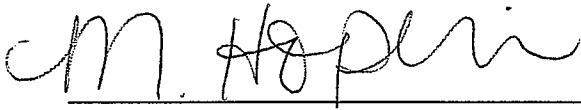
The City Council finds, determines and declares that a sufficient written notice was posted and this Ordinance was passed in accordance with the Open Meetings Act. The Acting City Secretary is instructed to publish this Ordinance in the Official Newspaper of the City of Magnolia in the manner provided and for the time required by Section 52.011(a) of the Local Government Code at which time this Ordinance takes effect.

PASSED, APPROVED, AND ADOPTED this 8<sup>th</sup> day of March, 2005.



Jimmy Thornton, Mayor

ATTEST:



Acting City Secretary

## AFFIDAVIT OF PUBLICATION

Before me, the undersigned authority, on this day personally appeared Denny O'Brien who on his oath stated:

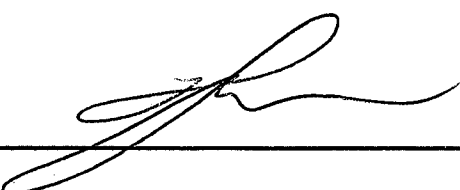
ORDINANCE NO. 2005 - 366

AN ORDINANCE PROVID-  
ING FOR LANDSCAPING  
REQUIREMENTS FOR ALL  
LAND LOCATED WITHIN  
THE CITY OF MAGNOLIA  
AND PROPOSED FOR  
DEVELOPMENT OTHER  
THAN SINGLE-FAMILY OR  
DUPLEX DEVELOPMENT;  
AND PROVIDING FOR  
ENFORCEMENT AND  
PENALTIES FOR VIOLA-  
TIONS.



I am the Editor of the Tomball Magnolia Tribune, a newspaper published in Montgomery County, Texas and now the facts stated in this affidavit. The attached matter is a true and correct copy of the publication of the citation of which it purports to be a copy, as the same appeared in such newspaper in the respective issues of:

3/21, 2005  
          , 2005

  
\_\_\_\_\_  
Denny O'Brien, Editor

Subscribed and sworn to this 21<sup>st</sup> day of March, 2005

