

APPENDIX E TREE PLANTING, PRESERVATION AND REPLACEMENT*

***Editor's note:** Ord. No. 1965, adopted June 11, 1990, added App. E to the Code. Said appendix is set out herein as enacted, with minor editorial emendation in brackets [] added for clarity.

Cross references: Buildings and building regulations, Ch. 8; housing and building maintenance code, Ch. 16; soil removal and other land-disturbing activities, Ch. 30; streets and sidewalks, Ch. 33; city zoning ordinance, App. A; subdivision regulations, App. B; site plan ordinance, App. C.

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Sec. 1.1. Narrative.

Trees are proven producers of oxygen, a necessary element for the survival of man. Trees appreciably reduce the ever-increasing and environmentally dangerous carbon dioxide contents in the air, and they play a vital role in purifying the air that man breathes.

Trees precipitate dust and other particulate airborne pollutants to settle on the ground.

Trees, through their root systems, stabilize the water table and play an important and effective part in soil conservation and erosion control.

Trees are an invaluable physical and psychological counterpart to the urban setting, make urban life more comfortable by providing shade and cooling of the air and land, and reducing noise levels and glare.

The city council of Virginia Beach has determined that the planting and preservation of trees within Virginia Beach is not only desirable but essential to the present and future health, safety and welfare of all the citizens.

(Ord. No. 1965, 6-11-90)

Sec. 1.2. Intent.

It is the intent of the City of Virginia Beach to require the planting of trees on residential lots and along residential streets. It is further intended to perpetuate tree growth through these provisions, to encourage tree preservation, provide adequate tree canopy and numbers, in the best interests of the health, safety and welfare of present and future citizens.

(Ord. No. 1965, 6-11-90; Ord. No. 2330, 5-23-95)

Sec. 1.3. Definitions.

For the purposes of this ordinance [appendix], certain terms as defined as follows:

Caliper: The diameter of a tree measured six (6) inches above existing grade.

Canopy cover: The crown "branch" area of a tree measured in square feet after ten (10) years from installation as specified in this ordinance [appendix].

Cultivar: A "variety" of plant denoting an assemblage of cultivated individuals which are distinguished by any significant characteristics and which, reproduced, retain their distinguishing characteristics.

Drip line: An imaginary, perpendicular line that extends downward from the outermost tips of the branches to the ground.

Lot size: That portion of the lot allowed for use in determining the minimum lot size requirements as stated in section 200 of the city zoning ordinance.

Multistem tree: A tree having more than one stem "trunk" emerging from the root system.

Planning director: The director of the department of planning or his designee.

Residential lot: A piece or parcel of land abutting on a street and created by proper legal instrument upon which is to be built one or more dwelling units and shall include single-family condominiums.

Resubdivision: Subdividing an existing subdivision to change the shape or size of the lots without increasing density.

Species: The unit in the botanical classification of plants.

Standard tree: A tree grown with a single erect stem.

Tree: Any self-supporting woody plant of a species which normally grows, in Virginia Beach, at a commonly accepted maturity, to an overall height of a minimum of fifteen (15) feet.

(Ord. No. 1965, 6-11-90; Ord. No. 2153, 6-23-92)

Sec. 1.4. Application.

The terms and provisions of this ordinance [appendix] shall apply to property as follows:

A. Residential.

1. All residential lots shall have trees planted, or canopy cover provided, based upon the following minimum requirements by lot size:

a. 1--4,999 square feet:

(1) One small tree per attached townhouse interior lot.

(2) Two (2) small, or medium, trees for attached townhouse end lots.

(3) Two (2) small or medium trees for all other lots.

b. 5,000--7,499 square feet: 300 square-foot canopy cover.

c. 7,500--9,999 square feet: 400 square-foot canopy cover.

d. 10,000--14,999 square feet: 600 square-foot canopy cover.

e. 15,000--19,999 square feet: 750 square-foot canopy cover.

f. 20,000--29,999 square feet: 900 square-foot canopy cover.

g. 30,000--65,339 square feet: 1,000 square-foot canopy cover.

h. 65,340--87,119 square feet: 1500 square-foot canopy cover.

i. 87,200 square feet and greater: 2,000 square-foot canopy cover.

2. Trees shall be selected from the specifications and standards and shall be a minimum of five (5) to six (6) feet in height for small trees at the time of planting and one and one-half (1 1/2) inches to two (2) inches caliper for medium and large trees at the time of planting. Planting shall be accomplished in accordance with the specifications and standards.

3. Existing or relocated trees on individual lots may be used to satisfy section 1.4.A., provided that:
 - a. The trees meet or exceed the quantities required for lots one to four thousand nine hundred ninety-nine (4,999) square feet or canopy cover as listed in section 1.4.A.1.; and
 - b. The trees have been protected in accordance with section 1.4.A.5. during construction and are physically and structurally in good condition per the city arborist or his designee;
 - c. Trees that have canopy extending over adjoining lots will receive credit for only that portion of canopy covering the lot from which the tree is growing. Credit for canopy cover will be given when tree on adjoining lots have canopy extending over an individual lot, but only that portion extending will be credited towards the required canopy cover for the individual lot. Canopy cover for street trees shall be credited toward residential lots in the amount of area on the individual lot measured from the right-of-way line. This credit will be considered only if the outline of the tree canopy, square footage of the tree canopy and type of tree are shown on the site plan when presented to obtain a building permit.
4. Nonacceptable trees: Trees selected for residential use shall not be of a species, variety or cultivar from the nonacceptable tree list in the specifications and standards.
5. Tree protection during construction: Existing trees that are to be used to meet the requirements of section 1.4 shall be protected in accordance with the following: Before construction activity begins, protective barriers must be securely in place. Minimum undisturbed areas shall be determined by multiplying the tree's diameter breast height (DBH), measured at four and one-half (4 1/2) feet, by one foot. This is the minimum diameter that must be left undisturbed around each tree. This area is approximately the area of the outermost branches (drip line). All construction activities shall be prohibited within the minimum undisturbed areas provided for any tree(s) for which credit is given toward satisfying the residential canopy requirements. All temporary construction activities shall also be prohibited within the minimum undisturbed areas, including all excavating, filling, trenching, construction storage and dumping, and parking of construction equipment/vehicles or employee vehicles.
6. Inspection and bonding: Each lot shall be inspected and approved prior to the issuance of the certificate of occupancy or final inspection approval. All new trees must be identified with species identification tags and must remain tagged until after the inspection is complete. The inspection shall be performed by the permits and inspections division of the department of planning. Where additional residential lot trees are required, no certificate of occupancy or final inspection approval shall be issued until the required trees have been planted in accordance with City of Virginia Beach typical planting standards. When the occupancy of a structure is desired prior to the completion of the residential lot tree planting requirement, a temporary certificate of occupancy may be issued if the owner or developer provides to the permits and inspections division of the department of planning a disclosure statement accepting responsibility for the installation of the required trees.

B. *Street tree planting:*

1. Trees shall be planted within all public rights-of-way in conjunction with new residential development except resubdivisions, undeveloped rights-of-way and townhouse developments where the street design does not provide greenspace for street trees. Trees shall be planted in accordance with a master street tree plan, section 1.4.B.4, that is to be included with the subdivision construction plans. The master street tree plan

is to be prepared in accordance with section 1.4.B.4. and approved by the planning director.

2. All street trees shall be a minimum of one and three-fourths (1 3/4) to two (2) inch caliper at time of planting for standard trees and five (5) feet to six (6) feet in height for multistem trees at time of planting. Trees shall be guaranteed to be in good physical condition as determined by the city arborist or his designee, for a period of one year by the developer. The one-year period shall commence from the time of final inspection.

3. Tree selection: Trees shall be selected from the specifications and standards. Tree selection shall be small or medium size and spaced according to the recommended list of street trees in the specifications and standards when distance between sidewalk and curb is four (4) feet. Tree selection shall be medium or large size and spaced according to the recommended list of street trees in the specifications and standards where the distances between sidewalk and curb is greater than four (4) feet or if a sidewalk is not required.

4. Master street tree plan: A master street tree plan shall be prepared and contain the following information:

a. A landscape plan drawn to the same scale as the subdivision plan showing the location and spacing of all trees to be planted.

b. Botanical names, common names, sizes and quantities.

c. Planting details.

d. Location of all curb lines, sidewalks and major utilities. Utilities conflicting with placement of trees shall require an adjustment of tree spacing. When adjustment is necessary, spacing shall not exceed the maximum allowable spacing. No trees shall be placed within ten (10) feet of a streetlight pole nor encroach within the visibility triangle as defined by section 201(f) of the city zoning ordinance. Generally, a minimum of four (4) feet of greenspace on either side of the sidewalk shall be required.

e. Trees on residential lots shall not be used to meet the requirements of street tree planting, except when a lot or group of lots are heavily wooded and the planting of street trees would physically conflict with the canopy of the residential trees. The street tree requirements may be deleted in these areas only. The planning director or his designee shall determine if such a conflict exists.

5. Bonding: Prior to the recordation of any final subdivision plat, the developer shall provide a performance bond with surety, cash escrow, irrevocable letter of credit, any combination thereof, or such other legal arrangement acceptable to the city attorney to cover the costs of such trees and their planting. In the event that the developer fails to plant such trees as required by this ordinance, the city may use the performance bond to cover the cost of purchase and planting of all required street trees. In such event, the developer shall reimburse the city for any excess cost should the cost of purchase and planting of the trees exceed the amount of security provided. A bond shall be required to cover the guarantee period.

C. Exemptions:

1. The requirements of section 1.4.B. of this appendix shall not apply to resubdivisions or to unimproved rights-of-way.

2. The requirements of section 1.4.B. shall not apply to townhouse developments where the street design does not provide adequate greenspace for street trees.

D. *Compatibility with best management practices (BMPS)*. In no case shall a subdivision be approved wherein the design calls for the planting of trees over any underground water retention areas.

(Ord. No. 1965, 6-11-90; Ord. No. 2153, 6-23-92; Ord. No. 2330, 5-23-95)

Sec. 1.5. Violations and penalties.

Any person who violates any of the provisions of this ordinance [appendix] shall, upon conviction thereof, be guilty of a misdemeanor punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00). Each day that a violation continues shall be considered a separate offense.

(Ord. No. 1965, 6-11-90)

Sec. 1.6. Variances and appeals.

A. The city manager or his designee is authorized, upon appeal in specific cases, to grant a variance from the terms of the ordinance [appendix] as will not be contrary to the public interest, when owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship, provided that the spirit of the ordinance [appendix] shall be observed and substantial justice done, as follows:

1. Strict application of the terms of the ordinance [appendix] will effectively prohibit or unreasonably restrict the use of the property.
2. Granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege.

In authorizing a variance, the city manager or his designee may impose such conditions as may be necessary in the public interest.

B. It is further provided that any decision of the city manager or his designee may be modified, reversed or affirmed by the city council upon appeal by any aggrieved party to such decision, if such appeal is filed within thirty (30) days of such decision.

C. Final decision under this ordinance [appendix] shall be subject to review by the appropriate court of record, if filed within thirty (30) days from the date of council action.

D. Notwithstanding anything in this section to the contrary, variances and appeals arising from provisions of the Chesapeake Bay Preservation Area Ordinance [Appendix F] included or incorporated in this ordinance [appendix] shall be in accordance with Section 110 or Section 111 of the Chesapeake Bay Preservation Area Ordinance as the case may be.

(Ord. No. 1965, 6-11-90; Ord. No. 2153, 6-23-92; Ord. No. 2794, 12-9-03)