

Sec. 74-383. - Conditions for removal; replacement.

(a) *Conditions for removal.*

- (1) It is the intent of this section to minimize the removal of protected trees and provide that no authorization be granted to remove a tree if the applicant has failed to take reasonable measures to design and locate the proposed improvements so that the number of protected trees to be removed is minimized. In particular, the design must attempt to preserve specimen and historic trees.
- (2) With respect to the issuance of a tree removal permit in conjunction with a development activity, no such tree removal permit shall be issued prior to the issuance of the appropriate building permit and, with respect to a major development as defined in section 66-162(b), until a cash bond equal to the replacement value of all the trees permitted to be replaced has been filed with the town manager guaranteeing the replacement in accordance with subsection (b) of this section. No authorization for the removal of a protected tree shall be granted unless the applicant demonstrates one or more of the following conditions:
  - a. A permissible use of the site cannot reasonably be undertaken unless specific trees are removed or relocated.
  - b. The tree is located in such proximity to an existing or proposed structure that the safety, utility or structural integrity of the structure is materially impaired.
  - c. The tree materially interferes with the location, servicing or functioning of existing utility lines or services.
  - d. The tree creates a substantial hazard to motor, bicycle or pedestrian traffic by virtue of physical proximity to traffic or impairment of vision.
  - e. The tree is diseased or weakened by infestation by insects, abuse, storm, fire or any other cause or condition whatsoever, and the weakened condition of the tree presents a threat to persons or property, as determined by the town manager or the designee of the town manager.
  - f. Any law or town regulation requires the removal.

(b) *Replacement.*

- (1) Trees removed pursuant to subsection (a) of this section, except for trees removed pursuant to subsection (a)(2)e., shall either be replaced, as set forth in this subsection, at the expense of the property owner, or a fee in lieu of replacement shall be paid to the town. Replacement shall not be required for trees removed pursuant to subsection (a)(2)e. of this section, nor shall any fee be required in lieu of replacement for trees removed pursuant to subsection (a)(2)e.
- (2) Replacement trees shall, if practicable, be planted on the development site. If it is not practicable to plant replacement trees on the development site, then the owner shall be required to either donate replacement trees to the town, which trees shall be planted on town property, or the owner shall be required to pay a fee in lieu of tree replacement to the town, which fee shall be deposited in the tree replacement fund of the town, and the monies deposited shall be used solely for tree plantings and maintenance of trees. The election to require the owner to provide replacement trees to the town or a fee in lieu thereof shall rest in the sole and absolute discretion of the town manager. If the town manager elects to accept replacement trees instead of a fee in lieu thereof, then the town shall have the sole and absolute discretion to dictate the location and species of the replacement trees to be provided to the town and planted on town property.
- (3) If replacement trees are provided by the owner, regardless of whether the replacement trees are to be planted on the development site or on town property, then the replacement trees shall be in accordance with the town landscaping master plan at the time of planting. For each inch of diameter at breast height of trees removed, an inch of diameter at breast height shall be replaced. With respect to replacement trees which are planted on the development site, the owner shall use

his best efforts to ensure that the replacement trees thrive. If any replacement tree, within 90 days of its planting, shows any sign that the tree will not survive, the owner shall replace any such tree with another acceptable replacement tree. With respect to replacement trees which are donated to the town, such replacement trees shall be accompanied by a 90-day guarantee from the nursery which supplied the tree. The replacement trees shall also be state department of agriculture Nursery Grade No. 1. Only the following species of trees shall be acceptable replacement trees:

*Large street and median shade trees:*

- Live oak
- Weeping elm
- Laurel oak
- Sycamore
- Red cedar
- Pignut hickory
- Slash pine
- Bald cypress
- Southern magnolia

*Smaller street and median shade trees:*

- East Palatka holly
- Weeping holly
- Weeping bottlebrush
- Rigid bottlebrush
- Wax myrtle
- Crape myrtle

*Palms for street and median:*

- Canary Island date palm
- Wild date palm
- Cabbage palm
- Washingtonian palm
- Pinto palm

- (4) If the town requires a fee to be paid by the owner pursuant to subsection (2) of this subsection, the fee shall approximate the cost to purchase and plant equivalent sizes and species of acceptable replacement trees. The fee shall be calculated on a per-inch basis, and the per-inch fee shall be determined by the town commission from time to time.

- (5) If it is practicable to replace a tree on the development site, in lieu of replacing any such tree, a tree removed from one location on a site may be planted at another location on the same development site. If the owner elects to relocate a tree on the development site, the town manager may require the owner or applicant to consult with a horticulturist or other tree professional to prescribe measures to ensure the survival of the tree.
  - (6) In the event that a palm is to be removed, it may be replaced with either another palm or a tree as specified in section 74-383(b)(3), except that a palm removed from a protected tree-lined road as specified in section 74-386 must be replaced with a like variety in the same location as the removed palm.
- (c) *Historic and specimen trees and historic tree stands.*
- (1) Historic trees or historic stands of trees are trees that have been designated by the town commission as trees of notable historical interest and value to the town because of their location or historical association with the community. A public hearing shall be held by the town commission on the designation, with due notice to the tree's owner.
  - (2) Specimen trees are trees that have been officially designated by the town commission to be of high value because of their type, size, age or other relevant criteria. A public hearing on the designation shall be held by the town commission, with due notice to the owner of the tree.
  - (3) No historic tree or historic stand of trees or specimen tree shall be removed without a finding by the town commission that the tree or stand of trees is a hazard or that it is not economically or practically feasible to develop the parcel without removing the tree or stand of trees. The applicant shall explain in detail why the tree or stand of trees is a hazard or why it is not economically or practically feasible to allow the tree or stand of trees to remain. The town manager shall make a presentation to the commission on the application and make a recommendation as to whether it should be approved or denied. The decision by the commission on the application shall be made within 30 days of the date the application was filed.

(Ord. No. 399, § 1, 11-20-01)