

NOTICE

THE COMMISSIONERS OF THE CITY OF REHOBOTH BEACH ON JUNE 16, 2023, ADOPTED ORDINANCE NO. 0623-04 WHICH READS AS FOLLOWS:

**AN ORDINANCE TO AMEND CHAPTER 253, TREES,  
OF THE MUNICIPAL CODE OF THE CITY OF REHOBOTH BEACH, DELAWARE, 2001, BY  
DELETING THE EXISTING CHAPTER 253, TREES, IN ITS ENTIRETY AND INSERTING IN LIEU  
THEREOF A NEW CHAPTER 253, TREES**

**WHEREAS**, the City of Rehoboth Beach adopted the 2020 Comprehensive Development Plan in 2022, which calls for the preservation, protection and conservation of trees within the City; and

**WHEREAS**, the Mayor and Commissioners of the City of Rehoboth Beach desire to complete a comprehensive revision of Chapter 253 of the Municipal Code of the City of Rehoboth Beach relating to Trees.

**BE IT ORDAINED** by the Commissioners of the City of Rehoboth Beach, in session met, a quorum pertaining at all times thereto, in the manner following to-wit:

**Section 1.** Chapter 253, Trees, of the Municipal Code of the City of Rehoboth Beach, Delaware, 2001, as amended be and the same is hereby further amended by deleting Chapter 253, Trees, in its entirety and inserting in lieu thereof a new Chapter 253, Trees, attached hereto as **EXHIBIT A**.

**Section 2.** If any provision of this Ordinance shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Ordinance which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to be severable.

**Section 3.** This Ordinance shall take effect immediately upon its adoption by the Commissioners of the City of Rehoboth Beach, except that the requirement for a tree plan as set forth in § 253-24 shall not become effective until 45 days after final passage.

**SYNOPSIS:** This Ordinance deletes Chapter 253, Trees, of the Municipal Code of the City of Rehoboth Beach in its entirety and inserts in lieu thereof a new Chapter 253, Trees.

**EXHIBIT A**

**CHAPTER 253 TREES**

**ARTICLE I  
GENERAL PROVISIONS**

**§ 253-1. Findings.**

The City Commissioners find that:

- A. The City of Rehoboth Beach adopted the 2020 Comprehensive Development Plan in 2022, which calls for the preservation, protection and conservation of trees within the City;
- B. The City of Rehoboth Beach contains a diversity and abundance of trees that are of economic, recreational, and environmental value to the City and makes it a desirable place for residents and visitors;
- C. The abundance of trees contributes to the City's unique wooded seaside character and distinguishes the City from many other coastal communities;
- D. The appearance of Rehoboth Beach contributes to the economic prosperity and general welfare of the City;
- E. Growth and development in the City of Rehoboth Beach often results in the removal of trees, thereby contributing to their depletion;
- F. Trees are a vital component of the City's green infrastructure that shape a healthy, resilient and sustainable community by supporting vital ecosystem services such as air purification, temperature mitigation, and storm water interception; and
- G. It is necessary to protect and manage trees as valuable assets in order to protect and enhance the health, safety, and welfare of the citizens of Rehoboth Beach.

**§ 253-2. Purpose.**

The City Commissioners declare the intent of this Chapter is to:

- A. Regulate the protection, planting, removal, and long-term management of trees within the City that, in the case of private property, takes into account the natural area plan for that property;
- B. Require a survey of existing trees and a plan for tree preservation and protection prior to development, redevelopment or subdivision of a lot;

- C. Establish a system of permits to assure density, correct maintenance, protection and removal of trees on public and private property;
- D. Establish remedies and penalties for violations of its provisions; and
- E. Promote the education of the citizens of the City of Rehoboth Beach on proper tree-care practices and the importance of increasing our urban forest.

**§ 253-3. Applicability.**

- A. The provisions of this Chapter apply to all land in the municipal boundaries of the City of Rehoboth Beach.
- B. Activities that require review and approval by the City Arborist are:
  - (1) Private maintenance or planting of trees on public land (§ 253-14)
  - (2) All activities that require an approved tree plan (§ 253-24A)
  - (3) All activities that require a tree removal permit (§ 253-25)
- C. Emergency Waiver. The provisions of this article may be suspended or waived by the City Manager during a period officially declared an emergency by the Mayor or the Governor.

**§ 253-4. Definitions.**

**ANSI STANDARDS**

Tree standards set by the American National Standards Institute.

**CALIPER**

The diameter measurement of the trunk of nursery stock trees, measured at 6 inches from the soil for trees 4 inches or less and at 12 inches from the soil for trees over 4 inches.

**CITY ARBORIST**

An employee of the City or an individual retained by the City on a contractual basis to perform the duties identified in this Chapter. Such person shall be trained in arboriculture, forestry, horticulture, landscape architecture, or another related field and have at least two years of working experience in the area of training. He/she shall also be a certified arborist or capable of becoming certified within one year.

**CITY PARKS AND SHADE TREE COMMISSION**

As established in Article II, § 253-5.

**CITY TREE**

Any tree not on private property.

**COMMERCIAL PROPERTY**

Commercially zoned property.

**DAMAGE**

Severe decline, disfigurement, discoloration, defoliation, removal or death of any tree, which is intentionally caused or is the result of recklessness or negligence.

**DBH**

Diameter at breast height (DBH) is a standard method of measuring the diameter of the trunk of a mature tree. DBH is measured at 4 feet, 6 inches above the ground, in accordance with International Society of Arboriculture (ISA) standards.

**DEMOLITION**

Includes the destruction of all or part of a structure.

**DEVELOPMENT**

The act, process or state of the erection or demolition of structures, or adding to existing structures, or subdivision of a lot.

**HAT-RACKING**

To flat cut the top of a tree, severing the leader or leaders; or to trim a tree by stubbing off mature wood larger than three inches in diameter; or to reduce the total circumference of crown spread not in conformance with the current ANSI Standards.

**HERITAGE TREE**

An existing tree of twenty (20) inches DBH or more.

**INVASIVE SPECIES**

An alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health, as included on the Delaware Department of Natural Resources and Environmental Control list.

**LAND DISTURBANCE ACTIVITY**

Any activity that results in movement of earth, or a change in the existing soil cover and/or the existing soil topography. Land disturbing activities include, but are not limited to, clearing, grading, filling, and excavation.

**LINE TREE**

A tree with any part of its trunk below DBH sitting across a property line.

## **LOT**

A uniquely identifiable parcel, tract or area of contiguous land that is held in common ownership, fronts on one or more streets unless specifically exempted from such requirement in this Chapter, is not divided by a street, shall not include any land within the plotted limits of a public or private street, alley, avenue, lane, or other way and is any of the following:

A. A parcel, tract or area of contiguous land whose boundaries have been established by and are shown on a legally created subdivision plat recorded in the Sussex County office of the Recorder of Deeds and which plat has been recognized by the City. Such lots will usually be identified by a block number or street and a lot number.

B. A parcel, tract or area of land which was originally a lot or lots and/or parts of lots as delineated in Subsection A above and resulted from making boundary line adjustments through the recording, in the Sussex County office of the Recorder of Deeds, of a valid deed or other instrument prior to the City's adoption of a Subdivision Ordinance on November 18, 1974. The parcel, tract or area of land shall have been conveyed as a single parcel.

C. A parcel, tract or area of land which does not constitute a part of a legally created subdivision and which has been defined in a deed by metes and bounds and which has been transferred as a single unit prior to the City's adoption of a Subdivision Ordinance on November 18, 1974.

D. A parcel, tract or area of land which results from the consolidation of two or more lots as delineated in Subsections A through C above.

## **NATIVE TREE**

A tree species that is known to grow naturally in the Mid-Atlantic coastal region.

## **NATURAL AREA**

That portion of the gross lot area that is dedicated to either trees, grass, flowers, bushes, other plantings and/or mulched areas. For the purpose of calculating natural area, mulched areas shall be limited to the use of vegetative ground covers and shall not include the use of clam shells, decorative stone, or other similar hard materials.

## **PARK TREE**

A tree located in a park as defined in § 195-1.

## **PROTECTED TREE**

Any tree meeting one or more of the following descriptions:

- (1) A tree that is necessary and counted to meet the density requirement in § 253-22.
- (2) An existing tree of eight inches diameter or more measured at DBH of a species listed on the City of Rehoboth Beach Approved Tree List.
- (3) Any existing or new tree required for mitigation under § 253-29.

**REMOVE OR REMOVAL**

- (1) The actual removal of trees;
- (2) Direct or indirect actions resulting in the effective removal or death of trees through damage or poison.

**RESIDENTIAL PROPERTY**

Residentially zoned property or property otherwise used exclusively for a residential purpose.

**STREET TREE**

A tree on land lying between property lines on either side of any street, avenue, boulevard, road, land, parkway, viaduct, alley or other way which is an existing state, county or City roadway, or a street or way shown upon a plat.

**SUBDIVISION**

A subdivision of a lot as defined in § 236-3.

**TOPPING**

To trim a tree to prevent the natural upwardly growth of a tree, significantly altering its natural shape.

**TREE**

A living, woody plant having a well-defined stem, a more or less well-defined canopy and which is capable of attaining a height of at least 15 feet.

**TREE PRESERVATION AREA**

That area of a lot or parcel of land within which all protected trees shall be protected as designated on a tree preservation plan.

**TREE PROTECTION PLAN**

A written plan having text and/or graphic illustrations indicating the methods which are to be used to preserve existing protected trees during construction.

**TREE PROTECTION DEVICES**

Barriers, fences, other devices and techniques reasonably required to protect the tree preservation area from intrusion by construction vehicles and equipment, materials and spoils.

**TRIM**

To reduce, shorten, diminish or prune a tree or parts of a tree, without substantially altering the existing shape or damaging the health of the tree or shortening its life span.

**URBAN FOREST PLAN**

An action plan to provide effective long-term management of the City of Rehoboth Beach's urban forest and designed to increase public involvement, promote best management practices, and minimize risk to the public.

## ARTICLE II

### CITY PARKS AND SHADE TREE COMMISSION; REGULATION OF TREES IN PUBLIC SPACE

#### **§ 253-5. Commission membership.**

The City Parks and Shade Tree Commission for the City of Rehoboth Beach shall consist of five members who are residents or property owners of this City, and who shall be appointed by the Mayor with the approval of the City Commissioners.

#### **§ 253-6. Term of office.**

The term of the five persons appointed by the Mayor with the approval of the City Commissioners shall be three years. In the event that a vacancy shall occur during the term of any members, their successor shall be appointed by the Mayor with the approval of the City Commissioners for the unexpired portion of the term.

#### **§ 253-7. Compensation.**

Members of the City Parks and Shade Tree Commission shall serve without compensation.

#### **§ 253-8. Duties and responsibilities of the City Parks and Shade Tree Commission.**

- A. Subject to the provisions of § 253-30, The Commission shall hear and decide appeals for affected parties where it is alleged that there is an error in any order, requirement, decision or determination made by the City Arborist or other City official in the application of this Chapter. The Commission may authorize a variance from this ordinance where owing to special conditions or exceptional situations, an interpretation of the Chapter will result in unnecessary hardship or exceptional practical difficulties to the property owner so long as the variance does not substantially impair the intent and purpose of this Chapter.
- B. The Commission shall review a status report in October annually of the Urban Forest Plan prepared by the City Arborist and data to include the total number of permits issued and denied, and the total number of trees removed and replanted.
- C. The Commission, when requested by the City Commissioners, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work.

**§ 253-9. Species of Park Trees and Street Trees to be planted.**

Trees planted as park trees and as street trees shall be species native to the mid-Atlantic as classified by the Delaware Forest Service or another species approved by the City Arborist. No tree species classified as an invasive tree species by the Department of Natural Resources and Environmental Control shall be planted as park trees or as street trees.

**§ 253-10. Spacing of Street Trees.**

- A. The placement and spacing of street trees will be approved by the City Arborist.
- B. All street trees shall conform to American Association of Nurserymen Standards and be at least 2 inches caliper and at least eight (8) feet in height when planted.

**§ 253-11. Street Tree planting distance from curbs and sidewalks.**

All street trees will be planted in the center of the area between the curb or curblines and sidewalks, or in bump-outs or bioretention planters.

**§ 253-12. Street Tree planting distance from street corners and fire hydrants.**

No street tree shall be planted closer than 30 feet to any street corner, measured from the point of nearest intersecting curbs or curblines except as approved by the City Arborist. No street tree shall be planted closer than 10 feet to any fire hydrant.

**§ 253-13. Utilities.**

No street trees other than small tree species approved by the City Arborist shall be planted under or within 10 lateral feet of any overhead utility wire, or over or within five lateral feet of any underground water line, sewer line, transmission line or other utility, unless otherwise approved by City Manager.

**§ 253-14. Maintenance of City Trees.**

- A. The City shall have the right to plant, prune and maintain and remove trees, plants and shrubs within the plotted boundaries of all streets, alleys, avenues, lanes, public squares and public grounds, as may be necessary to ensure public safety, or to preserve or enhance the symmetry and beauty of such public grounds, or to protect public or private property. It shall be the responsibility of the City to provide adequate maintenance for all City parks and City trees, except as otherwise provided by law. The City Arborist shall procure qualified tree trimming contractors to perform necessary maintenance, in accordance with City procurement procedures, and at the direction of the City Manager.



- B. The City Arborist may remove or cause or order to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewer and electric power lines, gas lines, water lines or other public improvements or is affected with any injurious fungus, insect or other pest.
- C. No person shall plant, spray, preserve, prune, remove, cut above ground or otherwise disturb any tree on any street or City owned property without first receiving permission from the City Arborist. Any tree removed from City owned property must be replaced in a location approved by the City Arborist. Heritage trees must be replaced with two (2) trees of at least two (2) inches caliper and eight (8) feet high which is of a species on the City of Rehoboth Approved Tree List per Heritage tree removed; otherwise each tree removed must be replaced by a tree of at least two (2) inches caliper and eight (8) feet high which is of a species on the City of Rehoboth Approved Tree List.
- D. Upon approval of the City Arborist, property owners may plant street trees on City-owned property adjacent to their property, provided that the selection and location of said trees is in accordance with §§ 253-9 through 253-13 of this article, and prior to planting, the property owner enters into a written agreement with the City requiring the property owner to maintain the street tree for the first two years. Said street tree shall be the property of the City. Responsibility for any damage to the sidewalk shall be in accordance with Chapter 232, Article I, § 232-1.

**§ 253-15. Tree topping and hat-racking of City Trees prohibited.**

The topping or hat-racking of any street tree, park tree, or other tree on public property shall be unlawful. Trees severely damaged by storms or other causes or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this article at the determination of the City Arborist.

**§ 253-16. Pruning of trees overhanging public space.**

- A. Every owner of any tree overhanging any street, alley, avenue, lane, or other way within the City shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of twelve feet above the surface of the street or eight feet above the sidewalk and no lateral intrusion into the street or sidewalk area within this clear space. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public.
- B. The City shall have the right to prune any tree or shrub on private property when it intrudes into the clear space above a street, alley, avenue, lane, way, or sidewalk, interferes with the proper spread of light along the street from a streetlight, or interferes with visibility of any traffic control device or sign. The City shall have the authority to charge the cost of pruning to the property owner.

**§ 253-17. Removal of dead or diseased trees; costs.**

- A. The City shall have the right to cause the removal of any dead or diseased trees on private property within the City and on City-owned property when such trees constitute a hazard to life and property in public space, or harbor insects or disease which constitute a potential threat to other trees within the City. This includes trees planted between the curb or curblines and sidewalk, regardless if the tree was planted by the City or the property owner, and will also include removal because of damage done to the sidewalk and/or curb by tree roots.
- B. If the City planted the tree, the City will incur all costs involved in removing and replacing the tree and repairing damage to sidewalks and curbs or curblines. If a property owner has planted a tree on City property and it needs to be removed, the City will notify the owner in writing, and the City may require removal and repair by the owner at the owner's expense within 15 days after the date of service of notice, or such longer period not to exceed 60 days as the City may approve for good cause. In the event of failure of the owner to comply with such provisions, the City shall have the authority to remove the tree and make repairs and charge the cost of removal and repairs to the property owner. If it is indeterminable whether a property owner or the City planted a tree on City property, the City shall be responsible for maintenance. To the extent that this Section conflicts with any other provision of the Code concerning the duty to repair sidewalks or curbing, this Section shall control the repair of tree-related damage to sidewalks, curbs or curblines.

**§ 253-18. Removal of Street Tree stumps.**

All stumps of street trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

**§ 253-19. Abuse of Street Trees and trees on City property.**

Unless specifically authorized by the Parks and Shade Tree Commission, no person shall intentionally damage, cut, carve, transplant or remove any tree; attach any rope, wire, nails, advertising posters or other contrivance to any street tree or tree on City property; allow any gaseous liquid or solid substance which is harmful to such trees to come in contact with them; or set fire or permit any fire to burn when such fire or the heat hereof will injure any portion of any tree.

**§ 253-20. License required for business of tree pruning, treating or removal.**

It shall be unlawful for any person to engage in the business or occupation of pruning, treating or removing street or park trees within the City without first applying for and procuring a license.

## ARTICLE III

### TREE ORDINANCE; REGULATION OF TREES ON PRIVATE PROPERTY

#### § 253-21. Species to be planted.

Trees planted to meet the tree density requirements of § 253-22 or the mitigation requirements of § 253-29 of this article shall be selected from the City of Rehoboth Beach Approved Tree List.

#### § 253-22. Minimum tree density requirements.

- A. All lots used for residential purposes, whether zoned residential or not, must maintain an average minimum tree density of 26 trees per acre, subject to adjustments as stated in this subsection. Tree density may be achieved by existing trees or planting of new trees. The specific tree density requirements for each lot are as follows:

Each lot used for residential purposes, whether zoned residential or not, and each lot containing a hotel, motel or inn shall have at least three trees on the lot for each 5,000 square feet of land, or one tree for each 1,666 square feet of land for lots smaller or larger than 5,000 square feet. In calculating the minimum tree density required for a lot where dividing the square footage of the lot by 1,666 results in a tree density requirement that contains a fractional number, that fractional number shall be increased to the next highest number if the fractional number is 0.5 or higher.

- B. In meeting the density requirements set forth in Subsection A above, only existing trees exceeding two inches DBH and 8 feet in height, and new trees to be planted in accordance with § 253-24 may be counted to meet the density requirements, provided that:
- (1) New trees shall either be on the City of Rehoboth Beach Approved Tree List, or planted prior to the date of adoption of this Chapter. At minimum, one (1) out of every three (3) of the trees counting towards the density requirement for a lot must be a native canopy tree. If the lot is required to have a minimum density of less than three (3) trees, at least one (1) tree counting towards the density requirement must be a native canopy tree.
  - (2) A line tree shall count as one tree for each property owner in calculating tree density.
  - (3) Where one or more trees are to be planted to meet the density requirements, at least one tree, existing or planted, shall be in the front setback area. This provision shall not apply to lots abutting the Boardwalk or any lot in an ocean block south of Pennsylvania Avenue and within 150 feet of the eastern terminus of the street upon which the lot is located.
  - (4) A tree that is trimmed ornamentally or otherwise in a manner that prevents attaining its natural height, other than for the removal of decay, damage, or disease, shall not be counted to meet the density requirements.

- C. The density requirements shall be met whether or not a lot had trees prior to the consolidation of two or more lots, the filing of an application for a building or demolition permit, house move permit, or for subdivision or site plan approval.
- D. Notwithstanding anything else to the contrary in this section, if a lot does not meet the density requirements in Subsection A of this section, then such property owner shall not be required to meet such density requirements for such lot unless an application is filed that requires a tree plan or tree removal permit or a building permit which involves land disturbance activity of at least 1000 square feet, provided that, in the event that an existing tree on such lot is or becomes dead or significantly diseased, thereby reducing the tree density below the density required by Subsection A of this section, it shall be removed and replaced by a tree of at least two (2) inches caliper and eight (8) feet high which is of a species on The City of Rehoboth Beach Approved Tree List; and provided, further, that the density requirements in Subsection A of this section shall apply upon any conveyance or transfer of such lot upon the date of adoption of this Chapter.
- E. No tree removal permit will be issued and no tree plan will be approved if it will result in a tree density less than that specified in Subsection A and B of this section.

**§ 253-23. Maintenance of trees.**

A. Property owners shall maintain all trees on their lots so that they are healthy and present a neat and orderly appearance free of refuse and debris. Property owners may trim trees on their lots as necessary to promote uniform healthy growth, a clean, neat and healthy condition and to allow a tree to attain its natural size. Trees shall be trimmed to remove diseased or dying portions. Lower limbs and suckers may be selectively removed to provide clearance for pedestrians and vehicles and to comply with § 253-16A.

B. Severe cutting back of lateral branches and canopy or topping or hat-racking trees is expressly prohibited.

C. With respect to trees that are preserved or planted pursuant to a property owner's approved tree plan under § 253-24:

- (1) The property owner shall submit to an on-site inspection of each planted or preserved tree 6 months after the approval of the plan, and thereafter as needed, except when trees are planted pursuant to a building permit for new construction, inspection shall be done before the certificate of occupancy is issued.
- (2) If it is determined that said tree is dead, diseased or otherwise not in compliance with provisions of this code and the original approved tree plan, the property owner shall be provided notice and directed to correct any such deficiencies and replace said tree or all noncompliant materials within 60 days, or such longer period specified by the City Arborist taking into account planting seasons.

**§ 253-24. Submission of tree plans with applications for building or demolition permit, for subdivision or site plan approval, or tree removal permit.**

A. Tree Plan Required

- (1) City approval of a tree plan shall be required as part of every application for a:
  - (a) Tree removal permit;
  - (b) Demolition permit;
  - (c) House move permit;
  - (d) Building permit relating to any building/construction where there is land disturbance activity of 500 square feet or more;
  - (e) Subdivision or merger of land; and
  - (f) Site plan review.
- (2) Review of such tree plan, and any approval thereof, will proceed in the same manner by the same City officials and/or entity responsible for reviewing and approving the application for building permit, tree removal permit, subdivision or site plan approval, or demolition permit.

B. Tree plans shall include the following information for a lot:

- (1) Dimensions of the property;
- (2) Location, type and DBH of all existing trees of two (2) inches DBH or greater, and a notation of whether each such tree is to be preserved or removed;
- (3) Location of all structures, parking areas, drives, vehicular use areas, curb cuts, retention/detention areas, other improvements and other features on the lot as may be required in the application for any item described in Subsection A(1) of this § 253-24 and a notation of what exists that shall remain or will be removed from the lot, and what is proposed for creation or installation on the lot;
- (4) Location of existing and proposed overhead or underground power lines and other utility lines, such as but not limited to water and sewer, and adjacent streets, alleys, avenues, lanes, and other ways;
- (5) Location, type, height, DBH, and quantity of all trees proposed to be planted, and other information as may be required for a mitigation plan described in § 253-29; and
- (6) General notes including mulching requirements, fertilization and planting details, and such other information as needed.

C. The City may designate, as appropriate, one or more protected areas on any lot meeting the description in § 253-24B of this article when it is essential for the limited purpose of protecting the roots and trunk of a tree or trees during or after construction or demolition or other activity for which the application has been filed.

- D. Tree plan review fee. A nonrefundable administrative fee of \$100 to offset the cost of reviewing each plan required by this § 253-24 will be collected by the City, except when submitting an application to remove a dead or diseased tree, in which case there shall be no fee.

### § 253-25. Tree removal permits.

Tree removal permits shall be applied for and obtained prior to beginning any activity on a lot which is intended to or may reasonably affect any tree as described below in this section.

#### A. Tree removal.

- (1) No person shall, directly or indirectly, cut down, substantially alter, destroy, remove, relocate, damage, or authorize any such act involving a protected tree situated on any land within the City of Rehoboth Beach without first obtaining a tree removal permit. No permit shall be issued to remove any protected tree unless removal is by a licensed tree professional if, in the judgment of the City Arborist, professional removal is needed for the protection of any property or persons.
- (2) Tree removal permit.
  - (a) No tree removal permit shall be issued unless the City finds that at least one of the following criteria is satisfied with respect to each protected tree designated for removal:
    - [1] In the case of an application for a building or demolition permit or for partitioning, a subdivision or site plan approval, the tree prevents reasonable development of a lot that is otherwise permissible under City ordinances, provided, however, that a tree removal permit shall not be granted where the applicant has failed to design and locate the proposed improvements, demolition or subdivision so as to minimize the removal of trees consistent with the permitted use of the lot and shall be granted only after reasonable efforts have been made to save protected trees on a lot. Reasonable efforts shall include, but not be limited to, alteration of building design; alternate location of building, an erosion control plan, parking area and other impervious surfaces, water retention or drainage infrastructure; or relocation of utilities;
    - [2] The tree is located within an existing or proposed public or utility company street, alley, avenue, lane or other way, an existing or proposed public or utility company easement, or stormwater management tract or facility, provided that only the minimum area reasonably necessary for the public service or use shall be considered for purposes of determining whether there is necessity for tree removal;
    - [3] The tree is located where it creates or will create a material safety or health hazard with respect to existing or proposed structures or vehicles or

pedestrian routes, and such hazard is not innate to or commonly associated with the existence of trees in general (for example, lightning, wet leaves on the ground during rainstorms);

- [4] The tree is located where it interferes with the installation, delivery or maintenance of proposed or existing utility services to the lot and relocation of such services is not reasonably practicable;
- [5] The tree is determined by the City to be dead, significantly diseased, severely injured or in danger of falling;
- [6] A tree is determined to be one of the following species: Ailanthus, Bradford Pear, Japanese Black Pine, Leyland Cypress, and Norway Maple; or
- [7] The tree is under eight (8) inches and is replaced with another approved tree meeting minimum tree density, in those cases where mitigation is required.

B. Exempt activities. The following activities shall be exempt from the requirements of this section:

- (1) Removal of any tree in an existing utility easement or the plotted boundaries of a street, alley, avenue, lane, or other way, provided such work is done by or under the direct control of the operating utility company and said company has received all necessary licenses or permits to provide utility service within the easement and said company has documented the need for said removal. However, this exemption shall not apply to the removal of any Heritage tree.
- (2) Removal of any tree for the purpose of maintaining an existing legally required access to a property.
- (3) Removal of any tree which has been destroyed or damaged beyond saving, from extreme weather conditions, insects, disease or fire, or which constitutes an immediate peril to life or property, in any such case where it has been determined to be such by the City.

C. Display of permit. The applicant shall prominently display on the site the permit issued on a sign prescribed by the Parks and Shade Tree Commission. Such permit shall be displayed continuously while trees are being removed or work done as authorized by the permit. As a condition for the issuance of a permit, the applicant shall agree in writing to consent to entry onto their lot by representatives of the City to inspect the permit and activities at any time, and such entry shall be lawful.

D. Application. Application for a tree removal permit shall be made in writing on the form provided by the City.

- (1) The application shall include but not be limited to the following:
  - (a) Statement as to the ownership interest in the lot;

- (b) Legal description of the lot and a boundary survey or accurately scaled drawing thereof;
  - (c) A tree plan for the lot meeting the standards of §§ 253-24 or 253-29 of this article;
- (2) If an application for building or demolition permit or for subdivision or site plan approval contemplates activity on a lot which is intended to or may reasonably affect any tree as described below in this section, then an application for a tree removal permit shall be submitted and processed concurrently. All items shown shall be properly dimensioned, scaled and referenced to the property lines and setback requirements.
  - (3) The filing of an application shall be deemed to extend permission to the City to inspect the property subject to such application, if inspection is found necessary for purposes of evaluating the application.
  - (4) For those applications that are not being processed concurrently with an application for a building or demolition permit or for a subdivision or site plan approval, in which case longer periods of time may occur, the City shall have a reasonable time following the receipt of a completed application within which to make a determination on whether a permit shall be issued as requested. If the permit is not issued, the City shall indicate in writing that the application is denied.
  - (5) Any permit issued hereunder shall remain valid for a term of six months and may be renewed for a second six-month period upon request to the City or the City may require re-application and full review. If a permit required by this section has been issued concurrently with the building or demolition permit or approval of an application for a subdivision or site plan, then such permit shall run concurrently with the building or demolition permit or approved subdivision or site plan and may be renewed together therewith.
  - (6) Issuance of a tree removal permit shall constitute approval of the tree plan.

E. Permit fees.

- (1) Tree removal permit fee. A nonrefundable administrative fee will be collected by the City of \$25 per tree plus a fee for the total cumulative diameter of trees removed:
  - (a) 4 to 15 inches: \$50
  - (b) 16 to 24 inches: \$100
  - (c) More than 24 inches: \$300

The fee shall be waived to remove a dead tree where it has been determined to be such by the City.

**§ 253-26. Tree plan inspection.**



Following the receipt of the completed application for a tree removal permit or submission of a tree plan, the City Arborist shall conduct an inspection of the proposed development site within such period of time as may reasonably be required to verify the information contained on the application. Following inspection, the City Arborist, consistent with the purpose of this article, shall advise the applicant of any required changes in the applicant's proposed tree removal, protection or replanting plans.

**§ 253-27. Tree protection during construction.**

Where a building permit application involves any land disturbance activity of 500 square feet or more, a Tree Protection Plan shall be required subject to the following provisions:

- A. The Tree Protection Plan shall delineate tree root protection areas and other construction protection measures to be taken to ensure the safety and survivability of all Protected Trees. Such protection measures shall apply to any disturbance activity associated with all construction activities, grading or drainage changes, trenching including underground utility lines, heavy equipment use or any temporary construction access drives and where construction materials and equipment will be stored. In addition, the following shall apply:
- (1) The construction protection must be adequate to assure the tree is not damaged or destroyed and approved protective barriers, best practices, including proper branch and root pruning, pre and post watering or other techniques must be utilized. At minimum, a 6 feet wide 4 feet high barrier with a sign in English and Spanish marking a no-entry zone shall be erected around the tree. If additional protection is necessary, the City Arborist may require an alternative method of protection in accordance with ISA standards. Inspection of tree protection barriers is required prior to any land disturbance or development. The City Arborist shall be contacted to schedule an inspection time.
  - (2) No person shall encroach or place solvents, material, construction machinery or temporary soil deposits within six feet from the trunk of any protected tree or any tree within a tree preservation area, including any tree on an adjacent lot for which the tree preservation area extends into the site, without prior approval of the City Arborist. The City Arborist may authorize, for good cause, a reduction in the protected area to not less than four feet from the trunk of any protected tree or any tree within a tree preservation area.
  - (3) No grading, demolition, trenching, or other activity which may adversely affect trees in this zone may proceed prior to approval and issuance of necessary permits by the City.
  - (4) Any alterations to the tree preservation area must be accomplished using best practices, unless otherwise approved by the City.
  - (5) If the lot contains or is located within 10 feet of one or more Heritage trees, additional reports are required as part of the tree protection plan. All reports shall be prepared by a certified arborist and note the Heritage tree's size, species, and general health condition.
    - (a) Pre-demolition or pre-construction report: shall state removal/retention recommendations, additional protections needed, best practices for preservation,

and maintenance needs (including but not limited to watering, pruning, insect/disease treatments, and fertilization). It shall also compare the tree's current health to its anticipated health post-construction.

- (b) Post-construction report: shall document any Heritage trees damaged during construction and recommended remediation, including removal. It shall state any immediate maintenance requirements and long-term recommendations to ensure survival. The current status of all protections and activities required in Subsection a. above shall be noted. The approval of this report is required in order to issue a certificate of occupancy and/or close out the permits.
  - (c) All reports must be approved by the City Arborist. The City Arborist may request an amended plan and report before approving the tree protection plan and arborist report. As part of the plan approval, the City will note any required recommendations (including maintenance and protection) and may require a copy of a signed contract for those services as supporting documentation.
- B. All tree protection devices must remain in functioning condition until removal is authorized by the City.
  - C. Whether or not the City has designated a protected area, any tree designated in the tree plan to be saved, which is damaged during construction or as a result of construction, as determined by the City Arborist, shall be treated in accordance with accepted ISA Standards. Such damage or removal, shall be a violation of this Chapter in accordance with § 253-32.
  - D. Failure of property owners to comply with the requirements of § 253-27 may result in the referral to the Building Official for the issuance of a Stop Work Order for all permitted work. After written notice, civil penalties may be assessed as provided in § 253-32.

#### **§ 253-28. Tree planting requirements.**

Prior to the issuance of the certificate of occupancy or the final close-out of all building permits, if applicable, the tree plan shall be inspected by the City.

- A. In the event there are any changes to the approved tree plan, such changes must be reviewed and approved by the City and noted on the plan prior to final close-out.
- B. Trees must be planted according to ANSI Standards.

#### **§ 253-29. Mitigation of Protected Trees.**

- A. Mitigation shall be required for the loss of any protected tree. Mitigation shall include the following:
  - (1) The replacement trees, either preserved, relocated or newly planted, shall be on the City of Rehoboth Beach Approved Tree List.

- (2) The replacement trees shall be at least (eight) 8 feet tall and (two) 2 inches caliper.
- (3) Each Protected Tree removed shall be replaced with one (1) tree selected from the City of Rehoboth Beach Approved Tree List.
- (4) No mitigation shall be required if there are ninety (90) inches DBH or more of trees remaining on the lot.
- (5) The replanting design shall provide adequate space for root and crown development.
- (6) The property owner shall be responsible for maintenance of the mitigation trees, such responsibility to include replacement of unhealthy and dead mitigation trees. The property owner shall submit to an on-site inspection of the planted/preserved trees 6 months after the approval of the tree plan or tree removal permit. The property owner must also provide a signed proposal for planting or a receipt of purchase for any replacement tree. If it is determined that the planted tree is dead, diseased or otherwise not in compliance with provisions of this code and the original approved mitigation in the tree plan, the property owner shall be provided notice and directed to correct any such deficiencies and replace all noncompliant materials within 60 days or such longer period specified by the City Arborist taking into account planting seasons.

**B. Fee In Lieu of Mitigation.**

- (1) Where a property is shown clearly not suitable for on-site mitigation for a replacement tree, the property owner or permit applicant shall pay a fee in lieu of mitigation in the amount of \$1200 for each replacement tree required.
- (2) Tree preservation account. Moneys received from the property owner as a fee in lieu of mitigation will be placed in the City's Tree Preservation Account for planting trees on public property, or as the City declares appropriate to preserve and manage trees on public and/or private property for the purpose of protecting the health, safety and welfare of citizens of Rehoboth Beach. This may include incentives for private property owners to plant and maintain trees on their property.

## **ARTICLE IV**

### **APPEALS, VIOLATIONS, AND REMEDIES**

**§ 253-30. Waiver; administrative appeals.**

- A. If an application for a tree removal permit does not meet the requirements of § 253-25, the applicant may make a written request to the Parks and Shade Tree Commission to approve a waiver of the pertinent requirement of § 253-25. Within 15 days of the filing of a waiver request, the City Arborist, taking into account the natural area plan, shall file a written response to the waiver request with the City Manager setting out the professional opinion of the City Arborist in

and the factual findings in support of that opinion. In making said written response, the City Arborist may opine that the purposes of this ordinance would not be served by the denial of the waiver request. A copy of the City Arborist's written response shall be provided to the applicant by the City. The Parks and Shade Tree Commission shall then set a reasonable time for a hearing of the waiver request and give public notice, as well notifying the parties and decide the waiver request within a reasonable time. Any party to the appeal may appear at the hearing in person, by agent, or by attorney. Such hearing shall include a public hearing. If, upon review at a public hearing, the Parks and Shade Tree Commission makes a finding that the purposes of this ordinance would not be served by the denial of the application, then the City Arborist shall approve the application, in whole or in part.

- B. Any person aggrieved by a decision of the City Arborist relating to a tree plan or permit application and owning property within 200 feet of the tree or trees that is the subject of the tree plan or permit application may appeal to the City Parks and Shade Tree Commission, except that denial of a tree removal permit for a City tree cannot be appealed. A written notice of appeal must be filed with the City Manager within 30 days of the date of the decision which is the subject of the appeal. An administrative appeal fee in the amount of \$450 shall be paid to the City upon the filing of a notice of appeal.
- (1) Notice of appeal. A notice of appeal must be in writing and shall include the applicant's grounds for appeal. The notice of appeal must identify the error upon which the appeal is based and the grounds for reversal of the City Arborist's decision. Any additional exhibits or evidence which the applicant would like the Parks and Shade Tree Commission to consider on appeal may be filed with the notice of appeal. Upon the filing of a notice of appeal, the City Arborist shall transmit to the City Manager all the papers constituting the record of the basis for the City Arborist's decision.
  - (2) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the City Arborist from whom the appeal is taken certifies to the Parks and Shade Tree Commission after the notice of appeal shall have been filed that, by reason of facts stated in the certificate, a stay would, in the City Arborist's opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Parks and Shade Tree Commission or by a court record on application or notice to the City Arborist from whom the appeal is taken and on due cause shown.
  - (3) City response; hearing. Within 15 days of the filing of a notice of appeal, the City Arborist shall file a written response to the notice of appeal with the City Manager. A copy of any written response shall be provided to the applicant by the City. The Parks and Shade Tree Commission shall then set a reasonable time for a hearing of the appeal and give public notice, as well notifying the parties and decide the appeal within a reasonable time. Any party to the appeal may appear at the hearing in person, by agent, or by attorney. Such hearing shall include a public hearing.

- (4) Authority of the Parks and Shade Tree Commission. The Parks and Shade Tree Commission shall have the authority to hear and decide appeals where it is alleged that there is error in any decision made by the City Arborist relating to a tree plan or tree removal permit. In exercising its authority, the Park and Shade Tree Commission may reverse or affirm, wholly or in part, or may modify the City Arborist's decision, only if it finds that the City Arborist's decision is contrary to a specific provision of this Chapter, is not supported by substantial evidence, or is arbitrary or capricious. The Parks and Shade Tree Commission shall set forth its decision in writing within 30 days following the hearing, which decision shall include the findings and conclusions on which the decision is based.

### **§ 253-31. Appeals to City Commissioners.**

- A. Any person aggrieved by the final decision of the Parks and Shade Tree Commission may appeal said decision in writing to the City Commissioners within 30 days after the date of the written decision by filing with the City Commissioners a written notice of appeal. An administrative appeal fee in the amount of \$250 shall be paid to the City upon the filing of a notice of appeal.
  - (1) Notice of Appeal. The written notice of appeal shall consist of a general statement of the grounds for appeal and the grounds upon which the person(s) filing the appeal believes they have been aggrieved. For the purposes of this section, a decision of the Parks and Shade Tree Commission shall mean a vote of said Commission to affirm, reverse, or modify wholly or in part, a decision of the City Arborist.
  - (2) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the City Arborist from whom the appeal is taken certifies to the Parks and Shade Tree Commission after the notice of appeal shall have been filed with them that, by reason of facts stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property.
  - (3) Hearing: Upon receipt of the required written notice of appeal, the Commissioners shall schedule an appeal hearing within 60 days or as soon thereafter as practical at which the Parks and Shade Tree Commission, the appellant, and the applicant, if different than the appellant, shall be afforded an opportunity to be heard. The Commissioners shall provide public notice of the hearing. Only person(s) who provided written or oral testimony during the Parks and Shade Tree Commission's public hearing upon the application that is the subject of the appeal may testify, so long as such testimony is limited to restating their position as previously stated on the record.
  - (4) On the Record Appeal. The appeal shall be an appeal on the record of the hearing before the Parks and Shade Tree Commission. The record shall consist of all written and oral evidence and legal arguments properly submitted at or for the Parks and Shade Tree Commission hearing prior to the Parks and Shade Tree Commission's decision on appeal,

as well as the Parks and Shade Tree Commission's deliberations and decision thereon. Evidence and legal arguments not on the record of the hearing before the Parks and Shade Tree Commission may not be presented to the Commissioners in writing or orally.

- (5) Submissions. The Parks and Shade Tree Commission, the appellant, and the applicant, if different than the appellant, may provide a written submission of not more than 10 pages to the Commissioners and other parties to the appeal not later than 21 days prior to the scheduled appeal hearing before the Commissioners.
- (6) Authority of Commissioners. After the appeal hearing, the Commissioners may, by recorded vote of a majority of the Commissioners, take one of the following actions relying upon the record of the hearing before the Parks and Shade Tree Commission and the authorized written, and oral submissions: Affirm the decision of the Parks and Shade Tree Commission, in whole or in part; reverse the decision of the Parks and Shade Tree Commission, in whole or in part; remand the whole matter to the Parks and Shade Tree Commission for further review, consideration and a new final action; or modify the final action of the Parks and Shade Tree Commission.
- (7) Standard of Review. In deciding whether the decision of the Parks and Shade Tree Commission should be affirmed, reversed, or modified, the City Commissioners shall consider whether the decision is contrary to a specific provision of this Chapter, is not supported by substantial evidence, or is arbitrary or capricious. The City Commissioners shall set forth their decision in writing within 30 days following the hearing, which decision shall include the findings and conclusions on which the City Commissioners' decision is based.
- (8) Judicial Review. Any person aggrieved by the decision of the City Commissioners may appeal to the appropriate court, but only after all remedies made available under this Chapter have been exhausted.

### **§ 253-32. Violations and remedies.**

- A. Each and every person, owner, agent, contractor, lessee or tenant violating any provision of this Chapter, including those who knowingly commit, take part or assist in any such violation, shall be punished as described herein and in addition thereto may be enjoined from continuing the violation. Each tree cut, damaged or poisoned shall constitute a separate offense. Any tree removed without the proper permit will be subject to a fine of \$500. If said fine is not paid within seven days, the fine will be \$500 per day for each day thereafter that the fine is not paid. If said tree is removed by an individual or entity with a City business license or a City residential rental license, the City business license or City residential rental license may be revoked by the City pursuant to Chapter 120 of this Code for a period of two years. If said tree is removed by an unlicensed individual or entity, the individual or entity shall be ineligible to obtain any City business license or City residential rental license for a period of two years.

B. In addition to the monetary penalty specified above, violations of this Chapter involving trees of eight inches caliper or greater shall be subject to mitigation as follows:

- (1) The replacement tree shall be chosen from the City of Rehoboth Beach Approved Tree List.
- (2) The quality and size of the replacement trees shall be at least eight (8) feet tall and at least two (2) inches caliper. Any tree which is the subject of a mitigation plan shall be replaced at a ratio of at least one inch of caliper for each inch of caliper removed.
- (3) The replanting design shall provide adequate space for root and crown development.
- (4) The property owner shall be responsible for maintenance of the mitigation trees. The property owner shall submit to an on-site inspection of the planted tree or trees 12 months after planting. If a mitigated tree is found to be dead, diseased or otherwise not in compliance with this Chapter, the property owner shall replace the tree within 60 days and be subject to all other provisions of this Section.
- (5) When the property is not suitable for on-site mitigation, the City may provide for use of a site on public lands, subject to all other provisions of this Section.