

In 2006, the City of Rehoboth Beach enacted its Comprehensive Tree Regulations and incorporated it as part of the Tree Ordinance (Chapter 253 of the City Code). In December 2012, the Mayor and City Commissioners passed a resolution regarding trees tasking the Planning Commission to among other things "... conduct research, examine and recommend to the City Commissioners amendments to the existing tree ordinance and other ordinances and regulations and their enforcement, and/or propose new ordinances and regulations as it determines are warranted in order to better fulfill the purposes of the tree ordinance, including the protection, planting, removal and long-term management of trees within the City be they on private or public lands."

Since receiving this charge, the Planning Commission has over the last 16 months sought public input, received expert information and recommendations, conducted interviews with City officials and agencies, received input from companies doing tree related business in the City, conducted its own research, and has held public meetings and workshops. It is important to note that the charge given to the Commission and its work are much broader than the City's Tree Ordinance. However, based on the information gathered to date, the Planning Commission has developed the attached draft of a proposed amended Tree Ordinance. (Copies of the City's current Tree Ordinance can be found at <http://ecode360.com/7275484>)

Before finalizing the proposed amended Tree Ordinance, the Planning Commission wishes to make available its current working draft in order to seek any additional input from the public or interested parties. Such input should be sent to: City of Rehoboth Beach, Attn: Planning Commission, 306 Rehoboth Avenue, Rehoboth Beach, DE 19971 or sent via e-mail to Ann Womack, City Secretary at [ann@cityofrehoboth.com](mailto:ann@cityofrehoboth.com).

1 **Article I: City Parks and Shade Tree Commission; Regulations**

2 **§ 253-1 Definitions.**

3 As used in this article, the following terms shall have the meanings indicated:

4 **CITY ARBORIST**

5 As defined in § 253-24

6 **PARK TREES**

7 Trees, shrubs, bushes and all other woody vegetation in public parks having  
8 individual names, and all areas owned by the city or to which the public has free  
9 access as a park.

10

11 **STREET TREES**

12 Trees, shrubs, bushes and all other woody vegetation on land lying between property  
13 lines on either side of all streets, avenues or ways within the city.

14 **§ 253-2 Creation of Commission; membership.**

15

16 There is hereby created and established a City Parks and Shade Tree Commission for the  
17 City of Rehoboth Beach, Delaware, which shall consist of five members, citizens and  
18 residents of this city, who shall be appointed by the Mayor with the approval of the  
19 Commissioners.

20 **§ 253-3 Term of office.**

21

22 The term of the five persons to be appointed by the Mayor shall be three years, except that  
23 the term of two of the members appointed to the first Commission shall be for only one year  
24 and the term of two members of the first Commission shall be for two years. In the event that  
25 a vacancy shall occur during the term of any members, his successor shall be appointed for  
26 the unexpired portion of the term.

27 **§ 253-4 Compensation.**

28

29 Members of the Board shall serve without compensation.

30

31 **§ 253-5 Duties and responsibilities of Commission.**

32

33 It shall be the responsibility of the Commission to study, investigate, counsel and develop  
34 and/or update annually, and administer a written plan for the care, preservation, pruning,  
35 planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in  
36 other public areas. Such plan will be presented annually to the City Commissioners and, upon  
37 their acceptance and approval, shall constitute the official comprehensive city tree plan for  
38 the City of Rehoboth Beach, Delaware. The Commission, when requested by the City  
39 Commissioners, shall consider, investigate, make findings, report and recommend upon any  
40 special matter of question coming within the scope of its work.

41 **§ 253-6 Operation of Commission.**

42

43 The Commission shall choose its own officers, and make its own rules and regulations, keep  
44 a journal of its proceedings. A majority of the members shall be a quorum for the transaction  
45 of business.

46 **§ 253-7 Species to be planted.**

47

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

52 **§ 253-8 Spacing of trees.**

53

54 A. The spacing of street trees will be approved by the City Arborist.

55

56 B. All street trees planted on city-owned land shall conform to American Association of  
57 Nurserymen Standards and be at least 1 1/4 to 1 1/2 inches in diameter at breast height and at  
58 least eight to 10 feet in height when planted.

59 **§ 253-9 Distance from curbs and sidewalks.**

60

61 All trees will be planted in the center of the area between the curb or curblines and sidewalks.

62 **§ 253-10 Distance from street corners and fireplugs.**

63

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

67

68 **§ 253-11 Utilities.**

69

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

73 **§ 253-12 Maintenance.**

74

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

83

84 B. The City Arborist may remove or cause or order to be removed any tree or part thereof which  
85 is in an unsafe condition or which by reason of its nature is injurious to sewer and electric  
86 power lines, gas lines, water lines or other public improvements or is affected with any  
87 injurious fungus, insect or other pest. Any tree removed from municipal-owned property  
88 must be replaced unless otherwise authorized by the Parks and Shade Tree Commission.

89

90 C. No person shall plant, spray, preserve, prune, remove, cut above ground or otherwise disturb  
91 any tree on any street or municipal-owned property without first receiving permission from  
92 the City Arborist. This section does not prohibit the planting of street trees by adjacent  
93 property owners, provided that the selection and location of said trees is in accordance with  
94 §§ 253-7 through 253-11 of this article, and provided further that the adjacent property owner  
95 shall enter into a written agreement, in a form specified by the City Manager, to maintain  
96 said trees for a definite period in accordance with the requirements of § 253-27 for property  
97 owners with respect to trees on their lots, and to replace said trees upon the advent of death  
98 or severe decay. Said street tree shall be the property of the City. If said tree needs to be  
99 removed, the City shall have the authority to remove said tree and make repairs and charge  
100 the cost of removal and repairs to the property owner. Responsibility for any damage to the  
101 sidewalk shall be in accordance with Chapter 232, Article I, § 232-1.

102

103 **§ 253-13 Tree topping and hat-racking.**

104

105 The topping or hat-racking, as defined in § 253-24, of any street tree, park tree, or other tree  
 106 on public property shall be unlawful as a normal practice for any person, firm or city  
 107 department. Trees severely damaged by storms or other causes or certain trees under utility  
 108 wires or other obstructions where other pruning practices are impractical may be exempted  
 109 from this article at the determination of the City Arborist.

110 **§ 253-14 Pruning of overhanging trees.**

111

112A. Every owner of any tree overhanging any street or right-of-way within the city shall prune  
 113 the branches so that such branches shall not obstruct the light from any street lamp or  
 114 obstruct the view of any street intersection and so that there shall be a clear space of twelve  
 115 feet above the surface of the street or eight feet above the sidewalk and no lateral intrusion  
 116 into the street or sidewalk area within this clear space. Said owners shall remove all dead,  
 117 diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the  
 118 safety of the public.

119

120B. The city shall have the right to prune any tree or shrub on private property when it intrudes  
 121 into the clear space above the street or sidewalk, interferes with the proper spread of light  
 122 along the street from a streetlight, or interferes with visibility of any traffic control device or  
 123 sign. The city shall have the authority to charge the cost of pruning to the property owner.

124 **§ 253-15 Removal of dead or diseased trees; costs.**

125

126 A. The city shall have the right to cause the removal of any dead or diseased trees on private  
 127 property within the city and on city-owned property when such trees constitute a hazard to  
 128 life and property, or harbor insects or disease which constitute a potential threat to other trees  
 129 within the city. This includes trees planted between the curb and sidewalk, regardless if the  
 130 tree was planted by the city or the property owner, and will also include removal because of  
 131 damage done to the sidewalk and/or curb by tree roots.

132

133 B. If the city planted the tree, all costs involved in removing and replacing the tree and repairing  
 134 damage to sidewalks and curbs are the city's responsibility. If a property owner has planted a  
 135 tree on city property and it needs to be removed, the City will notify him in writing, and  
 136 removal and repair shall be done by the owner at his expense within 15 days after the date of  
 137 service of notice, or such longer period not to exceed 60 days as the City may approve for  
 138 good cause. In the event of failure of the owner to comply with such provisions, the city shall  
 139 have the authority to remove the tree and make repairs and charge the cost of removal and  
 140 repairs to the property owner.

141

142 **§ 253-16 Removal of stumps.**

143

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

146 **§ 253-17 Interference with Commission.**

147

148 It shall be unlawful for any person to prevent, delay or interfere with the City Parks and  
149 Shade Tree Commission, or any of its agents, while engaging in and about the planting,  
150 cultivating, mulching, pruning, spraying or removing of any street tree, park tree or trees on  
151 city-owned or private property, as authorized in this article.

152 **§ 253-18 Abuse of public trees.**

153

154 Unless specifically authorized by the Parks and Shade Tree Commission, no person shall  
155 intentionally damage, cut, carve, transplant or remove any tree; attach any rope, wire, nails,  
156 advertising posters or other contrivance to any tree; allow any gaseous liquid or solid  
157 substance which is harmful to such trees to come in contact with them; or set fire or permit  
158 any fire to burn when such fire or the heat hereof will injure any portion of any tree. Any  
159 person or persons who shall violate this section shall be jointly and severally liable to the city  
160 for all damage caused to public trees.

161 **§ 253-19 License required for business of tree pruning, treating or removal.**

162

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

166 **§ 253-20 Review of Commissioners.**

167

168 The City Commissioners shall have the right to review the conduct, acts and decisions of the  
169 Parks and Shade Tree Commission. Any person may appeal from any ruling or order of the  
170 Parks and Shade Tree Commission to the City Commissioners who may hear the matter and  
171 make final decision.

172

173

174 **Article II: Shade Tree Ordinance**

175

176 **§ 253-21 Findings.**

177

178 The City Commissioners find that:

179

180 A. The City of Rehoboth Beach adopted the Comprehensive Development Plan in 2003

181 (certified by the State of Delaware in 2004), which calls for the preservation, protection and

182 conservation of trees within the City;

183

184 B. The City of Rehoboth Beach contains a diversity and abundance of trees that are of

185 economic, recreational, and environmental value to the City and makes it a desirable place

186 for residents and visitors;

187

188 C. The abundance of trees contributes to the City's unique wooded seaside character and

189 distinguishes the City from many other coastal communities;

190

191 D. The appearance of Rehoboth Beach contributes to the economic prosperity and general

192 welfare of the City;

193

194 E. Growth and development in the City of Rehoboth Beach often results in the removal of trees,

195 thereby contributing to their depletion; and

196

197 F. It is necessary to protect and manage trees as valuable assets in order to protect and enhance

198 the health, safety, and welfare of the citizens of Rehoboth Beach.

199 **§ 253-22 Purpose.**

200

201 The City Commissioners declare the intent of this article is to:

202

203 A. Regulate the protection, planting, removal, and long-term management of trees within the

204 City that, in the case of private property, takes into account the natural area plan for that

205 property;

206

207 B. Require a survey of existing trees and a plan for tree preservation prior to development,

208 redevelopment or subdivision of a lot;

209

210 C. Establish a system of permits to assure density, correct maintenance, protection and removal

211 of trees on public and private property; and

212

213 D. Establish remedies and penalties for violations of its provision.

214 **§ 253-23 Applicability.**

215  
216 A. The provisions of this article apply to all land in the municipal boundaries of the City of  
217 Rehoboth Beach.

218  
219 B. Activities that require review and approval by the City Arborist are:

220 (1) Private maintenance or planting of trees on public land (§ 253-33.B), and

221 (2) All activities that require an approved tree plan (§ 253-28).  
222

223 C. Activities that require a tree removal permit are all activities that, directly or indirectly,  
224 cut down, substantially alter, destroy, remove, relocate, damage, or authorize any such act  
225 involving a protected tree, except as otherwise specified in § 253-29.  
226

227  
228  
229 D. Emergency Waiver.

230  
231 The provisions of this article may be suspended or waived by the City during a period  
232 officially declared emergency by the City Manager, such as a storm or other City  
233 emergency.

234 **§ 253-24 Definitions and word usage.**

235  
236 As used in this article, the following terms shall have the meaning indicated in this section.  
237 Words not defined herein shall be interpreted so as to give them the meaning they have in  
238 common usage and to give this article its most reasonable application.  
239

240 **ANSI STANDARDS**

241 Tree standards set by the American National Standards Institute.

242 **BREAST HEIGHT**

243 4 feet, 6 inches above the ground, measured on the uphill side of a tree.

244 **CITY ARBORIST**

245 An employee of the City or an individual retained by the City on a contractual  
246 basis to perform the duties identified in this chapter. Such person shall be trained in  
247 arboriculture, forestry, horticulture, landscape architecture, or another related field  
248 and have at least two years of working experience in the area of training, with  
249 preference being given to any applicant who is a certified arborist recognized by  
250 the International Society of Arboriculture.

251 **CITY PARKS AND SHADE TREE COMMISSION**

252 As established in § 253-2.

253  
254 **COMMERCIAL PROPERTY**



255 Commercially zoned property.

256 **DAMAGE**

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

259 **D.B.H.**

260 Diameter at breast height of a tree.

261 **DEMOLITION**

262 Includes the destruction of all or part of a structure or the removal of all or part of  
263 any structure to any off-site location.

264 **DEVELOPMENT**

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

267 **HAT-RACKING**

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

272 **HEALTHY**

273 As that term is defined by the International Society of Arboriculture.

274

275 **LINE TREE**

276 Any tree that at breast height is astride a property line.

277 **LOT**

278 A lot, parcel, site, and any other real property whether or not legally designated as  
279 a lot for purposes other than this article, including multiple lots that have been or  
280 will be merged and all new lots that will be created through subdivision.

281

282 **NATURAL AREA**

283 That portion of the gross lot area that is dedicated to either trees, grass, flowers,  
284 bushes, other plantings and/or mulched areas as further defined in § 270-4

285

286 **NATURAL AREA PLAN**

287 The landscape design and planned use of the natural area of a lot that are consistent  
288 with the objectives of the Shade Tree Ordinance.

289

290 **NET BUILDABLE AREA**

291 (1) In the case of new construction, the land space to be occupied by the principal  
292 structure to be built, which cannot exceed legal setback requirements.

293 (2) In the case of an existing building which is the principal structure, the land space  
294 occupied by the structure.

295 (3) In the case of an existing structure for which a permit is sought for an additional  
296 500 square feet or over, the total land space to be occupied by the existing  
297 structure together with the proposed addition.

298 **PROTECTED TREE**

299 Any tree meeting one or more of the following descriptions:

- 300 (1) A specimen tree or tree stand.  
 301 (2) A tree that is necessary and counted to meet the density requirement in § 253-26;  
 302 (3) An existing tree of four inches D.B.H. or more of a species permitted by § 253-25;

303 **REMOVE OR REMOVAL**

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

307 **RESIDENTIAL PROPERTY**

308 Residentially zoned property.

309 **SHADE TREE**

310 Any tree of a species that is capable of attaining a height of 30 feet or more at  
 311 maturity.

312 **SPECIMEN TREE**

313 Any tree in healthy condition that equals or exceeds twenty-four-inch D.B.H, and  
 314 that meets all of the following minimum standards:

- 315 (1) A life expectancy of greater than 15 years.  
 316 (2) A structurally sound trunk, not hollow and having no extensive decay and less  
 317 than 20% radial trunk dieback.  
 318 (3) No more than one major and several minor dead limbs (hardwoods only).  
 319 (4) No major insect or pathological problems.

320 **SUBDIVISION**

321 A subdivision of a lot as defined in Chapter **236** of the Code of the City of  
 322 Rehoboth Beach.

323 **TOPPING**

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

326 **TREE**

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

329 **TREE PROTECTION**

330 Materials for active tree protection shall consist of chain link, orange laminated  
 331 plastic, wooden post and rail fencing or other equivalent restraining material.

332 **TREE STAND**

333 A contiguous grouping of two or more trees which has been determined to be of  
 334 high value by the City Arborist based upon the following criteria:

- 335 (1) A relatively mature, even-aged stand.  
 336 (2) A total combined D.B.H. of 14 inches or greater.  
 337 (3) A stand with purity of species composition or of a rare or unusual nature.  
 338 (4) A stand with exceptional aesthetic quality.

339 **TRIM**

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

343 **§ 253-25 Species to be planted.**

- 344
- 345 A. Trees planted to meet the tree density requirements of § 253-26, or the mitigation  
 346 requirements of § 253-33 of this article shall be shade trees and either:  
 347 (1) Species native to Delaware as classified by the Delaware Forest Service at the  
 348 time of City approval of the tree plan, or  
 349 (2) Non-native species approved by the City Arborist, to include the male ginkgo,  
 350 DED-tolerant elm, London plane, Southern magnolia and Japanese zelkova.  
 351
- 352 B. No tree species classified as an invasive tree species by the Delaware Forest Service  
 353 shall be planted to meet the tree density requirements of § 253-26, or the  
 354 requirements of § 253-33 of this article.  
 355

356 **§ 253-26 Minimum tree density requirements.**

- 357
- 358 A. All lots used for residential purposes, whether zoned residential or not, must maintain an  
 359 average minimum shade tree density of 26 trees per acre, subject to adjustments as stated in  
 360 this subsection. Shade tree density may be achieved by existing trees or planting of new  
 361 shade trees. The specific shade tree density requirements for each lot are as follows:  
 362
- 363 (1) Each single-family residence lot in a residence district shall have at least three shade trees  
 364 on the lot for each 5,000 square feet of land, or one shade tree for each 1,666 square feet  
 365 of land for lots smaller or larger than 5,000 square feet. In calculating the minimum tree  
 366 density required for a lot where dividing the square footage of the lot by 1,666 results in a  
 367 tree density requirement that contains a fractional number, that fractional number shall be  
 368 increased to the next highest number if the fractional number is 0.5 or higher.  
 369
- 370 (2) Each residence lot in a residence district other than a single-family residence lot and each  
 371 commercial or mixed-use or other lot not in a residence district shall have at least two  
 372 shade trees per dwelling unit.  
 373
- 374 B. In meeting the density requirements set forth in Subsection A(1) or (2) above, only existing  
 375 shade trees exceeding four inches D.B.H. and 12 feet in height, and new trees to be planted in  
 376 accordance with § 253-32 may be counted to meet the density requirements, provided that:  
 377
- 378 (1) A line tree may not be counted in calculating tree density under § 253-26.  
 379
- 380 (2) The location of the trees must provide adequate room for tree growth and health and shall  
 381 take into account aesthetic appearance;

382

383 (3) Where one or more trees to be planted in accordance with § 253-32 to meet the density  
 384 requirements, at least one tree, existing or planted, shall be in the front setback area. This  
 385 proviso shall not apply to lots fronting a street on an ocean block south of Pennsylvania  
 386 Avenue.

387

388 (4) A tree that is trimmed ornamentally or otherwise in a manner that prevents attaining its  
 389 natural height, other than for the removal of decay, damage or disease, shall not be  
 390 counted to meet the density requirements.

391

392 C. Lots located within one block of the ocean that do not conform to the tree density  
 393 requirements in Subsection A of this section may select salt-tolerant tree species from the  
 394 recommended listing of salt-tolerant trees as specified by the Delaware Forest Service to  
 395 meet the tree density requirement.

396

397 D. The density requirements shall be met whether or not a lot had trees prior to the conveyance  
 398 or transfer of the lot, and whether or not a lot had trees prior to the filing of an application for  
 399 a building or demolition permit or for subdivision or site plan approval.

400

401 E. Notwithstanding anything else to the contrary in this section, if a lot does not meet the density  
 402 requirements in Subsection A of this section as of January 24, 2006, then such property  
 403 owner shall not be required to meet such density requirements for such lot unless an  
 404 application is filed for a building permit relating to building/construction cost greater than  
 405 \$20,000 or for a demolition permit or for a subdivision of such lot; provided that, in the event  
 406 that an existing tree on such lot is or becomes dead or significantly diseased, thereby  
 407 reducing the tree density below the density required by Subsection A of this section, it shall  
 408 be removed and replaced by a tree of at least three inches D.B.H. and 12 feet high which is  
 409 of a species permitted by § 253-25 ; and provided, further, that the density requirements in  
 410 Subsection A of this section shall apply upon any conveyance or transfer of such lot after  
 411 January 24, 2006.

412

413 F. No tree-removal permit will be issued and no tree plan will be approved if it will result in a  
 414 tree density less than that specified in Subsection A of this section.

415 **§ 253-27 Maintenance of trees.**

416

417 (1) Property owners shall maintain all trees on their lots so that they are healthy and present  
 418 a neat and orderly appearance free of refuse and debris. Property owners may trim trees on  
 419 their lots as necessary to promote uniform healthy growth, a clean, neat and healthy condition  
 420 and to allow a tree to attain its natural size. Trees shall be trimmed to remove diseased or  
 421 dying portions. Lower limbs and suckers may be selectively removed to provide clearance  
 422 for pedestrians and vehicles and to comply with §253-14 A.

423

424 (2) Severe cutting back of lateral branches and canopy or topping or hat-racking trees is  
 425 expressly prohibited.

426

427 (3) With respect to trees that are preserved or planted pursuant to a property owner's  
 428 approved tree plan under § 253-28

429

430 (a) The property owner shall submit to an on-site inspection of each planted or preserved  
 431 tree 12 months after the approval of the plan or permit, and thereafter as needed.

432

433 (b) If it is determined that said tree is dead, diseased or otherwise not in compliance with  
 434 provisions of this code and the original approved tree plan, the property owner shall  
 435 be provided notice and directed to correct any such deficiencies and replace said tree  
 436 or all noncompliant materials within 60 days, or such longer period specified by the  
 437 City Arborist taking into account planting seasons.

438 **§ 253-28 Submission of plans with applications for building or demolition permit, for**  
 439 **subdivision or site plan approval, or tree-removal permit.**

440

441 A. Tree Plan Required

442

443 (1) City approval of a tree plan shall be required as part of every application for a:

444

445 (a) Tree removal permit;

446 (b) Demolition permit;

447 (c) Building permit relating to building/construction cost greater than \$20,000 for  
 448 a residence or for the lot on which a residence is located;

449 (d) Subdivision of land; and

450 (e) Site plan review.

451

452 (2) Review of such tree plan, and any approval thereof, will proceed in the same manner by  
 453 the same City officials and/or entity responsible for reviewing and approving the  
 454 application for building permit, tree-removal permit, subdivision or site plan approval, or  
 455 demolition permit.

456

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

458

459 (1) Dimensions of the property.

460

461 (2) Location, type and D.B.H. of all existing trees of three inches D.B.H. or greater, and of all  
 462 tree stands, and a notation of whether each such tree or tree stand is to be preserved or  
 463 removed.

464

465 (3) Location of all structures, parking areas, drives, vehicular use areas, curb cuts,  
 466 retention/detention areas, other improvements and other features on the lot as may be  
 467 required in the application for any item described in Subsection A. (1) of this § 253-28,  
 468 and a notation of what exists that shall remain or will be removed from the lot, and what  
 469 are proposed for creation or installation on the lot.

470  
 471 (4) Location of existing and proposed overhead or underground power lines and other utility  
 472 lines, such as but not limited to water and sewer, and adjacent rights-of-way.

473  
 474 (5) Location, type, height, D.B.H., and quantity of all trees proposed to be planted, and other  
 475 information as may be required for a mitigation plan described in § 253-33.

476  
 477 (6) General notes including mulching requirements, fertilization and planting details, and  
 478 such other information as needed;

479  
 480 C. The City shall designate, as appropriate, one or more protected areas on any lot meeting the  
 481 description in § 253-31 of this article when it is essential for the limited purpose of protecting  
 482 the roots and trunk of a tree or trees during or after construction or demolition or other  
 483 activity for which the application has been filed.

484  
 485 D. Tree plan review fee. A nonrefundable administrative fee of \$50 to offset the cost of  
 486 reviewing each plan required by this § 253-28 will be collected by the City, except when  
 487 submitting an application to remove a dead or diseased tree, in which case the fee shall be  
 488 waived.

489 **§ 253-29 Tree-removal permits.**

490  
 491 Tree-removal permits shall be applied for and obtained prior to beginning any activity on a  
 492 lot which is intended to or may reasonably affect any tree as described below in this section.

493  
 494 A. Tree removal.

495  
 496 (1) No person shall, directly or indirectly, cut down, substantially alter, destroy, remove,  
 497 relocate, damage, or authorize any such act involving a protected tree situated on any  
 498 land within the City of Rehoboth Beach without first obtaining a tree-removal permit. No  
 499 permit shall be issued to remove any protected tree unless removal is by a licensed tree  
 500 professional if, in the judgment of the City Arborist, professional removal is needed for  
 501 the protection of any property or persons. Before applying for a tree-removal permit, the  
 502 applicant shall clearly identify each tree to be removed by wrapping the tree in a red  
 503 ribbon.

504  
 505 (2) Tree-removal permit.

506

- 507 (a) No tree-removal permit shall be issued unless the City finds that at least one of the  
508 following criteria is satisfied with respect to each protected tree designated for  
509 removal:  
510
- 511 [1] In the case of an application for a building or demolition permit or for a  
512 subdivision or site plan approval, the tree
- 513 i. is located within the net buildable area of a given lot as identified on the tree  
514 plan, or
  - 515 ii. the tree prevents reasonable development of a lot that is otherwise permissible  
516 under City ordinances,  
517 provided, however, that a tree-removal permit shall not be granted where the  
518 applicant has failed to design and locate the proposed improvements,  
519 demolition or subdivision so as to minimize the removal of trees consistent  
520 with the permitted use of the lot and shall be granted only after reasonable  
521 efforts have been made to save protected trees on a lot. Reasonable efforts  
522 shall include, but not be limited to, alteration of building design; alternate  
523 location of building, parking area and other impervious surfaces, water  
524 retention or drainage infrastructure; or relocation of utilities;  
525
- 526 [2] The tree is located within an existing or proposed public or utility company right-  
527 of-way, and relocation of such right-of-way or the use thereof is not reasonably  
528 practicable;  
529
- 530 [3] The tree is located within an existing or proposed public easement, stormwater  
531 management tract or facility, provided that only the minimum area reasonably  
532 necessary for the public service or use shall be considered for purposes of  
533 determining whether there is necessity for tree removal;  
534
- 535 [4] The tree is located where it creates or will create a material safety or health hazard  
536 or nuisance with respect to existing or proposed structures or vehicles or  
537 pedestrian routes, and such hazard or nuisance is not innate to or commonly  
538 associated with the existence of trees in general (for example, lightning, wet  
539 leaves on the ground during rainstorms);  
540
- 541 [5] The tree is located where it interferes with the installation, delivery or maintenance  
542 of proposed or existing utility services to the lot and relocation of such services is  
543 not reasonably practicable;  
544
- 545 [6] The tree is determined by the City to be dead, significantly diseased, severely  
546 injured or in danger of falling; or  
547
- 548 [7] The tree is located where it interferes with the root or crown development of a  
549 larger healthy protected tree.

550

551 (b) In the case of an application to remove 10 or more trees, no tree-removal permit shall  
 552 be issued unless the applicant provides a written erosion control plan describing  
 553 methods to control erosion which may be expected to occur as a result of the  
 554 proposed clearing or grubbing, and the applicant demonstrates compliance with all  
 555 other provisions of this article and state, county and federal laws, rules and  
 556 regulations.

557

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

560

561 (1) Removal of any tree in an existing utility easement or public right-of-way, provided such  
 562 work is done by or under the direct control of the operating utility company and said  
 563 company has received all necessary licenses or permits to provide utility service within  
 564 the easement and said company has documented the need for said removal. However, this  
 565 exemption shall not apply to the removal of any specimen tree or tree stand.

566

567 (2) Removal of any tree for the purpose of maintaining an existing legally required access to  
 568 a property.

569

570 (3) Removal of any tree which has been destroyed or damaged beyond saving, from extreme  
 571 weather conditions, insects, disease or fire, or which constitutes an immediate peril to life  
 572 or property, in any such case where it has been determined to be such by the City.

573

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

580

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

583

584 (1) The application shall include but not be limited to the following:

585

586 (a) Statement as to the ownership interest in the lot;

587

588 (b) Legal description of the lot and a boundary survey or accurately scaled drawing  
 589 thereof;

590

591 (c) A tree plan for the lot, if required, meeting the standards of § **25328** or **253-31** of this  
 592 article;



593

594

(d) An erosion control plan, if required by § 253-28 of this article.

595

596

(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 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.

597

598

599

600

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602

(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.

603

604

605

606

(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.

607

608

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613

(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.

614

615

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618

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620

621

(6) Issuance of a tree removal permit shall constitute approval of the tree plan.

622

623 E. Permit application fees.

624

625

(1) Tree-removal permit fee. A nonrefundable administrative fee will be collected by the City:

626

627

628

(a) 1 to 5 trees: \$50

629

630

(b) 6 to 10 trees: \$100

631

632

(c) More than 10 trees: \$500

633

634

The fee shall be waived for any application to remove a dead or diseased tree.,

635 **§ 253-30 Tree plan inspection.**

636

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

643 **§ 253-31 Tree protection during construction.**

644

645 The City may designate, in special circumstances, a protected area on the site that shall be  
 646 subject to the following provisions:

647

648 A. No person shall encroach or place solvents, material, construction machinery or temporary  
 649 soil deposits within six feet from the trunk of any protected tree or any tree within a tree  
 650 protection zone, including any tree on an adjacent lot for which the protection zone extends  
 651 into the site, without prior approval of the City Arborist. The City Arborist may authorize,  
 652 for good cause, a reduction in the protected area to not less than four feet from the trunk of  
 653 any protected tree or any tree within a tree protection zone.

654

655 B. Before development, land clearing, filling or any land alteration, the developer shall be  
 656 required to erect suitable active or passive protective barriers as required by the City  
 657 Arborist. Authorization to remove the protective devices shall be in writing by the City  
 658 Arborist or by the issuance of a final certificate of occupancy. Inspection of tree protection  
 659 barriers is required prior to any land disturbance or development. The City Arborist shall be  
 660 contacted to schedule an inspection time.

661

662 C. All tree protection devices must remain in functioning condition until removal is authorized  
 663 by the City.

664

665 D. Whether or not the City has designated a protected area, any tree designated in the tree plan  
 666 to be saved, which is damaged during construction or as a result of construction, as  
 667 determined by the City Arborist, shall be treated in accordance with accepted ISA Standards,  
 668 or if removed, shall be mitigated in accordance with § 253-33. In addition, penalties specified  
 669 in § 253-36 shall apply.

670 **§ 253-32 Tree planting requirements.**

671

672 All trees planted pursuant to an approved tree plan shall be planted in compliance with the  
 673 following:

674

675 A. Prior to the issuance of the final development approval or the certificate of occupancy, if  
 676 applicable, the tree planting shall be:

677

678 (1) Certified as complete and in conformance to the approved tree plan by  
 679 submission of a certification letter by a licensed tree professional who is  
 680 certified by the International Society of Arboriculture (ISA); and

681

682 (2) Inspected by the City. In the event there are any changes to the approved tree  
 683 plan, such changes must be reviewed and approved by the City and noted on  
 684 the plan prior to notification for the final inspection for a certificate of  
 685 occupancy.

686

687 B. Trees which are balled and burlapped must be planted according to ISA Standards. If stakes  
 688 or guy wires are used to support a tree, the wire must be covered with protective material  
 689 where it is in contact with the tree. The stakes or guy wires must be removed after one year.

690

691 C. To minimize traffic hazards at street intersections, all tree plantings must provide  
 692 unobstructed views.

693 **§ 253-33 Mitigation of Protected Trees.**

694

695 A Mitigation shall be required for the loss of any protected tree, except when a protected tree is  
 696 removed because it is located where it interferes with the root or crown development of a  
 697 larger healthy protected tree. Mitigation shall include the following:

698

699 (1) The replacement trees, either preserved, relocated or newly planted, shall be of a species  
 700 permitted by § 253-25.

701

702 (2) The replacement trees shall be at least 12 feet tall and 3 inches D.B.H..

703

704 (3) For each protected tree removed, the quantity of replacement trees shall be determined as  
 705 follows:

D.B.H. of removed tree	Replacement trees
706 Less than 12 inches	707 1
708 12 inches to less than 24 inches	709 2
709 24 inches to less than 36 inches	710 3
710 36 inches or more	711 4

711

712 (4) The City Arborist shall verify that the replanting design shall provide adequate space for  
 713 root and crown development.

714

715 (5) The property owner shall be responsible for maintenance of the mitigation trees, such  
 716 responsibility to include replacement of unhealthy and dead mitigation trees. The

717 property owner shall submit to an on-site inspection of the planted/preserved trees 12  
 718 months after the approval of the tree plan or tree removal permit. If it is determined that  
 719 the planted tree is dead, diseased or otherwise not in compliance with provisions of this  
 720 code and the original approved mitigation in the tree plan, the property owner shall be  
 721 provided notice and directed to correct any such deficiencies and replace all  
 722 noncompliant materials within 60 days or such longer period specified by the City  
 723 Arborist taking into account planting seasons.  
 724

725 B Off-site Mitigation and Fee In Lieu of Mitigation.

726

727 (1) Where a property is shown clearly not suitable for on-site mitigation for a replacement  
 728 tree, the property owner or permit applicant shall:

729

730 (a) With City approval, provide for use of a site on City public lands providing that the  
 731 applicant furnishes all necessary services incidental to such mitigation on public  
 732 property, including but not limited to funding of tree maintenance and labor.  
 733 Preference shall be given, where feasible, to off-site mitigation with new street trees  
 734 abutting the site, in which case the property owner shall be required to enter into a  
 735 written agreement for planting and maintenance thereof in accordance with §253-  
 736 12.C.

737

738 (b) Pay a fee in lieu of mitigation in the amount of \$500 for each replacement tree  
 739 required by Subsection A(3) that is not actually planted either on-site or pursuant to  
 740 approved off-site mitigation.

741

742 (3) Tree preservation account. Moneys received from the property owner as a fee in lieu of  
 743 mitigation will be placed in the City's Tree Preservation Account for planting trees on  
 744 public property, or as the City declares appropriate to preserve and manage trees on  
 745 public property for the purpose of protecting the health, safety and welfare of citizens of  
 746 Rehoboth Beach.

747

748 C Tree protection as justification for variance. The interest in preserving a specimen tree shall  
 749 be considered prima facie a unique or special condition or circumstance peculiar to the land  
 750 involved for the purpose of application for a variance from the literal requirements of a land  
 751 development ordinance, such as building setbacks, parking space requirements, or minor or  
 752 residential street right-of-way widths, providing adjustments are made elsewhere on the site  
 753 to preserve the maximum permitted lot coverage and the total minimum number of parking  
 754 spaces, and provided safety precautions are taken to offset any hazard resulting from  
 755 decreased right-of-way widths. Any such request shall be heard by the Board of Adjustment.

756

§ 253-34 Waiver; Administrative appeals.

757

758 A. If an application for a tree removal permit does not meet the requirements of § 253-29.A(2),  
759 and the City Arborist, taking into account the natural area plan, is of the opinion that the  
760 purposes of this ordinance would not be served by the denial of that application, then the  
761 Building Inspector may make a written request the Park and Shade Tree Commission to  
762 approve a waiver of the pertinent requirement of § 253-29.A(2). The request of the Building  
763 Inspector shall set out the professional opinion of the City Arborist and factual findings in  
764 support of that opinion. If, upon review at a public hearing, the Park and Shade Tree  
765 Commission makes a finding that the purposes of this ordinance would not be served by the  
766 denial of the application, then the Building Inspector may approve the application, in whole  
767 or in part.

768

769 B. Any person aggrieved by a decision involving the grant or denial of an application for a tree-  
770 removal permit may appeal to the City Park and Shade Tree Commission. A written notice of  
771 appeal must be filed with the City Manager within 30 days of the date of the decision which  
772 is the subject of the appeal.

773

774 (1) Notice of appeal. A notice of appeal must be in writing and shall include the applicant's  
775 grounds for appeal. The notice of appeal must identify the error upon which the appeal is  
776 based and the grounds for reversal of the Building Inspector's decision. Any additional  
777 exhibits or evidence which the applicant would like the Park and Shade Tree Commission  
778 to consider on appeal may be filed with the notice of appeal. Upon the filing of a notice  
779 of appeal, the Building Inspector shall transmit to the City Manager all the papers  
780 constituting the record of the basis for the Building Inspector's decision.

781

782 (2) City response; hearing. Within 15 days of the filing of a notice of appeal, the Building  
783 Inspector may file a written response to the notice of appeal with the City Manager. A  
784 copy of any written response shall be mailed to the applicant by the City. The Park and  
785 Shade Tree Commission shall then set a reasonable time for a hearing of the appeal and  
786 give public notice, as well notifying the parties in interest, and decide the appeal within a  
787 reasonable time. Any party to the appeal may appear at the hearing in person, by agent, or  
788 by attorney.

789

790 (3) Authority of the Park and Shade Tree Commission. The Park and Shade Tree  
791 Commission shall have the authority to hear and decide appeals where it is alleged that  
792 there is error in any decision made by the Building Inspector on an application for a tree-  
793 removal permit. In exercising its authority, the Park and Shade Tree Commission may  
794 reverse or affirm, wholly or in part, or may modify the Building Inspector's decision, only  
795 if it finds that the Building Inspector's decision is contrary to a specific provision of this  
796 ordinance, is not supported by substantial evidence, or is arbitrary or capricious.

797

798 (4) Additional restrictions. In deciding appeals, the Park and Shade Tree Commission may  
799 impose any such additional restrictions or standards as may be necessary to protect the  
800 health and safety of workers and residents in the community, and to protect the value and  
801 use of property in the City.

802

803 C. Administrative appeal fee. An administrative appeal fee in the amount of \$250 shall be paid  
804 to the City upon the filing of a notice of appeal.

805 **§ 253-35 Enforcement and remedies.**

806

807A. While any application is pending for an action for which a permit is required under this  
808 article or after the grant of any such application, or while a request for approval of a tree plan  
809 is pending or after the grant of any such approval, the City may inspect a lot to determine if  
810 any activities have occurred in violation of this article or contrary to an approved tree plan.

811

812B. Violations of this article, or failure to maintain all required trees as reflected in the approved  
813 tree plan, shall be subject to the noncompliance fee in the amount of four times the applicable  
814 tree-removal permit fee, plus the applicable fee in lieu of mitigation if the property owner  
815 shall fail to obtain approval for a mitigation plan, and in addition, shall be grounds for action  
816 by the City Arborist, the Board of Adjustment, the Park and Shade Tree Commission and any  
817 other appropriate City official or entity for appropriate action, including but not limited to  
818 postponement of action or denial of a pending application, revocation of any issued building  
819 or demolition permit or certificate of occupancy, revocation of any issued permit for tree  
820 removal or land clearance, and specific performance or other equitable relief in the Chancery  
821 Court.

822 **§ 253-36 Violations and penalties.**

823

824 A. Any person, firm or corporation violating any provision of this article shall be punished as  
825 described herein and in addition thereto may be enjoined from continuing the violation. Each  
826 tree cut, damaged or poisoned shall constitute a separate offense. Any tree removed without  
827 the proper permit will be subject to a fine of not less than \$250 nor more than \$500. If said  
828 fine is not paid within seven days the fine will be not less than \$1000 nor more than \$2000. If  
829 said tree is removed by a licensed tree care professional, the tree care company will pay a  
830 fine of not less than \$1000 nor more than \$2000. Payment of such fines shall be the  
831 responsibility of the property owner.

832

833 B. In addition to the monetary penalty specified above, violations of this article shall be subject  
834 to mitigation in accordance with § 253-33.

835 **§ 253-37 Severability; repealer.**

836

837 A. If any section, part of a sentence, paragraph, phrase or word of this article is for any reason  
838 held to be unconstitutional, inoperative or void, such holding shall not affect the remaining  
839 portions hereof and it shall be construed to have been the legislative intent to pass this article.

840

841 B. All ordinances or parts of ordinances in conflict herewith are and shall be repealed and shall  
842 be of no further force or effect whatsoever.

843 **§ 253-38 When effective.**

844

845 This article is and the same shall become effective immediately upon final passage hereof,  
846 except that the requirement for a tree plan as set forth in § 253-28 shall not become effective  
847 until 45 days after final passage.  
848

DRAFT