



Town of Dewey Beach

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ORDINANCE NO 803

AN ORDINANCE TO AMEND CHAPTER 173, TREES, OF THE MUNICIPAL CODE OF THE TOWN OF DEWEY BEACH, DELAWARE TO CLARIFY EXISTING PROVISIONS, ADD REQUIRMENTS FOR REPLACEMENT OF TREES, AND EXPAND PENALTIES FOR VIOLATIONS

WHEREAS, the Town of Dewey Beach Comprehensive Plan calls for protecting and preserving the natural environment in and around Dewey Beach, and;

WHEREAS, the Comprehensive Plan declares that the natural environment is one of the Town's most positive attributes which the Town requires a mandate to protect and preserve, and;

WHEREAS, the Comprehensive Plan recognizes that Dewey Beach benefits greatly from its existing landscape of trees and ornamental shrubs that adds value to the Town's visual appeal as well as complements the built environment, and

WHEREAS, the Commissioners wish to ensure that regulations governing removal or destruction of existing trees are clear and consistent, and

WHEREAS, the Commissioners desire to establish policies requiring placement of trees that are removed or destroyed, and

WHEREAS, the Commissioners believe that the penalties associated with violations of the provisions of Section 173 should be appropriate for achieving the objective of protecting and preserving the natural environment.

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Commissioners of the Town of Dewey Beach, Sussex County, Delaware, in session met, as follows:

Section 1. Amend Chapter 173 of the Municipal Code of Dewey Beach, Delaware by making the highlighted insertions, strikeouts, and substitutions depicted below:

§ 173-2. Removal of trees.

- A. Trees with a circumference of less than 20 inches measured one foot above ground level ~~or trees that are not recognized by the Town as a native species~~ may be removed without a permit.
- B. No tree ~~taller than 25 feet in height measured from ground level and greater than 20 inches~~ **or greater** in circumference measured one foot above ground level, shall be removed or destroyed without written approval **in the form of a permit** from the Town ~~Code Enforcement~~ **Building** Official, based upon the criteria set forth below.
- C. The Town ~~Code Enforcement~~ **Building** Official shall ~~only~~ **issue a** permit for the removal or destruction of a tree **only** if:
 - (1) The tree is less than 40 inches in circumference, as measured one foot above ground level, and is shorter than 25 feet measured from ground level; or

- (2) The removal or destruction of the tree is required to protect persons or property from immediate harm; or
 - (3) The tree is unlikely to survive due to age, disease, or other cause; or**
 - (4) The tree is located within the footprint of any new construction, including the area necessary to facilitate such construction. All reasonable efforts shall be made during construction or renovation to protect from harm any and all trees otherwise protected under this chapter. To this end, the Town may identify and enforce protected areas for the protection of trees and roots during construction.
- ~~D. No tree with a circumference of greater than 40 inches as measured one foot above ground level may be removed without a signed statement from a licensed arborist or the Town Code Enforcement Official stating the reason(s) for removal or destruction of each tree.~~
- D. A signed statement from a licensed arborist is required to support removal of a tree under criteria C.(2) or C.(3). The Town reserves the right to consult an independent licensed arborist before issuing a permit to remove the tree. If a tree poses imminent harm to persons or property because of a storm or other emergency, the Town Building Official should be notified, and the tree or portions of the tree posing imminent harm may be removed.**

§ 173-3 Removal of trees within tree stands- Replacement of trees removed under permit

Each tree removed or destroyed under a permit approved according to criteria C.(1) or C.(4) in §173-2 must be replaced with a new tree satisfying the following minimum requirements:

- A. Native species included on the Delaware Department of Agriculture list of recommended trees, or other similar authoritative list; the Town Building Official shall maintain and provide a copy of the current list;**
- B. Minimum circumference measured one foot above ground of 15 inches; and**
- C. Minimum height of 12 feet when planted.**

Replacement shall be completed within 90 days after removal. The Town Building Official may extend this period if weather or other conditions warrant.

if the cost of replacing the tree would exceed \$5,000, with prior documentation to and approval from the Building Official, the replacement tree may be of smaller circumference than specified above provided the tree was removed under a permit. The replacement tree must be the largest size commercially available under \$5,000.

Replacement trees must be properly maintained and may be inspected by the Town one year after replacement. The Town Building Official may consult with a licensed arborist and may require replacement of any tree for which, in the arborist's judgement, survival of the tree is threatened

because of improper maintenance.

The Town Code Enforcement Official shall only permit the removal or destruction of one or more trees in a tree stand if:

- A. ~~The tree stand spans less than 50 feet in all directions and has no trees larger than 25 inches in circumference, as measured one foot above ground level; or~~
- B. ~~The removal or destruction of each tree or trees is required to protect persons or property from immediate harm; or~~
- C. ~~The tree or trees to be removed are located within the footprint of any new construction, including the area necessary to facilitate such construction. All reasonable efforts shall be made during construction or renovation to protect from harm any and all trees otherwise protected under this chapter. To this end, the Town may identify and enforce protected areas for the protection of trees and roots during construction.~~

§ 173-4. Topping and pruning.

Topping of trees and tree stands shall be prohibited. Pruning for aesthetics or the health of the tree/tree stand is permitted, as is reduction when required directly under utility lines for safety. **A no cost permit issued by the Town Building Official is required before beginning any pruning or reduction.**

§ 173-5. Procedures for approval.

Any person seeking permission from the Town to remove or destroy a tree or tree stand, ~~whether in part or in total,~~ must provide the Town ~~Code Enforcement~~**Building** Official with a reasonable sketch of the property showing the location of all trees and structures on the property, including any proposed new construction or additions, and listing the size and species of each tree sought to be removed or destroyed. ~~If any tree or trees to be removed are greater than 40 inches in circumference,~~ **Any required** signed statement from a licensed arborist ~~or the Town Code Enforcement Official~~ stating the reason(s) for removal or destruction of each tree must also be provided.

§ 173-6. Violations and penalties.

- A. A violation of any provision of this chapter is declared to be a civil offense pursuant to Chapter 80 of the Municipal Code of the Town of Dewey Beach, and shall be subject to ~~an~~ **a** minimum assessment of \$500 for each offense.
- B. **Failure to replace a tree as required in § 173-3 is subject to a fine of \$1,000, increasing to \$3,000 if not paid within 60 days of the notice of violation. Failure to replace a tree as required within 1 year of the notice of violation will incur an additional fine of \$3,000, increasing by \$3,000 for each additional year that the tree is not replaced.**
- C. ~~Additionally,~~ **Any** person who violates this chapter by improperly removing or destroying ~~one~~

~~or more~~ trees shall be **subject to a fine of \$3,000 and shall be** required to replace each such tree with a tree of comparable size and a comparable species selected from the **Delaware Department of Agriculture** list of ~~approved native species~~ **recommended trees**. **Fines for improper removal or destruction that remain unpaid after 60 days shall incur an additional \$3,000 penalty. Failure to replace the tree as required within a 1-year period as determined by the Town Building Official shall incur an additional \$3,000 penalty, increasing by \$3,000 for each additional year that the tree is not replaced.**

- D. **Any unpaid fines for violations of this chapter shall be satisfied before any future licenses or permits may be issued to the property owner of the subject property.**

§ 173-7. Appeals.

Any person aggrieved by a decision of the Town Code ~~Enforcement~~**Building** Official involving the denial of a request for tree-removal permit may appeal to the Board of Adjustment. A written notice of appeal must be filed with the Town Manager within 30 days of the date of the decision which is the subject of the appeal.

- A. 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 Town ~~Code Enforcement~~**Building** Official's decision. Any additional exhibits or evidence which the applicant would like the Board to consider on appeal may be filed with the notice of appeal.
- B. Town response; hearing. Within 15 days of the filing of a notice of appeal, the Town ~~Code Enforcement~~**Building** Official may file a written response to the notice of appeal with the Town Manager. A copy of any written response shall be mailed to the applicant by the Town. The Board of Adjustment shall then set a reasonable time for a hearing of the appeal and give public notice, notify the parties in interest, and decide the appeal within a reasonable time. Any party to the appeal or any interested citizens may appear at the hearing in person, by agent, or by attorney.

Section 2. Severability. 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.

Adoption. This Ordinance shall take effect immediately upon its adoption by a majority vote of the Commissioners of the Town of Dewey Beach. Adopted by at least a majority vote of all Commissioners of the Town of Dewey Beach on this 17th day of February, 2023.

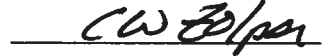
Section 3. This act shall take effect April 1, 2023.

SYNOPSIS

This Act clarifies and amends Chapter 173 to increase understanding of requirements for removing trees, adds a policy for replacement of trees removed, and increases penalties for violations of this chapter.



Mayor, William Stevens



Town Manager, Bill Zolper