



REHOBOTH BEACH BOARD OF COMMISSIONERS

Support Document Packet

REGULAR MEETING:

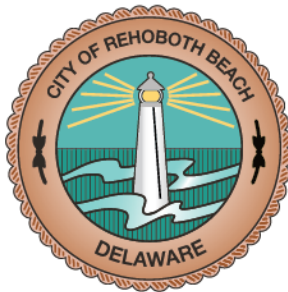
May 20, 2016

****DISCLAIMER****

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Board of Commissioners

229 Rehoboth Avenue
P.O. Box 1163
Rehoboth Beach, Delaware 19971



City of Rehoboth Beach

Telephone 302-227-4504

Fax 302-227-3336

www.cityofrehoboth.com

PUBLIC NOTICE

THE COMMISSIONERS OF REHOBOTH BEACH

Regular Meeting

Second Floor of Rehoboth Beach Volunteer Fire Company

Friday, May 20, 2016; 7:00 p.m.

AGENDA

1. Call to Order
2. Invocation, Pledge of Allegiance and Roll Call
3. Approval of Agenda
4. Correspondence
5. Approval of Minutes – Workshop Meeting held on November 9, 2015
Workshop Meeting held on December 7, 2015
Workshop Meeting held on January 4, 2016
Workshop Meeting held on February 8, 2016
Workshop Meeting held on March 7, 2016
Workshop Meeting held on April 4, 2016
Regular Meeting held on April 15, 2016
Workshop Meeting held on May 9, 2016
6. Report of Police Department
7. Report of Rehoboth Beach Volunteer Fire Company
8. Report of Building and Licensing Department
 - A. Permit of Compliance request by Melissa Moore, to operate a new restaurant with a patio to be known as “Egg” pursuant to the City of Rehoboth Beach Municipal Code, Chapter 215 – Restaurants and Section 270-19(A) – Use Restrictions; Patios. The restaurant will be located at 510 Rehoboth Avenue.
9. Report of Planning Commission
10. Old Business
 - A. Discuss possible revisions to Chapters 215, Restaurants and 270, Zoning as they relate to the regulation and permitting of restaurants that serve alcohol including brewery-pubs.
11. New Business
 - A. Consider authorizing the execution of a new 10-year franchise agreement with Comcast of Delmarva, LLC permitting Comcast to continue to occupy the City’s right-of-ways to provide cable, phone, internet and other services within the City.
 - B. Consider adoption of an ordinance amending Chapter 92, of the City Code related to the types of parking meters used by the city and the various means of paying for parking at meters.
12. City Manager’s Report
 - A. Approval of Street Aid Expenditures

13. Committee Report
14. City Solicitor's Report
15. Commissioner Announcements/Comments
16. Discuss items to include on future agendas.
17. Citizen Comment
18. Adjournment

AGENDA ITEMS MAY BE CONSIDERED OUT OF SEQUENCE

Citizen comment regarding Old Business, New Business and Committee Reports will be heard during each agenda topic after initial discussion by the Commissioners at the discretion of the Chair and prior to any vote being taken. Speakers shall state their name and address. Comments are limited to three minutes or at the discretion of the Chair. Comments on non-agenda items will be heard under "Citizen Comment".

*For additional information or special accommodations, please call (302) 227-6181 (TDD Accessible) 24-hours prior to the meeting.

**Next scheduled meeting – (Workshop) Monday, June 6, 2016, 2016; 9:00 a.m.

amw: 05/13/16; posted 05/13/16

pc (via Fax) Cape Gazette, Coast Press, Delaware State News



**CITY OF REHOBOTH BEACH
POLICE DEPARTMENT**

229 REHOBOTH AVENUE
REHOBOTH BEACH, DE 19971

KEITH W. BANKS

Chief of Police

Phone: (302)227-2577

Fax: (302)227-6054

www.rehobothpolice.org

CITY OF REHOBOTH BEACH COMMISSIONERS' MEETING
May 20, 2016

POLICE REPORT FOR THE MONTH OF APRIL 2016

Total Charges for the Month	213
Adult Arrests	192
Juvenile Arrests	21

Court	Criminal	Traffic	Civil	Total
JP 2	5	13	0	18
JP 3	37	6	0	43
JP 14	0	9	0	9
Alderman 37	0	97	4	101
Family	20	0	0	20
Common Pleas	0	5	0	5
Superior	0	0	0	0
VAC	0	17	0	17
Other	0	0	0	0
Totals	62	147	4	213

Revenue from Parking Permits, Parking Violations & Meters	
Parking Dept. fines collected from Permits	\$150.00
Parking Dept. fines collected from Parking Violations	\$2,160.00
Parking Dept. fines collected from Meters	\$2,515.00

Patrol Data, Door Checks, Police & Dispatch Hours	
Vehicle Patrol Hours	846
Bike Patrol Hours	0
Total Miles	5200
Foot Patrol Hours	156
Commercial Door Checks	1844
Residential Door Checks	383
Total Man-Hours/Police & Dispatch	5337

CRIMINAL CHARGES

Attempted Burglary	6
Attempted Theft	2
Burglary	8
Conspiracy	12
Criminal Impersonation	1
Criminal Mischief	8
Criminal Trespassing	2
Disorderly Conduct	3
Endangering Welfare of Child	2
Offensive Touching/Law Enf. Officer	1
Possession of Marijuana	4
Possession of Paraphernalia	1
Resisting Arrest	2
Theft	8
Underage Consumption	1
Wearing Disguise During Felony	1
TOTAL CHARGES	62

TRAFFIC CHARGES

Careless Driving	1
Cell Phone While Driving	19
Disregard Traffic Control Device	12
Driving While Suspended/Revoked	8
DUI	5
Expired Tags	1
Fail to Adhere to Temp. Lic.	1
Fail to Maintain Lane	2
Fail to Obey Officer Command	1
Fail to Reinstate	1
Failure to Report Collision	1
Fail to Signal	1
Fail to Yield	2
Fictitious Registration	1
Following Too Close	1
Headlights Required	1
Leaving Scene of Collision	1
No Insurance	23
No Registration in Possession	2
No Valid License	6
Speed	28
Suspended License	2
Suspended Registration	2
Tag Light	1
Unregistered Motor Vehicle	19
Unlawful Backing	1
Unsafe Lane Change	2
Window Tint	1
Wrong Way/One Way	1
TOTAL	147

CIVIL CHARGES

Disturbing the Peace	4
TOTAL CHARGES	4

ARREST COMPARISON WITH PREVIOUS YEAR

MONTH / YEAR / TOTAL

April 2015: 266

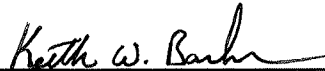
April 2016: 213

+/-: 53

PERSONNEL AS OF THIS REPORT

1 Chief
2 Lieutenants
4 Sergeants
1 Cpl. /Detective
7 Corporals
2 Patrolmen First Class
0 Patrolmen
25 Seasonal Patrolmen
1 Adm. Asst. to Chief of Police
1 Part-time Police Clerk
1 Dispatch Supervisor
8 Full-time Dispatchers
2 Part-time Dispatchers

Officers	Police Administration	Dispatch
39	5	11



Keith W. Banks
Chief of Police

BUILDING INSPECTOR'S REPORT

Building Permit Summary : April 1 - April 30, 2016

Permit Type		Permits	Bldgs	Construction Cost	Avg. Proj. Cost
New Construction					
Residential					
Multi-Family					
Commercial					
Additions					
Residential					
Multi-Family					
Commercial					
Alterations,Repairs,Conversions					
Residential		41	41	375,264.33	9,152.79
Multi-Family		6	6	74,903	12,483.83
Commercial		14	14	118,352,74	8,453.77
Permit Processing Fees					
Signs		4	4	20	80
Fences		4	4	20	80
Sheds					
Moving					
Demolitions		1	1	20	20
Institutions/Schools					
Tree Permits		10	10	20	200
Plumbing Permits		8	8	20	160
Building Permits		65	65	20	1300
Copies		2	2		45
Major Jobs					
Board of Adjustment Meeting		1	1		
Restaurant Applications		1	1		
Notice of Violations		108	108		
Inspections/Meetings					
Building Inspections		93	93		
Plumbing Inspections		22	22		
Building Re-Inspection					
Tree Meetings		52	52		
New Projects -Discussions with Applicants		54	54		

BUDGET YEAR 2016-2017 \$526,402.00

2016/2017	April	May	June	July	August	September	October
Permit Fee	\$18,939.70						
Value	\$581,912.97						
# of Permits	92						
Processing Fee	\$1,885.00						

2016/2017	November	December	January	February	March	Yearly Total	
Permit Fee						\$18,939.70	
Value						\$581,912.97	
# of Permits						92	
Processing Fee						\$1,885.00	

City of Rehoboth Beach

Sharon Lynn
City Manager

slynn@cityofrehoboth.com



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Rehoboth Beach, Delaware 19971
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NOTICE OF PUBLIC HEARING

A Public Hearing will be held by the City of Rehoboth Beach Mayor and Commissioners on Friday, May 20, 2016, at 7:00 p.m. on the second floor of the Rehoboth Beach Volunteer Fire Company, 219 Rehoboth Avenue, Rehoboth Beach, Delaware.

The Mayor and Commissioners will publicly hear and determine a Permit of Compliance request by Melissa Moore, to operate a new restaurant with a patio to be known as "Egg" pursuant to the City of Rehoboth Beach Municipal Code, Chapter 215 – Restaurants and Section 270-19(A) – Use Restrictions; Patios. The restaurant will be located at 510 Rehoboth Avenue.

For additional information or special accommodations, please call (302) 227-6181 (TDD Accessible) ten (10) days prior to the meeting.

All interested parties are invited to attend.

Sharon Lynn
City Manager

amw: 04/27/16; posted 04/27/16
pc: Damalier Molina
Residents within 200 feet
File

Cape Gazette
Coast Press
Delaware State News

Tuesday, May 3, 2016
Wednesday, May 4, 2016
Thursday, May 5, 2016

Building & Licensing

306 Rehoboth Avenue
P.O. Box 1163
Rehoboth Beach, Delaware 19971



City of Rehoboth Beach

Telephone 302-227-4504

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To: Mayor & Commissioners

From: Damalier Molina, Chief Building Inspector

Date: April 28, 2016

Re: Permit of Compliance Application No. 0416-01
510 Rehoboth Avenue "Egg"

The following is a complete report for the Application referenced above, to be heard on May 20, 2016:

1. Pursuant to Section 215-3:
 - A. The applicant is Melissa (Missi) Moore
 - B. The name of the restaurant is "Egg". The style is breakfast & lunch restaurant. The restaurant is open from 7:00 AM – 2:00 PM.
 - C. The restaurant is located at 510 Rehoboth Avenue, Rehoboth Beach, Delaware.
 - D. Pursuant to the plans submitted, the following is true:
 1. The property is located at 510 Rehoboth Avenue. The property is owned by Paul and Cindy Lovett of 4 Canal Street, Rehoboth Beach, DE 19971
 2. The structure is located in a zoning classification of C-1, Central Commercial District. Pursuant to Section 270-13C (3) (d), a restaurant serving alcoholic beverages is a permitted use.
 3. Restaurant Areas:
 - A. There is 738 square feet of service area, consisting of kitchen facilities, storage, restrooms, employee stations hallways and utilities.
 - B. There is 715 square feet of permanent seated dining area with 38 seats.
 - C. There are 7 seats located in the bar area.
 - D. The gross floor area of the restaurant is 1,623 square feet.
 - E. The bar area is 170 square feet with a ratio of bar to permanent seated dining of .18.
 - F. Pursuant to Section 215-1 *Definitions*, there is a dining patio of 267 square feet with 8 seats as defined at Section 270-19A(1)(b) not included as part of the permanent seated dining area or part of bar area.

4. The designated areas for proposed food storage and preparation are shown and labeled on the attached plans.
5. The distance to the nearest property lines of the nearest church, public park, and residential lot are as follows:
 - A. First Church of Christ Scientist– approximately 5,100 feet by way of Rehoboth Avenue to Bayard Avenue to Stockley Street.
 - B. Grove Park – 220 feet by way of a straight line.
 - C. Residential lot – (zoned R-2) directly behind on Canal Street and Sixth Street
6. The applicant has stated that the approximate percentage of revenue between the sale of alcohol and food is 30 percent alcohol and 70 percent food.
7. Authorization for the City to investigate is attached.
8. Written and dated declaration by the applicant is attached.
9. The fee of one thousand (\$1,000.00) dollars has been paid.

In summary, this is an application to build a new restaurant in an existing space that was previously used for retail as a delicatessen. The space was previously occupied by Hamels. There is a patio proposed.

Planning Commission

229 Rehoboth Avenue
P.O. Box 1163
Rehoboth Beach, Delaware 19971



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May 19, 2016

TO: Mayor and Commissioners

FROM: David M. Mellen
Chair, Planning Commission

SUBJECT: Planning Commission Report to the Board Of Commissioners
(for the Commissioners' Friday, May 20, 2016 meeting)

A meeting of the Planning Commission was held on Friday, May 13, 2016 from 3:00 p.m. to 4:30 p.m.

The Commission members in attendance were: Paull Hubbard, Jan Konesey, Joyce Lussier, Francis Markert, David Mellen, Bran Patterson (arrived at 3:30 p.m.), Harvey Shulman, Lynn Wilson

Also in attendance: Glenn Mandalas, City Solicitor
Elizabeth Lingo, City Arborist

1. The Planning Commission continued discussion of the Draft Tree Ordinance (approved Ver. June 2014) which now includes a number of wording modifications suggested by our new City Arborist at the April 2016 PC meeting. The PC also discussed a number of issues that were not included in the draft but were put forth in an 'opposition minority opinion' when the Draft was originally approved in 2014. An updated document package is included in your folders.
2. At this time, there are no new partitioning requests that have been submitted. The Planning Commission will schedule its next regular meeting for June 10, 2016. This meeting will commence at 3:00 p.m.

Planning Commission Chairman David Mellen will attend and present the Planning Commission's report and is prepared to answer any questions that the Board of Commissioners may have concerning this report or other activities of the Commission.

cc: City Manager
City Solicitor
Building Inspector
City Arborist
Planning Commission

City of Rehoboth Beach



306 Rehoboth Avenue
Rehoboth Beach, Delaware 19971

Planning Commission
(302) 227-4504

(302) 227-6181
Fax (302) 227-3336

August 11, 2014

TO: Mayor and City Commissioners
FROM: Preston A. Littleton, Jr. *Preston A. Littleton, Jr. /aw*
Chair, Planning Commission
SUBJECT: Final Report – Tree Study

The Planning Commission is pleased to forward to the Board of Commissioners its final “tree study” report.

The report consists of four parts: (1) a transmittal report entitled “Trees in the City of Rehoboth Beach: Goals, Realities, and Opportunities” that contains the Commission’s recommendations; (2) Exhibit #1, the proposed amended tree ordinance which the Commission is recommending its adoption by substitution with the current tree ordinance; (3) Exhibit #2 entitled “Discussion of Changes Between the Current and Proposed Amended Tree Ordinance”; and (4) a copy of the Board of Commissioners Resolution No. 1212-01 that tasked the Planning Commission to undertake this study.

Should the Board so desire, the Planning Commission or members thereof would be pleased to meet with the Board as it discusses the report and its implementation.

Encl: As noted above

cc: Commissioner Elect McGuiness
City Manager
City Solicitor
Chief Building Inspector
City Arborist
Parks and Shade Tree Commission members
Planning Commission members

Trees in the City of Rehoboth Beach

Goals, Realities, and Opportunities

The Planning Commission is pleased to submit this report to the Mayor and City Commissioners and to the citizens of the City of Rehoboth Beach regarding trees within the City. The Planning Commission undertook this study in response to a resolution passed by the Board of Commissioners in December 2012 concerning the City's trees [Attachment A]. While the resolution identified a number of specific tasks, there were two primary objectives. The overarching objective was how the City and its citizens could best meet the City's goal to maintain and increase its tree canopy on both private and public land. The second, more specific objective, was to assess the City's current tree ordinances with particular focus on the Comprehensive Tree Regulations that was adopted in January 2006, and to recommend changes as may be needed.

In carrying out this assignment, the Planning Commission sought input from the City's citizens, its elected and appointed officials, relevant City boards and commissions, City staff and departments, State governmental agencies, and tree and construction companies doing business within the City. Additionally, the Commission conducted its own research. The Commission's fundamental findings were (1) there are significant near and long-term impediments to attaining the City's goal to maintain and increase the City's tree canopy, be it on public or private land, and (2) the City's tree ordinances should be revised. While these findings are interrelated, each will be addressed separately in this report and several recommendations presented including the adoption of a proposed amended tree ordinance.

Maintain and Increase the City's Tree Canopy

The Planning Commission first tried to develop a quantifiable analysis of what had occurred over time regarding the City's tree canopy as well as determining the number of trees or percent of tree canopy on public vs. private property. It sought the assistance of State agencies in doing so. Unfortunately, costs, technology, and data limitations prevented such a precise analysis. Nonetheless, there is photographic evidence of what has occurred over time and more recent knowledge of what is occurring relative to the tree canopy.

The early history of the City shows that it was well treed north of Rehoboth Avenue, sparsely treed on the ocean blocks, and its south and southwest sections open farmlands. As the City developed and more homes were being built there were two opposite effects. While trees were lost as lots were being developed in the treed sections of the City, the opposite was occurring in the sparsely treed residential areas where trees were being planted as part of development. Noteworthy was that the size of many if not most homes then being built in the residential districts was then smaller relative to their lot size and provided natural area for preserving existing trees and planting additional trees. The Country Club Estates section of the City remains to this date as the residential neighborhood most lacking in tree canopy. [R-1] When Country Club Estates was developed in the 1960's on the site of the former country club, most of the club's trees were removed and the property owners subsequent efforts to plant street trees has/is failing because an inappropriate choice of Bradford pear trees.

The more recent history of the City is clear to most. Prior to 2006 and the enactment of the City's Comprehensive Tree Regulations, many lots were being clear cut prior to construction. Additionally, there was an abundance of what is often termed "mega-mansions" being built that consumed the lot and most of the natural area and its trees. This prompted the City to enact not only a tree ordinance but also Code changes, commonly referred to as FAR changes,

intended to better control the size of houses. In addition side and front yard setback requirements were increased.

Despite these Code changes, and in the face of very high land values, currently smaller older homes are being demolished and new homes built in their place, larger lots are being subdivided and where one smaller home may have stood two houses are being built, and former vacant lots are being developed. In nearly all such cases, very large multi-bedroom and multi-bath homes, many with swimming pools, are being built to the absolute maximum allowed by Code and with only the requisite two car on-site parking. The remaining natural area on these lots essentially consists of the setback areas, i.e., an aggregate of 16 foot side lot setback, 10 foot rear, and those with front porches, 10 foot front setback. The result, despite the existence of the current tree ordinance, is a loss of trees. Obviously those trees in or very close to the footprint of the house are removed. Additionally, the roots of existing trees on the property as well as those on the adjacent properties are damaged and these tree's long-term survival compromised. While the current code requires a minimum of three trees on a typical 50 x 100 foot lot, because these lots are being built to the maximum allowed under the current code, small and ornamental trees are often planted that contribute minimally to the City's tree canopy. In other cases, off-site remediation has been sought.

While the City is blessed by having the number of mature canopy trees that it has, recognition must be given to the fact that all trees have a life span and that without a plan for constant replacement the City's tree canopy will decrease. Likewise, not all of the existing trees are desirable species or trees appropriate to our coastal area. A newly identified threat results from changing weather and storm activity – particularly as has been experienced in other coastal areas. Utility companies having overhead power or communication lines have become far more aggressive in clearing lines in order to address service reliability requirements, often with resulting loss of trees or badly misshapen trees on both private and public land. Likewise, insurance companies, faced with mounting claims, are becoming more forceful in requiring the removal of trees or significant trimming of trees, regardless of their health or the owners'

wishes, in order to reduce their liability exposure. Through its research, the Planning Commission has learned that such action by insurance companies is projected to increase and, without offsetting defense, the property owner is forced to comply in order to maintain insurance coverage. [R-2, 3] Relevant to this report, a strong municipal tree code with professional arborist oversight is of assistance to the property owner faced with these problems.

As has been pointed out in the 2010 Davey Tree Inventory report, the greatest opportunity to increase significantly the City's tree canopy is planting and maintaining trees on public land. In the course of its study, the Planning Commission has been advised that there is little or no further opportunity to plant trees in the City's parks – and that attention there must be to maintenance activity. Rather, the planting of street trees presents the best opportunity. But there exist significant current impediments to doing so. These include the fact that in the side-walked residential sections of the City there is very little space between the sidewalk and the curb, typically two or less feet; trees in these narrow areas can interfere with opening car doors and thus impact parking. However, the main impediment is if trees are planted in these spaces by owner, with requisite City permission, the owner is responsible for not only maintaining the tree but also for any damage that may occur to the sidewalk, curb, or street and keeping the sidewalk and street clear of low intruding limbs. In areas of the City where there are not sidewalks in place, some owners have “assumed” ownership of the public land and incorporated it into their landscape.

In this report, the Planning Commission will present and highlight changes in its recommended amendment to the City's current tree ordinance. However, if there is a serious commitment by the City and its citizens to the goal of increasing the tree canopy, far more action will be required regarding trees on both private and, most particularly, public land.

Relative to private property, the current zoning code requirements concerning set-backs and natural area simply do not provide sufficient space for maintaining many of the existing large

canopy trees or the planting of large trees. [R-4] Additionally, as the Planning Commission heard repeatedly, decisions on what is or is not appropriate is best made on a lot-by-lot basis by a knowledgeable arborist who is also familiar with construction options. This means that the City arborist, be he/she employed or contracted, needs to have some discretionary authority. Likewise the Commission heard repeatedly that the objective should be to have the right tree in the right place rather than a specific number of trees, be they desirable or undesirable, on the property. The recommended revisions to the existing City tree ordinance somewhat address this but the oversight of the City arborist having requisite authority to make determinations on a case-by-case basis is needed. Finally, the Planning Commission is aware of various construction techniques that may facilitate maintaining existing desirable trees on property or which would better protect proximate trees on abutting properties. Again, the Chief Building Inspector or his/her designees would need requisite authority to require one type of foundation excavation or construction technique versus another. [R-5]

Relative to public property, the single most important change would be for the City to take on the responsibility for planting and maintaining street trees and, to be equitable to affected property owners, the City should assume the associated responsibility for maintaining the sidewalks, curbs, and street should they be affected. [R-6] Additionally, once again requiring discretionary authority, the Chief Building Inspector should be able to allow, on a case-by-case basis, the installation of non-linear sidewalks that go around existing trees and/or require special construction techniques. Modification of street design, for example creation of “bump-out” islands for tree planting or the creation of tree lined median islands on existing wide roads could be pursued. [R-7] In nearly all cases significantly increasing the number of trees on public lands would entail sizeable up-front expenditures by the City plus continuing maintenance expenses and possible liability exposure. However, the City’s goal to significantly increase the City’s tree canopy is heavily dependent on the City taking such action. As will be discussed in the next section concerning the tree ordinance and proposed revisions, any remediation or penalty monies should be reserved for such use by the City.

City Tree Ordinance

In seeking input from not only the public but also from the interviews it conducted, including those with responsibility to administer the ordinance or hear appeals or relevant companies doing business in the City, the common complaint was that the ordinance was complex, difficult to understand, had seeming inconsistencies, and at times its strict interpretation resulted in wrong or undesirable outcomes. Tree professionals emphasized that increased attention needed to be given to the right trees in the right place versus the possible preservation of existing undesirable or even invasive trees. Likewise, damage to root structure and ultimate survivability of an existing tree during construction vs the ability of a desirable shade tree planted post-construction to survive was explained. Additionally, when there is a dense stand of trees, it was explained that it is often advantageous to thin, i.e., remove, some trees for the ultimate benefit/survivability of the remaining trees. The Planning Commission also heard complaints from the public who found being required to maintain some existing and otherwise healthy trees incompatible with the use of their property, for example prickly leaf holly trees near their swimming pools or the density of multiple trees impeding landscaping or not allowing open area.

The Planning Commission's attempt to review and analyze tree permit applications, decisions, and appeals issued since the tree ordinance was enacted was not fruitful. The Building and Licensing department does not have an automated system in place to identify the permits applied for and those issued for a particular time period, their status, outcome or other statistical details. There are records of approved applications and tree removal permits, and once the work is completed, it is filed in an archived central file with all other permits and materials for any given property. Analysis would be limited to only approved applications and would require, a painstaking process of reviewing all the files on hand to uncover those permits for review. [R-8, 9, 10]

The Planning Commission was particularly attentive to the concerns and suggestions made by members of the Park and Shade Tree Commission regarding the current tree code and its assigned responsibilities. Likewise the Planning Commission was attentive to the concerns and suggestions by both City staff and by those who have been involved with appeals heard by the Park and Shade Tree Commission. To the extent possible, these have been addressed in the amended tree ordinance that the Planning Commission is recommending. However, the Planning Commission believes that the Park and Shade Tree Commission should be afforded professional assistance and training to help it best carry out its responsibilities. [R-11]

In drafting the amended tree ordinance the Planning Commission did not change the section of the existing Code (§253-5) relative to the Park and Shade Tree Commission's responsibility to develop and update annually what is referred to as "the official comprehensive tree plan for the City". However, this plan only deals with trees on public land. The Planning Commission recommends that the Park and Shade Tree Commission be assigned the responsibility of overseeing the development and implementation of a much broader and more comprehensive citywide effort to promote public awareness and increasing the number of trees on both private and public land. [R-12, 13, 14]

There was one section of the current tree code that the Planning Commission could find no evidence of its enforcement and that was the requirement that the tree density requirement be met upon any conveyance or transfer of a lot (§ 253-26 E). The Commission believes that this provision is essential to the City's goal to increase the tree canopy within the City and this requirement is continued in the amended tree ordinance. However, action is needed to ensure not only that purchasers are knowledgeable of this provision but also that it be enforced. [R-15]

Despite the issues, concerns, problems that were presented to the Planning Commission, there was agreement that as a result of the current ordinance more trees have been saved or planted than would have occurred without the ordinance. As such, the Planning Commission expended

considerable effort in its review of the current ordinance and drafting a revised ordinance that would not only maintain important features of the current ordinance but address concerns that had been raised.

RECOMMENDATION – TREE ORDINANCE

Attached as Exhibit 1 is the proposed amended tree ordinance and Exhibit 2 is a report highlighting changes from the current tree ordinance. The Planning Commission recommends that the Board of Commissioners takes such action as necessary to amend by substitution the current tree ordinance with the revised tree ordinance.

ADDITIONAL RECOMMENDATIONS

(Recommendations are listed per the narrative discussion and are not in priority order)

1. The Planning Commission recommends that the City initiate a special effort to increase the number of trees on both private and public property in those areas of the City that are most deficient of trees. Particular action should be taken, in collaboration with the Country Club Estates Property Owners Association, to increase the number of trees in the Country Club Estates area of the City.
2. The Planning Commission recommends that the City explore with the Delaware State legislative and executive officials action that can be taken to ensure that insurance companies doing business in the State do not require unwarranted tree trimming or removal by its clients.
3. The Planning Commission recommends that the City explore with the Delaware State legislative and executive officials action that can be taken to ensure that the Office of the Insurance Commissioner recognize the protection of trees as subject

matter appropriate for the formal complaint and arbitration process available to insureds.

4. The Planning Commission recommends that the Board of Commissioners take such action as necessary to increase the natural area requirements of the Zoning Code in order to provide more space for the planting of new trees and/or survival of existing trees.
5. The Planning Commission recommends that the Chief Building Inspector be given clear authority to specify the type of foundation excavation or construction technique where it would result in saving protected trees.
6. The Planning Commission recommends that the Board of Commissioners take such action as necessary to increase substantially the planting and maintenance of appropriate street trees. Such action should include:
 - The City take necessary action to plant, maintain, or replace as needed all street trees.
 - The City assume the responsibility of maintaining/repairing any damage to sidewalks and/or streets caused by street trees.
7. Whenever there is a modification or extensive repair of an existing street, the City should increase the number of street trees by such means as:
 - The creation of “bump-outs” near intersections that would provide tree planting space.
 - Where there is sufficient right-of-way, explore the creation of median islands with tree planting space.
 - In areas where there are no sidewalks, the planting of trees on the public right of way.

8. The Planning Commission recommends that the City develop and maintain a searchable and auditable computer-based record-keeping system that controls the issuance of all permits (and in this instance tree removal permits) by the Building and Licensing department whereby all tree permit applications and the approval or denial of said permits be entered and their final disposition recorded. At a minimum, such a system should capture statistical information, (i.e. type and number of trees to be removed, replaced or mitigated, location, inspections, etc.) for the City to better manage not only the permitting process, but to monitor and analyze the effectiveness of the ordinance in the context of reaching the City's tree canopy coverage goal. This system shall also record the existence of protected trees that may transfer from owner to owner to maintain a historical record.
9. The Planning Commission recommends that tree permit application forms and instructions be made available on the City's website. *[The Planning Commission further recommends that all City applications forms and instructions be made available on the City's website.]*
10. The Planning Commission recommends that tree permit applications or notice thereof be posted, upon submission, on the City's website. *[The Planning Commission further recommends that all City permits be posted upon submission on the City's website.]*
11. The Planning Commission recommends that the Parks and Shade Tree Commission be afforded necessary training and assistance, including professional help as required, in order to best carry out its responsibilities in accord with the proposed revised tree ordinance.
12. The Planning Commission recommends that the Parks and Shade Tree Commission be tasked by the Board of Commissioners to develop and, upon

approval by the Board, implement an annual citywide comprehensive tree plan for the City that promote public awareness and increasing the number of trees on both private and public land.

- That in developing such citywide comprehensive tree plan that representatives from the Board of Commissioners, Board of Adjustment, Planning Commission, Street and Transportation Committee, City Arborist, and interested citizen volunteers be involved.
- That the Board of Commissioners budget necessary funds to implement the City's approved annual citywide comprehensive tree plan.

13. The City should maintain its "Tree City" designation and implement a public information and education program to inform its citizens not only of the importance of trees to the environment and character of the City but also to inform them of the tree ordinance and its provisions.

14. The Planning Commission recommends that the City conducts annually an event that makes available, either free or at cost, desirable trees for planting by property owners on their private property.

15. The Planning Commission recommends that the City take necessary action to inform real estate companies and agents doing business in the City that the minimum tree requirements for a lot become effective upon any conveyance of that property. Additionally, upon the City's receipt of the transfer tax report from the County, the City should also notify the purchasers of this requirement and ensure compliance.

EXHIBIT #1

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Article I: City Parks and Shade Tree Commission; Regulations

§ 253-1 Definitions.

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

CITY ARBORIST

As defined in § 253-24

PARK TREES

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

STREET TREES

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

§ 253-2 Creation of Commission; membership.

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

§ 253-3 Term of office.

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

§ 253-4 Compensation.

Members of the Board shall serve without compensation.

35 **§ 253-5 Duties and responsibilities of Commission.**

36

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

45 **§ 253-6 Operation of Commission.**

46

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

50 **§ 253-7 Species to be planted.**

51

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

56 **§ 253-8 Spacing of trees.**

57

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

59

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

63 **§ 253-9 Distance from curbs and sidewalks.**

64

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

66 **§ 253-10 Distance from street corners and fireplugs.**

67

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

71

72 **§ 253-11 Utilities.**

73

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

77 **§ 253-12 Maintenance.**

78

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

87

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

93

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

106

107 **§ 253-13 Tree topping and hat-racking.**

108

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

114 **§ 253-14 Pruning of overhanging trees.**

115

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

123

124B. The city shall have the right to prune any tree or shrub on private property when it intrudes
 125 into the clear space above the street or sidewalk, interferes with the proper spread of light
 126 along the street from a streetlight, or interferes with visibility of any traffic control device or
 127 sign. The city shall have the authority to charge the cost of pruning to the property owner.

128 **§ 253-15 Removal of dead or diseased trees; costs.**

129

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

136

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

145

146

147

148 **§ 253-16 Removal of stumps.**

149

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

152 **§ 253-17 Interference with Commission.**

153

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

158 **§ 253-18 Abuse of public trees.**

159

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

167 **§ 253-19 License required for business of tree pruning, treating or removal.**

168

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

172 **§ 253-20 Review of Commissioners.**

173

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

178

179

180 **Article II: Shade Tree Ordinance**

181

182 **§ 253-21 Findings.**

183

184 The City Commissioners find that:

185

186 A. The City of Rehoboth Beach adopted the Comprehensive Development Plan in 2003
187 (certified by the State of Delaware in 2004), which calls for the preservation, protection and
188 conservation of trees within the City;

189

190 B. The City of Rehoboth Beach contains a diversity and abundance of trees that are of
191 economic, recreational, and environmental value to the City and makes it a desirable place
192 for residents and visitors;

193

194 C. The abundance of trees contributes to the City's unique wooded seaside character and
195 distinguishes the City from many other coastal communities;

196

197 D. The appearance of Rehoboth Beach contributes to the economic prosperity and general
198 welfare of the City;

199

200 E. Growth and development in the City of Rehoboth Beach often results in the removal of trees,
201 thereby contributing to their depletion; and

202

203 F. It is necessary to protect and manage trees as valuable assets in order to protect and enhance
204 the health, safety, and welfare of the citizens of Rehoboth Beach.

205 **§ 253-22 Purpose.**

206

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

208

209 A. Regulate the protection, planting, removal, and long-term management of trees within the
210 City that, in the case of private property, takes into account the natural area plan for that
211 property;

212

213 B. Require a survey of existing trees and a plan for tree preservation prior to development,
214 redevelopment or subdivision of a lot;

215

216 C. Establish a system of permits to assure density, correct maintenance, protection and removal
217 of trees on public and private property; and

218

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

220 **§ 253-23 Applicability.**

221
222 A. The provisions of this article apply to all land in the municipal boundaries of the City of
223 Rehoboth Beach.

224
225 B. Activities that require review and approval by the City Arborist are:

226
227 (1) Private maintenance or planting of trees on public land (§ 253-33.B), and

228
229 (2) All activities that require an approved tree plan (§ 253-28).

230
231 C. Activities that require a tree removal permit are all activities that, directly or indirectly,
232 cut down, substantially alter, destroy, remove, relocate, damage, or authorize any such act
233 involving a protected tree, except as otherwise specified in § 253-29.

234
235 D. Emergency Waiver.

236
237 The provisions of this article may be suspended or waived by the City during a period
238 officially declared emergency by the City Manager, such as a storm or other City
239 emergency.

240 **§ 253-24 Definitions and word usage.**

241
242 As used in this article, the following terms shall have the meaning indicated in this section.
243 Words not defined herein shall be interpreted so as to give them the meaning they have in
244 common usage and to give this article its most reasonable application.

245
246 **ANSI STANDARDS**

247 Tree standards set by the American National Standards Institute.

248
249 **BREAST HEIGHT**

250 4 feet, 6 inches above the ground, measured on the uphill side of a tree.

251
252 **CITY ARBORIST**

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

259
260

261 **CITY PARKS AND SHADE TREE COMMISSION**

262 As established in § 253-2.

263

264 **COMMERCIAL PROPERTY**

265 Commercially zoned property.

266

267 **DAMAGE**

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

270

271 **D.B.H.**

272 Diameter at breast height of a tree.

273

274 **DEMOLITION**

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

277

278 **DEVELOPMENT**

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

281

282 **HAT-RACKING**

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

287

288 **HEALTHY**

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

290

291 **LINE TREE**

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

293

294 **LOT**

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

298

299 **NATURAL AREA**

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

302

303

304 **NATURAL AREA PLAN**

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

307

308 **NET BUILDABLE AREA**

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

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

313 (3) In the case of an existing structure for which a permit is sought for an additional
314 500 square feet or over, the total land space to be occupied by the existing
315 structure together with the proposed addition.

316

317 **PROTECTED TREE**

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

319 (1) A specimen tree or tree stand,

320 (2) A tree that is necessary and counted to meet the density requirement in § 253-26,

321 (3) An existing tree of four inches D.B.H. or more of a species permitted by § 253-25.

322

323 **REMOVE OR REMOVAL**

324 (1) The actual removal of trees;

325 (2) Direct or indirect actions capable of resulting in the effective removal or death of
326 trees through damage or poison.

327

328 **RESIDENTIAL PROPERTY**

329 Residentially zoned property.

330

331 **SHADE TREE**

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

334

335 **SPECIMEN TREE**

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

338 (1) A life expectancy of greater than 15 years.

339 (2) A structurally sound trunk, not hollow and having no extensive decay and less
340 than 20% radial trunk dieback.

341 (3) No more than one major and several minor dead limbs (hardwoods only).

342 (4) No major insect or pathological problems.

343

344 **SUBDIVISION**

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

347 **TOPPING**

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

350

351 **TREE**

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

354

355 **TREE PROTECTION**

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

358

359 **TREE STAND**

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

362

(1) A relatively mature, even-aged stand.

363

(2) A total combined D.B.H. of 14 inches or greater.

364

(3) A stand with purity of species composition or of a rare or unusual nature.

365

(4) A stand with exceptional aesthetic quality.

366

367 **TRIM**

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

371 **§ 253-25 Species to be planted.**

372

373 A. Trees planted to meet the tree density requirements of § 253-26, or the mitigation
374 requirements of § 253-33 of this article shall be shade trees and either:

375

(1) Species native to Delaware as classified by the Delaware Forest Service at the
376 time of City approval of the tree plan, or

377

(2) Non-native species approved by the City Arborist, to include the male ginkgo,
378 DED-tolerant elm, London plane, Southern magnolia and Japanese zelkova.

379

380 B. No tree species classified as an invasive tree species by the Delaware Forest Service
381 shall be planted to meet the tree density requirements of § 253-26, or the
382 requirements of § 253-33 of this article.

383

384 **§ 253-26 Minimum tree density requirements.**

385

386 A. All lots used for residential purposes, whether zoned residential or not, must maintain an
387 average minimum shade tree density of 26 trees per acre, subject to adjustments as stated in

388 this subsection. Shade tree density may be achieved by existing trees or planting of new
389 shade trees. The specific shade tree density requirements for each lot are as follows:

390

391 (1) Each single-family residence lot in a residence district shall have at least three shade trees
392 on the lot for each 5,000 square feet of land, or one shade tree for each 1,666 square feet
393 of land for lots smaller or larger than 5,000 square feet. In calculating the minimum tree
394 density required for a lot where dividing the square footage of the lot by 1,666 results in a
395 tree density requirement that contains a fractional number, that fractional number shall be
396 increased to the next highest number if the fractional number is 0.5 or higher.

397

398 (2) Each residence lot in a residence district other than a single-family residence lot and each
399 commercial or mixed-use or other lot not in a residence district shall have at least two
400 shade trees per dwelling unit.

401

402 B. In meeting the density requirements set forth in Subsection A(1) or (2) above, only existing
403 shade trees exceeding four inches D.B.H. and 12 feet in height, and new trees to be planted in
404 accordance with § 253-32 may be counted to meet the density requirements, provided that:

405

406 (1) A line tree may not be counted in calculating tree density under § 253-26.

407

408 (2) The location of the trees must provide adequate room for tree growth and health and shall
409 take into account aesthetic appearance;

410

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

415

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

419

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

424

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

428

429 E. Notwithstanding anything else to the contrary in this section, if a lot does not meet the density
430 requirements in Subsection A of this section as of January 24, 2006, then such property

431 owner shall not be required to meet such density requirements for such lot unless an
 432 application is filed for a building permit relating to building/construction cost greater than
 433 \$20,000 or for a demolition permit or for a subdivision of such lot; provided that, in the event
 434 that an existing tree on such lot is or becomes dead or significantly diseased, thereby
 435 reducing the tree density below the density required by Subsection A of this section, it shall
 436 be removed and replaced by a tree of at least three inches D.B.H. and 12 feet high which is
 437 of a species permitted by § 253-25 ; and provided, further, that the density requirements in
 438 Subsection A of this section shall apply upon any conveyance or transfer of such lot after
 439 January 24, 2006.

440

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

443 **§ 253-27 Maintenance of trees.**

444

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

451

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

454

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

457

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

460

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

466 **§ 253-28 Submission of plans with applications for building or demolition permit, for**
 467 **subdivision or site plan approval, or tree-removal permit.**

468

469 A. Tree Plan Required

470

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

- 472
 473 (a) Tree removal permit;
 474 (b) Demolition permit;
 475 (c) Building permit relating to building/construction cost greater than \$20,000 for
 476 a residence or for the lot on which a residence is located;
 477 (d) Subdivision of land; and
 478 (e) Site plan review.

479
 480 (2) Review of such tree plan, and any approval thereof, will proceed in the same manner by
 481 the same City officials and/or entity responsible for reviewing and approving the
 482 application for building permit, tree-removal permit, subdivision or site plan approval, or
 483 demolition permit.

484

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

486

487 (1) Dimensions of the property.

488

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

492

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

498

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

501

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

504

505 (6) General notes including mulching requirements, fertilization and planting details, and
 506 such other information as needed;

507

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

512

513 D. Tree plan review fee. A nonrefundable administrative fee of \$50 to offset the cost of
 514 reviewing each plan required by this § **253-28** will be collected by the City, except when

515 submitting an application to remove a dead or diseased tree, in which case the fee shall be
516 waived.

517 **§ 253-29 Tree-removal permits.**

518
519 Tree-removal permits shall be applied for and obtained prior to beginning any activity on a
520 lot which is intended to or may reasonably affect any tree as described below in this section.

521

522 A. Tree removal.

523

524 (1) No person shall, directly or indirectly, cut down, substantially alter, destroy, remove,
525 relocate, damage, or authorize any such act involving a protected tree situated on any
526 land within the City of Rehoboth Beach without first obtaining a tree-removal permit. No
527 permit shall be issued to remove any protected tree unless removal is by a licensed tree
528 professional if, in the judgment of the City Arborist, professional removal is needed for
529 the protection of any property or persons. Before applying for a tree-removal permit, the
530 applicant shall clearly identify each tree to be removed by wrapping the tree trunk with a
531 red ribbon.

532

533 (2) Tree-removal permit.

534

535 (a) No tree-removal permit shall be issued unless the City finds that at least one of the
536 following criteria is satisfied with respect to each protected tree designated for
537 removal:

538

539 [1] In the case of an application for a building or demolition permit or for a
540 subdivision or site plan approval, the tree

- 541 i. is located within the net buildable area of a given lot as identified on the tree
542 plan, or
543 ii. the tree prevents reasonable development of a lot that is otherwise permissible
544 under City ordinances,
545 provided, however, that a tree-removal permit shall not be granted where the
546 applicant has failed to design and locate the proposed improvements,
547 demolition or subdivision so as to minimize the removal of trees consistent
548 with the permitted use of the lot and shall be granted only after reasonable
549 efforts have been made to save protected trees on a lot. Reasonable efforts
550 shall include, but not be limited to, alteration of building design; alternate
551 location of building, parking area and other impervious surfaces, water
552 retention or drainage infrastructure; or relocation of utilities;

553

554 [2] The tree is located within an existing or proposed public or utility company right-
555 of-way, and relocation of such right-of-way or the use thereof is not reasonably
556 practicable;

557

558 [3] The tree is located within an existing or proposed public easement, stormwater
559 management tract or facility, provided that only the minimum area reasonably
560 necessary for the public service or use shall be considered for purposes of
561 determining whether there is necessity for tree removal;

562

563 [4] The tree is located where it creates or will create a material safety or health hazard
564 or nuisance with respect to existing or proposed structures or vehicles or
565 pedestrian routes, and such hazard or nuisance is not innate to or commonly
566 associated with the existence of trees in general (for example, lightning, wet
567 leaves on the ground during rainstorms);

568

569 [5] The tree is located where it interferes with the installation, delivery or maintenance
570 of proposed or existing utility services to the lot and relocation of such services is
571 not reasonably practicable;

572

573 [6] The tree is determined by the City to be dead, significantly diseased, severely
574 injured or in danger of falling; or

575

576 [7] The tree is located where it interferes with the root or crown development of a
577 larger healthy protected tree.

578

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

585

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

588

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

594

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

597

598 (3) Removal of any tree which has been destroyed or damaged beyond saving, from extreme
599 weather conditions, insects, disease or fire, or which constitutes an immediate peril to life
600 or property, in any such case where it has been determined to be such by the City.
601

602 C. Display of permit. The applicant shall prominently display on the site the permit issued on a
603 sign prescribed by the Park and Shade Tree Commission. Such permit shall be displayed
604 continuously while trees are being removed or work done as authorized by the permit. As a
605 condition for the issuance of a permit, the applicant shall agree in writing to entry onto their
606 lot by representatives of the City to inspect the permit and activities at any time, and such
607 entry shall be lawful.
608

609 D. Application. Application for a tree-removal permit shall be made in writing on the form
610 provided by the City.
611

612 (1) The application shall include but not be limited to the following:
613

614 (a) Statement as to the ownership interest in the lot;
615

616 (b) Legal description of the lot and a boundary survey or accurately scaled drawing
617 thereof;
618

619 (c) A tree plan for the lot, if required, meeting the standards of § **253-28** or **253-32** of this
620 article;
621

622 (d) An erosion control plan, if required by § **253-28** of this article.
623

624 (2) If an application for building or demolition permit or for subdivision or site plan approval
625 contemplates activity on a lot which is intended to or may reasonably affect any tree as
626 described below in this section, then an application for tree removal permit shall be
627 submitted and processed concurrently. All items shown shall be properly dimensioned,
628 scaled and referenced to the property lines and setback requirements.
629

630 (3) The filing of an application shall be deemed to extend permission to the City to inspect
631 the property subject to such application, if inspection is found necessary for purposes of
632 evaluating the application.
633

634 (4) For those applications that are not being processed concurrently with an application for a
635 building or demolition permit or for a subdivision or site plan approval, in which case
636 longer periods of time may occur, the City shall have a reasonable time following the
637 receipt of a completed application within which to make a determination on whether a
638 permit shall be issued as requested. If the permit is not issued, the City shall indicate in
639 writing that the application is denied.
640

641 (5) Any permit issued hereunder shall remain valid for a term of six months and may be
 642 renewed for a second six-month period upon request to the City or the City may require
 643 re-application and full review. If a permit required by this section has been issued
 644 concurrently with the building or demolition permit or approval of an application for a
 645 subdivision or site plan, then such permit shall run concurrently with the building or
 646 demolition permit or approved subdivision or site plan and may be renewed together
 647 therewith.

648

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

650

651 E. Permit application fees.

652

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

655

656 (a) 1 to 5 trees: \$50

657

658 (b) 6 to 10 trees: \$100

659

660 (c) More than 10 trees: \$500

661

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

663 **§ 253-30 Tree plan inspection.**

664

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

671 **§ 253-31 Tree protection during construction.**

672

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

675

676 A. No person shall encroach or place solvents, material, construction machinery or temporary
 677 soil deposits within six feet from the trunk of any protected tree or any tree within a tree
 678 protection zone, including any tree on an adjacent lot for which the protection zone extends
 679 into the site, without prior approval of the City Arborist. The City Arborist may authorize,

680 for good cause, a reduction in the protected area to not less than four feet from the trunk of
 681 any protected tree or any tree within a tree protection zone.

682

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

689

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

692

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

698 **§ 253-32 Tree planting requirements.**

699

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

702

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

705

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

709

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

714

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

718

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

721 **§ 253-33 Mitigation of Protected Trees.**

722

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

726

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

729

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

731

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

D.B.H. of removed tree	Replacement trees
734 Less than 12 inches	1
735 12 inches to less than 24 inches	2
736 24 inches to less than 36 inches	3
737 36 inches or more	4

739

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

742

743 (5) The property owner shall be responsible for maintenance of the mitigation trees, such
744 responsibility to include replacement of unhealthy and dead mitigation trees. The
745 property owner shall submit to an on-site inspection of the planted/preserved trees 12
746 months after the approval of the tree plan or tree removal permit. If it is determined that
747 the planted tree is dead, diseased or otherwise not in compliance with provisions of this
748 code and the original approved mitigation in the tree plan, the property owner shall be
749 provided notice and directed to correct any such deficiencies and replace all
750 noncompliant materials within 60 days or such longer period specified by the City
751 Arborist taking into account planting seasons.

752

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

754

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

757

758 (a) With City approval, provide for use of a site on City public lands providing that the
759 applicant furnishes all necessary services incidental to such mitigation on public
760 property, including but not limited to funding of tree maintenance and labor.
761 Preference shall be given, where feasible, to off-site mitigation with new street trees
762 abutting the site, in which case the property owner shall be required to enter into a

763 written agreement for planting and maintenance thereof in accordance with §253-
764 12.C.

765

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

769

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

775

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

784 **§ 253-34 Waiver; Administrative appeals.**

785

786 A. If an application for a tree removal permit does not meet the requirements of § 253-29.A(2),
787 and the City Arborist, taking into account the natural area plan, is of the opinion that the
788 purposes of this ordinance would not be served by the denial of that application, then the
789 Building Inspector may make a written request the Park and Shade Tree Commission to
790 approve a waiver of the pertinent requirement of § 253-29.A(2). The request of the Building
791 Inspector shall set out the professional opinion of the City Arborist and factual findings in
792 support of that opinion. If, upon review at a public hearing, the Park and Shade Tree
793 Commission makes a finding that the purposes of this ordinance would not be served by the
794 denial of the application, then the Building Inspector may approve the application, in whole
795 or in part.

796

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

801

802 (1) Notice of appeal. A notice of appeal must be in writing and shall include the applicant's
803 grounds for appeal. The notice of appeal must identify the error upon which the appeal is
804 based and the grounds for reversal of the Building Inspector's decision. Any additional

805 exhibits or evidence which the applicant would like the Park and Shade Tree Commission
 806 to consider on appeal may be filed with the notice of appeal. Upon the filing of a notice
 807 of appeal, the Building Inspector shall transmit to the City Manager all the papers
 808 constituting the record of the basis for the Building Inspector's decision.

809

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

817

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

825

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

830

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

833 **§ 253-35 Enforcement and remedies.**

834

835A. While any application is pending for an action for which a permit is required under this
 836 article or after the grant of any such application, or while a request for approval of a tree plan
 837 is pending or after the grant of any such approval, the City may inspect a lot to determine if
 838 any activities have occurred in violation of this article or contrary to an approved tree plan.

839 Violations of this article, or failure to maintain all required trees as reflected in the approved
 840 tree plan:

841 1. Shall be subject to the noncompliance fee in the amount of four times the applicable
 842 tree-removal permit fee;

843 2. Shall be subject to the applicable fee in lieu of mitigation if the property owner shall
 844 fail to obtain approval for a mitigation plan;

- 845 3. Shall be grounds for action by the City Arborist, the Board of Adjustment, the Park
 846 and Shade Tree Commission and any other appropriate City official or entity for
 847 appropriate action, including but not limited to:
- 848 a. postponement of action or denial of a pending application,
 - 849 b. revocation of any issued building or demolition permit or certificate of
 850 occupancy,
 - 851 c. revocation of any issued permit for tree removal or land clearance, and
 - 852 d. specific performance or other equitable relief in the Chancery Court.

853 **§ 253-36 Violations and penalties.**

854

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

863

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

866 **§ 253-37 Severability; repealer.**

867

868 A. If any section, part of a sentence, paragraph, phrase or word of this article is for any reason
 869 held to be unconstitutional, inoperative or void, such holding shall not affect the remaining
 870 portions hereof and it shall be construed to have been the legislative intent to pass this article.
 871

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

874 **§ 253-38 When effective.**

875

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

879

880

881

882 *Proposed DRAFT amended Tree Code as approved by the Planning Commission on June 13, 2014.*

EXHIBIT #2

DISCUSSION OF CHANGES BETWEEN THE CURRENT AND PROPOSED AMENDED TREE ORDINANCE

The Mayor and City Commissioners passed a resolution in December 2012 requesting the Planning Commission to conduct a study related to the City's objective to maintain and increase the overall tree canopy within the City. One of the specific task was to review and propose amendments to the City's Tree Ordinance which was enacted in January 2006.

The Planning Commission spent considerable time in trying to assess how well the ordinance has served the community for the intervening years it has been in effect, and what improvements and amendments might be considered to perpetuate its purpose, which is to preserve our unique wooded seaside character that few coastal communities can claim. The ordinance has sustained many criticisms, the greatest of which are that it is complicated and difficult for the layman to understand in its legalese and cumbersome for the City to administer, and that it either infringes on the rights of property owners in the protections it requires or that it is not stringent enough to protect the tree canopy which is being lost.

Based on the input it received plus its own research, the Planning Commission determined that changes to the ordinance were warranted. However, because of the complexity of the ordinance, it concluded that little would be served by developing a long list of needed changes, each of would require even further deliberations by the Mayor and City Commissioners. Rather, the Planning Commission wanted to provide the Board of Commissioners with something more fully formed – the attached proposed amended Chapter 253 of the City Code that is titled "TREES".

Key Changes in the Proposed Tree Ordinance

In submitting the proposed ordinance, the Planning Commission was guided by the principle of "right tree, right place" and sought to:

- Simplify the rules for the protection of existing trees by focusing on trees that are relatively mature—4 inches or more diameter at breast height (§ 253-24. Definition of "Protected Tree")—and are of a "shade tree" species—capable of growing to a height of 30 feet or higher (§ 253-24. Definition of "Shade Tree"). City Arborist will no longer have to spend time on juvenile and small ornamental trees.
- Provide greater flexibility to remove trees when justified (§ 253-29. Tree-removal permits), and empower the City Arborist and the Building Inspector to request a Park and Shade Tree Commission waiver to allow tree removal (§ 253-33.A).
- Balance the greater flexibility for tree removal by strengthening the tree density requirement because only shade tree species would be counted (§ 253-26. Minimum tree density requirements).
- Replenish tree canopy in the long-term by leveraging the density and mitigation requirements to plant the "right tree" species, i.e. species of shade trees that are native to Delaware or are approved by the City Arborist (§ 253-25. Species to be planted).
- Simplify the permit application fee and the mitigation requirements (§ 253-29.E and § 253-33).

The Commission was able to make improvements in how the ordinance reads, eliminating ambiguities and repetitiveness, as well as ensuring that it coordinates with other parts of the City code. Unfortunately, this effort may not be immediately apparent, because it was not a simple matter of obvious changes and replacements, but also of reorganization. Additionally, the deletion of various terms such as "historic tree" and "evergreen tree," does not imply a lack of protection, but rather were based on the determination that those concepts were not useful in practice. Likewise, it is important to note that if one were to compare the old ordinance to the new, some sections that may appear to have been eliminated have simply been moved or incorporated in other sections.

The following is a distillation of the key changes and concepts that have been made in the draft revised ordinance being presented and the basis for those changes.

The City Arborist, to conform to accepted forestry practice, recommended the caliper or diameter measurement of a tree to be made at breast height (54" from the uphill side of a tree) replacing the measurement used in the current ordinance of 12" off the ground. The term Diameter at Breast Height or DBH is now indicated. A tree of a given caliper measured at DBH would tend to be larger and more robust as compared to a tree measured at the 12" height.

This becomes critical when the threshold for trees requiring protection is considered. In the interviews conducted by the Planning Commission it was learned that the City Arborist spends considerable effort dealing with trees for which a tree removal permit has been applied that contribute little to the overall tree canopy compared to those which are now distinguished in the amended Code as shade trees. Shade trees are further defined as trees of an acceptable type able to achieve a minimum of 30 feet in height at maturity. In that respect, by determining trees of 4" DBH or more to be protected, the Planning Commission has reduced overall the number of trees eligible for protection in the ordinance by eliminating the smaller trees, but at the same time has increased protection of the larger and potentially taller shade trees and to encourage their planting, where possible and appropriate. This is best summed up in a term heard repeatedly from tree professionals and in the literature -- "*Right Tree, Right Place*".

Right Tree refers to species of trees approved by the Delaware Forest Service or otherwise approved by the City Arborist that can be expected to provide desirable canopy for this seaside urban forest. In order to help maintain the existing canopy, existing non-native or invasive species trees meeting the size requirements would be protected. However, the planting of new non-approved trees would not be allowed or counted for meeting the density requirements.

Right Place encourages trees to be planted to meet the density requirements in the location on a lot where they are likely to grow to maturity without impediment. The minimum density requirement of trees on building lots (three trees on a 5,000 square foot lot) was not changed, but now only planting approved shade trees will be counted. This is expected to prompt better planning to achieve greater tree canopy over the long-term. Consideration is made for specific beach blocks where shade trees are not hardy. In addition, in order to increase those instances or triggers when planting of shade trees will be required for minimum tree density, it now includes building or renovation projects in excess of \$20,000.

As much as citizens are discouraged by examples of the removal of multiple and in some instances the removal of all trees on new building lots, the Planning Commission recognizes that even if trees close to the construction footprint are spared, their survival is not always assured due to the disruption of tree roots. And now that homes are often built to the maximum limits of lot coverage, the City Arborist, with support of the Building Inspector continues to have authority to ensure that reasonable efforts shall be

taken to save protected trees on a lot. Such efforts include altering the building design, alternate location of the building, parking area and other impervious surfaces, water retention or drainage infrastructure, or utilities.

The mitigation section of the Code concerning requirements for replacement, when protected trees are removed, has been rewritten in part due to the lack of available on-site and off-site public space for new trees to be planted within the City. [To offset this reduction, and to achieve greater overall tree canopy within the City, the Planning Commission is elsewhere recommending that the City investigate a program to increase the number of street trees, by making this space available for mitigation trees and taking on more responsibility for their care and maintenance.]

The Commission has attempted to address situations where owners of heavily treed lots should be allowed to remove certain trees for the benefit of improving the health of other trees, if such trees interfere with the root or crown development of a larger healthy protected tree.

Changes and clarifications have been made in the waivers/appeals section of the Code. There is now a process for those unique cases where the City Arborist determines that a strict interpretation of the Code would be contrary to the purpose of the Code that would spare the owner the time and expense of an appeal. Additionally, for those appeals of the City Arborist's decisions that are heard by the Park and Shade Tree Committee, the Code clarifies that the Committee may reverse, affirm or modify the decision, wholly or in part, only if it finds that the Arborist's decision is contrary to the specific provision of the ordinance, is not supported by evidence or is arbitrary.

The Mayor and City Commissioners must give this comprehensive rewrite of Chapter 253 of the City Code thoughtful review and welcome additional public comment. However, the Planning Commission believes that it has drafted a workable ordinance that addresses the issues and concerns identified in its year and half study and ensures that the interests of property owners to appropriately use their property are balanced with the interests of other citizens to enjoy the beauty and environmental benefits of trees to the community within the City.

NOTICE

THE COMMISSIONERS OF THE CITY OF REHOBOTH BEACH ON DECEMBER 21, 2012, ADOPTED RESOLUTION NO. 1212-01 WHICH READS AS FOLLOWS:

**A RESOLUTION
OF THE MAYOR AND COMMISSIONERS OF THE CITY OF REHOBOTH
BEACH, DELAWARE, REGARDING THE CITY'S TREES**

PURPOSE of the Resolution:

The unique character of Rehoboth Beach is created in large part by its urban forest. In order to preserve this character and ensure the beauty, enjoyment and environmental health of Rehoboth Beach's trees, this resolution calls upon the Planning Commission to conduct research and propose amendments, as necessary, to the City's ordinances, regulations, or procedures which preserve and augment that urban forest.

The 2010 Comprehensive Development Plan states that the existing tree ordinance *"needs to be refined to eliminate inconsistency and make it more efficient in ways that maintain its vision and simplify its enforcement."* Additionally, the 2004 and 2010 CDPs also call for the City to *"review and update its environmental protection and zoning codes and assign responsibility to ensure that all future buildings, developments, renovations, and partitionings are planned and executed to retain and plant the maximum amount of urban forest."*

Therefore, the City should review **all** of the ordinances and regulations that affect the ways in which the urban forest is to be protected, augmented and maintained on private and public lands.

CHARGE to the Planning Commission:

- 1) The Planning Commission is charged to 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.
- 2) In carrying out this assignment, the Planning Commission shall consider how best to insure that the interests of property owners to appropriately use their property are balanced with the interests of other citizens to enjoy the beauty and environmental benefits of trees to the community within the City.
- 3) The Planning Commission shall seek input from the City Parks and Shade Tree Commission, Board of Adjustment, City Manager, Public Works Department, Building and Licensing Department, City Arborist and other City, County and State officials in order to determine the effectiveness of existing ordinances and suggested measures for improving the ordinances, their interpretation, and their enforcement.

- 4) During the process of researching the ordinances and regulations, the Planning Commission shall establish a method of obtaining appropriate involvement from the citizens of the City of Rehoboth Beach, especially those who have obtained or been denied permits for tree removal under the current ordinances, and the neighbors of these citizens.
- 5) The Planning Commission shall also seek input from tree service companies, builders, developers and construction companies doing business within the City of Rehoboth Beach under the existing tree ordinance and other related ordinances and regulations.
- 6) In its research, the Planning Commission shall review the effectiveness of existing and established ordinances and protective measures from jurisdictions within the State of Delaware and around the country to determine what ordinances and regulations, policies, or powers create effective protection of trees and how such elements might be best incorporated into the ordinances and regulations of the City of Rehoboth Beach.
- 7) The Planning Commission is encouraged to contact state and local administrators and elected officials from other communities, and to use additional resources as needed to gain knowledge of the inherent impacts and benefits of such ordinances and regulations.
- 8) Recommendations from the Planning Commission may include the following:
 - a) Measures which make the tree ordinance easier to understand by property owners and enforcement authorities, and more equitable in its interpretation and application;
 - b) Measures for effective notice to neighbors and other interested parties of the intention to remove trees;
 - c) The use of the State of Delaware's list of approved or suggested trees in the ordinances of Rehoboth Beach;
 - d) A procedural and substantive plan to create a Community Forest Plan for the City, as called for in section 6.1 of the 2010 Comprehensive Development Plan;
 - e) Any other measures found appropriate in order to eliminate inconsistencies between ordinances and make enforcement of the tree ordinance more efficient and equitable.
- 9) The Planning Commission shall make recommendations regarding, and shall demonstrate the significant benefits of, any proposed ordinances or regulations, including the following:
 - a) The proper powers of city commissions or other regulatory bodies to effectively implement any new ordinances or regulations;

- b) The resources required for effective enforcement of any recommended ordinances or regulations;
- c) A plan for, and the resources required for, effective communication to and education of the citizens of Rehoboth Beach regarding such ordinances and regulations;
- d) Further steps to be taken in concert with DNREC and other State and County agencies to promote the effective protection of trees in the City.

REPORTING:

The Planning Commission shall develop a work plan for the timely completion of the work described in this resolution and provide monthly progress reports to the Mayor and Commissioners.

EXHIBIT #1

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Article I: City Parks and Shade Tree Commission; Regulations

§ 253-1 Definitions.

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

CITY ARBORIST

As defined in § 253-24

PARK TREES

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

STREET TREES

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

§ 253-2 Creation of Commission; membership.

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

§ 253-3 Term of office.

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

§ 253-4 Compensation.

Members of the Board shall serve without compensation.

35 **§ 253-5 Duties and responsibilities of Commission.**

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

45 **§ 253-6 Operation of Commission.**

46
47 The Commission shall choose its own officers, and make its own rules and regulations, keep
48 a journal of its proceedings. A majority of the members shall be a quorum for the transaction
49 of business.

50 **§ 253-7 Species to be planted.**

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

56 **§ 253-8 Spacing of trees.**

- 57
58 A. The spacing of street trees will be approved by the City Arborist.
59
60 B. All street trees planted on city-owned land shall conform to American Association of
61 Nurserymen Standards and be at least 1 1/4 ~~to 1 1/2 inches in diameter at breast height caliper~~
and at
62 least eight to 10 feet in height when planted.

63 **§ 253-9 Distance from curbs and sidewalks.**

64
65 All trees will be planted in the center of the area between the curb or curblines and sidewalks.

66 **§ 253-10 Distance from street corners and fireplugs.**

67
68 No street tree shall be planted closer than 30 feet to any street corner, measured from the
69 point of nearest intersecting curbs or curblines except as approved by the City Arborist. No
70 street tree shall be planted closer than 10 feet to any fire hydrant.
71

72 **§ 253-11 Utilities.**

73
74 No street trees other than small tree species approved by the City Arborist shall be planted
75 under or within 10 lateral feet of any overhead utility wire, or over or within five lateral feet
76 of any underground water line, sewer line, transmission line or other utility.

77 **§ 253-12 Maintenance.**

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

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

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

107 **§ 253-13 Tree topping and hat-racking.**

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

114 **§ 253-14 Pruning of overhanging trees.**

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

123
124B. The city [shall be responsible to prune trees on any street or municipal-owned property and the](#)
[city](#) shall have the right to prune any tree or shrub on private property when it intrudes
125 into the clear space above the street or sidewalk, interferes with the proper spread of light
126 along the street from a streetlight, or interferes with visibility of any traffic control device or
127 sign. The city shall have the authority to charge the cost of pruning to the property owner.

128 **§ 253-15 Removal of dead or diseased trees; costs.**

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

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

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§ 253-16 Removal of stumps.

All stumps of street and park 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.

§ 253-17 Interference with Commission.

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

§ 253-18 Abuse of public trees.

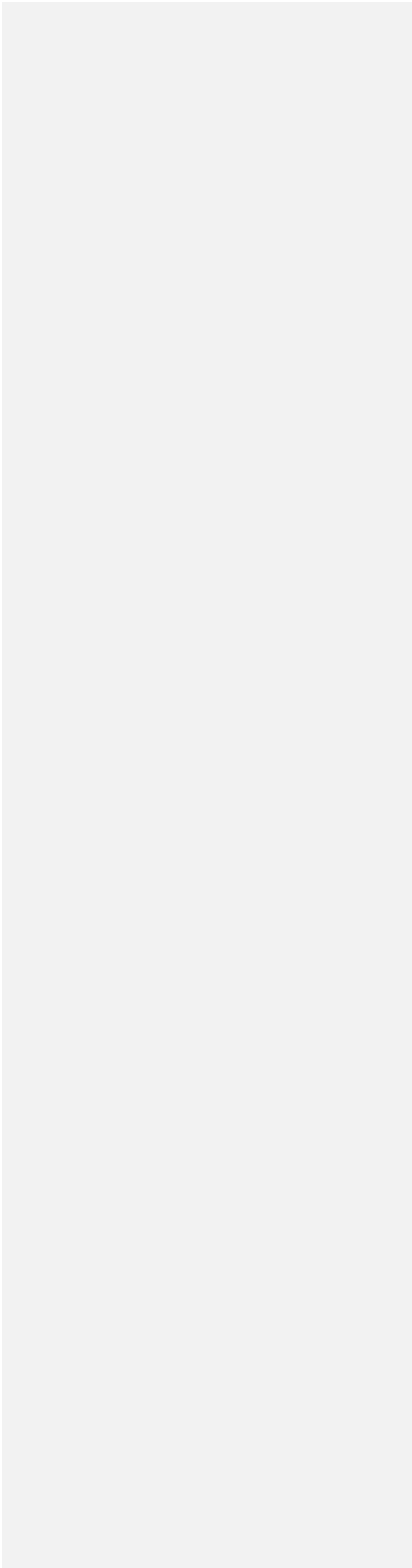
Unless specifically authorized by the Parks and Shade Tree Commission, no person shall intentionally damage, cut, carve, transplant or remove any tree; attach any rope, wire, nails, advertising posters or other contrivance to any tree; allow any gaseous liquid or solid substance which is harmful to such 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. Any person or persons who shall violate this section shall be jointly and severally liable to the city for all damage caused to public trees.

§ 253-19 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.

§ 253-20 Review of Commissioners.

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



180 **Article II: Shade Tree Ordinance**
181

182 **§ 253-21 Findings.**

- 183
- 184 The City Commissioners find that:
- 185
- 186 A. The City of Rehoboth Beach adopted the Comprehensive Development Plan in 2003
187 (certified by the State of Delaware in 2004), which calls for the preservation, protection and
188 conservation of trees within the City;
- 189
- 190 B. The City of Rehoboth Beach contains a diversity and abundance of trees that are of
191 economic, recreational, and environmental value to the City and makes it a desirable place
192 for residents and visitors;
- 193
- 194 C. The abundance of trees contributes to the City's unique wooded seaside character and
195 distinguishes the City from many other coastal communities;
- 196
- 197 D. The appearance of Rehoboth Beach contributes to the economic prosperity and general
198 welfare of the City;
- 199
- 200 E. Growth and development in the City of Rehoboth Beach often results in the removal of trees,
201 thereby contributing to their depletion; and
- 202
- 203 F. It is necessary to protect and manage trees as valuable assets in order to protect and enhance
204 the health, safety, and welfare of the citizens of Rehoboth Beach.

205 **§ 253-22 Purpose.**

206

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

208

209 A. Regulate the protection, planting, removal, and long-term management of trees within the
210 City that, in the case of private property, takes into account the natural area plan for that
211 property;

212

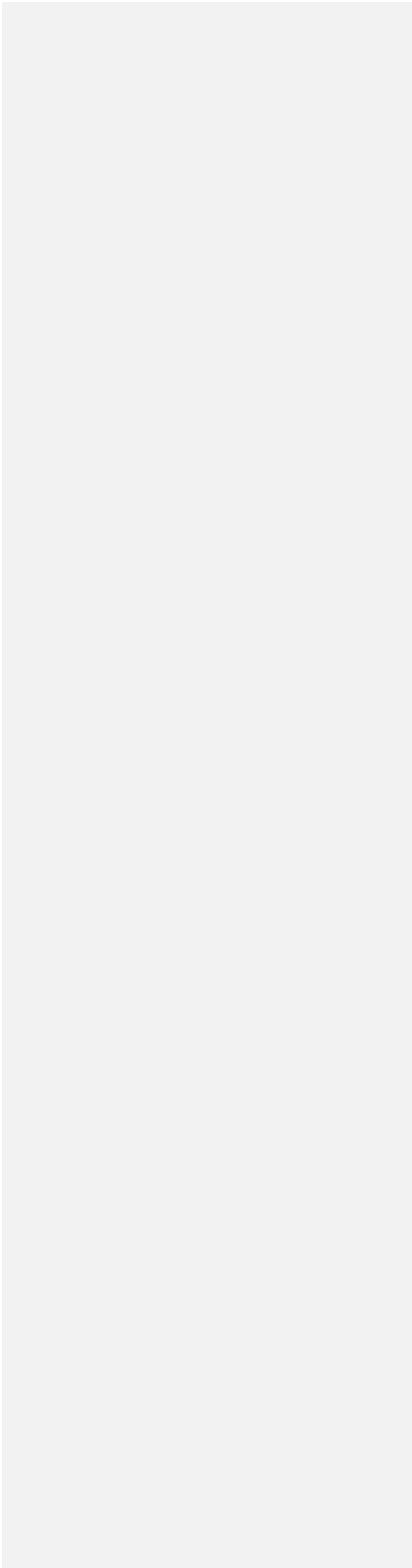
213 B. Require a survey of existing trees and a plan for tree preservation prior to development,
214 redevelopment or subdivision of a lot;

215

216 C. Establish a system of permits to assure density, correct maintenance, protection and removal
217 of trees on public and private property; and

218

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



220 **§ 253-23 Applicability.**

- 221
- 222 A. The provisions of this article apply to all land in the municipal boundaries of the City of
- 223 Rehoboth Beach.
- 224
- 225 B. Activities that require review and approval by the City Arborist are:
- 226
- 227 (1) Private maintenance or planting of trees on public land (§ 253-33.B), and
- 228
- 229 (2) All activities that require an approved tree plan (§ 253-28).
- 230
- 231 C. Activities that require a tree removal permit are all activities that, directly or indirectly,
- 232 cut down, substantially alter, destroy, remove, relocate, damage, or authorize any such act
- 233 involving a protected tree, except as otherwise specified in § 253-29.
- 234
- 235 D. Emergency Waiver.
- 236
- 237 The provisions of this article may be suspended or waived by the City during a period
- 238 officially declared emergency by the City Manager, such as a storm or other City
- 239 emergency.

240 **§ 253-24 Definitions and word usage.**

241

242 As used in this article, the following terms shall have the meaning indicated in this section.

243 Words not defined herein shall be interpreted so as to give them the meaning they have in

244 common usage and to give this article its most reasonable application.

245

246 **ANSI STANDARDS**

247 Tree standards set by the American National Standards Institute.

248

249 **BREAST HEIGHT**

250 4 feet, 6 inches above the ground, measured on the uphill side of a tree.

251

252 **CITY ARBORIST**

253 An employee of the City or an individual retained by the City on a contractual

254 basis to perform the duties identified in this chapter. Such person shall be trained in

255 arboriculture, forestry, horticulture, landscape architecture, or another related field

256 and have at least two years of working experience in the area of training, with

257 preference being given to any applicant who is a certified arborist recognized by

258 the International Society of Arboriculture.

259

260

261 **CITY PARKS AND SHADE TREE COMMISSION**

262 As established in § 253-2.

263

264 **COMMERCIAL PROPERTY**

265 Commercially zoned property.

266

267 **DAMAGE**

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

270

271 **D.B.H.**

272 Diameter at breast height of a tree.

273

274 **DEMOLITION**

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

277

278 **DEVELOPMENT**

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

281

282 **HAT-RACKING**

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

287

288 **HEALTHY**

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

290

291 **LINE TREE**

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

293

294 **LOT**

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

298

299 **NATURAL AREA**

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

302

303

304 **NATURAL AREA PLAN**

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

307
308 **NET BUILDABLE AREA**

- 309 (1) In the case of new construction, the land space to be occupied by the principal
310 structure to be built, which cannot exceed legal setback requirements.
311 (2) In the case of an existing building which is the principal structure, the land space
312 occupied by the structure.
313 (3) In the case of an existing structure for which a permit is sought for an additional
314 500 square feet or over, the total land space to be occupied by the existing
315 structure together with the proposed addition.
316

317 **PROTECTED TREE**

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

- 319 (1) A specimen tree or tree stand,
320 (2) A tree that is necessary and counted to meet the density requirement in § 253-26,
321 (3) An existing tree of ~~four-six~~ inches D.B.H. ~~or more of a species permitted by § 253-~~
322 ~~25.~~
323

324 **REMOVE OR REMOVAL**

- 325 (1) The actual removal of trees;
326 (2) Direct or indirect actions capable of resulting in the effective removal or death of
327 trees through damage or poison.
328

329 **RESIDENTIAL PROPERTY**

330 Residentially zoned property.
331

332 **SHADE TREE**

333 Any tree of a species that is capable of attaining a height of 30 feet or more at
334 maturity.
335

336 **SPECIMEN TREE**

- 337 Any tree in healthy condition that equals or exceeds twenty-four-inch D.B.H, and
338 that meets all of the following minimum standards:
339 (1) A life expectancy of greater than 15 years.
340 (2) A structurally sound trunk, not hollow and having no extensive decay and less
341 than 20% radial trunk dieback.
342 (3) No more than one major and several minor dead limbs (hardwoods only).
343 (4) No major insect or pathological problems.
344

345 **SUBDIVISION**

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

347 **TOPPING**

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

351 **TREE**

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

355 **TREE PROTECTION**

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

359 **TREE STAND**

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

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

367 **TRIM**

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

371 **§ 253-25 Species to be planted.**

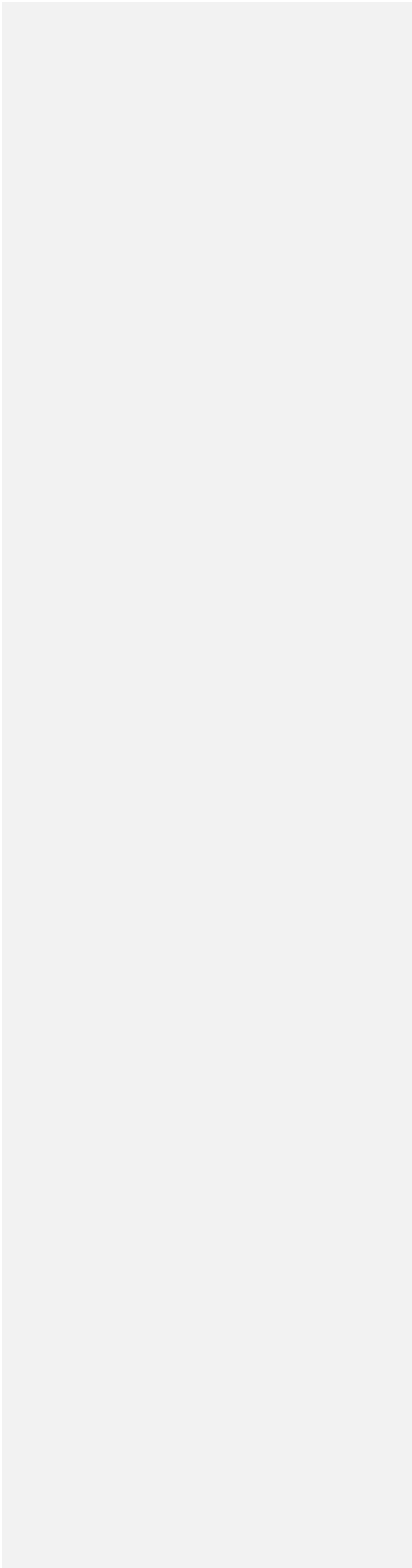
372
373 A. Trees planted to meet the tree density requirements of § 253-26, or the mitigation
374 requirements of § 253-33 of this article shall be shade trees and either:

- 375 (1) Species native to Delaware as classified by the Delaware Forest Service at the
376 time of City approval of the tree plan, or
- 377 (2) Non-native species approved by the City Arborist, to include the male ginkgo,
378 DED-tolerant elm, London plane, Southern magnolia and Japanese zelkova.

379
380 B. No tree species classified as an invasive tree species by the Delaware Forest Service
381 shall be planted to meet the tree density requirements of § 253-26, or the
382 requirements of § 253-33 of this article.

384 **§ 253-26 Minimum tree density requirements.**

385
386 A. All lots used for residential purposes, whether zoned residential or not, must maintain an
387 average minimum shade tree density of 26 trees per acre, subject to adjustments as stated in



388 this subsection. Shade tree density may be achieved by existing trees or planting of new
389 shade trees. The specific shade tree density requirements for each lot are as follows:

390

391 (1) Each single-family residence lot in a residence district shall have at least three shade trees
392 on the lot for each 5,000 square feet of land, or one shade tree for each 1,666 square feet
393 of land for lots smaller or larger than 5,000 square feet. In calculating the minimum tree
394 density required for a lot where dividing the square footage of the lot by 1,666 results in a
395 tree density requirement that contains a fractional number, that fractional number shall be
396 increased to the next highest number if the fractional number is 0.5 or higher.

397

398 (2) Each residence lot in a residence district other than a single-family residence lot and each
399 commercial or mixed-use or other lot not in a residence district shall have at least two
400 shade trees per dwelling unit.

401

402 B. In meeting the density requirements set forth in Subsection A(1) or (2) above, only existing
403 shade trees exceeding four inches D.B.H. and 12 feet in height, and new trees to be planted in
404 accordance with § 253-32 may be counted to meet the density requirements, provided that:

405

406 (1) A line tree may not be counted in calculating tree density under § 253-26.

407

408 (2) The location of the trees must provide adequate room for tree growth and health and shall
409 take into account aesthetic appearance;

410

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

415

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

419

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

424

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

428

429 E. Notwithstanding anything else to the contrary in this section, if a lot does not meet the density
430 requirements in Subsection A of this section as of January 24, 2006, then such property

431 owner shall not be required to meet such density requirements for such lot unless an
432 application is filed for a building permit relating to building/construction cost greater than
433 \$20,000 or for a demolition permit or for a subdivision of such lot; provided that, in the event
434 that an existing tree on such lot is or becomes dead or significantly diseased, thereby
435 reducing the tree density below the density required by Subsection A of this section, it shall
436 be removed and replaced by a tree of at least three inches D.B.H. and 12 feet high which is
437 of a species permitted by § 253-25 ; and provided, further, that the density requirements in
438 Subsection A of this section shall apply upon any conveyance or transfer of such lot after
439 January 24, 2006.

440
441 F. No tree-removal permit will be issued and no tree plan will be approved if it will result in a
442 tree density less than that specified in Subsection A of this section.

443 **§ 253-27 Maintenance of trees.**

- 444
- 445 (1) Property owners shall maintain all trees on their lots so that they are healthy and present
- 446 a neat and orderly appearance free of refuse and debris. Property owners may trim trees on
- 447 their lots as necessary to promote uniform healthy growth, a clean, neat and healthy condition
- 448 and to allow a tree to attain its natural size. Trees shall be trimmed to remove diseased or
- 449 dying portions. Lower limbs and suckers may be selectively removed to provide clearance
- 450 for pedestrians and vehicles and to comply with §253-14 A.
- 451
- 452 (2) Severe cutting back of lateral branches and canopy or topping or hat-racking trees is
- 453 expressly prohibited.
- 454
- 455 (3) With respect to trees that are preserved or planted pursuant to a property owner's
- 456 approved tree plan under § 253-28
- 457
- 458 (a) The property owner shall submit to an on-site inspection of each planted or preserved
- 459 tree 12 months after the approval of the plan or permit, and thereafter as needed.
- 460
- 461 (b) If it is determined that said tree is dead, diseased or otherwise not in compliance with
- 462 provisions of this code and the original approved tree plan, the property owner shall
- 463 be provided notice and directed to correct any such deficiencies and replace said tree
- 464 or all noncompliant materials within 60 days, or such longer period specified by the
- 465 City Arborist taking into account planting seasons.

466 **§ 253-28 Submission of plans with applications for building or demolition permit, for**
467 **subdivision or site plan approval, or tree-removal permit.**

468
469 A. Tree Plan Required

- 470
- 471 (1) City approval of a tree plan shall be required as part of every application for a:

- 472
- 473 (a) Tree removal permit;
- 474 (b) Demolition permit;
- 475 (c) Building permit relating to building/construction cost greater than \$20,000 for
- 476 a residence or for the lot on which a residence is located;
- 477 (d) Subdivision of land; and
- 478 (e) Site plan review.

479

480 (2) Review of such tree plan, and any approval thereof, will proceed in the same manner by

481 the same City officials and/or entity responsible for reviewing and approving the

482 application for building permit, tree-removal permit, subdivision or site plan approval, or

483 demolition permit.

484

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

- 486
- 487 (1) Dimensions of the property.
- 488
- 489 (2) Location, type and D.B.H. of all existing trees of three inches D.B.H. or greater, and of all
- 490 tree stands, and a notation of whether each such tree or tree stand is to be preserved or
- 491 removed.
- 492
- 493 (3) Location of all structures, parking areas, drives, vehicular use areas, curb cuts,
- 494 retention/detention areas, other improvements and other features on the lot as may be
- 495 required in the application for any item described in Subsection A. (1) of this § 253-28,
- 496 and a notation of what exists that shall remain or will be removed from the lot, and what
- 497 are proposed for creation or installation on the lot.
- 498
- 499 (4) Location of existing and proposed overhead or underground power lines and other utility
- 500 lines, such as but not limited to water and sewer, and adjacent rights-of-way.
- 501
- 502 (5) Location, type, height, D.B.H., and quantity of all trees proposed to be planted, and other
- 503 information as may be required for a mitigation plan described in § 253-33.
- 504
- 505 (6) General notes including mulching requirements, fertilization and planting details, and
- 506 such other information as needed;
- 507

508 ~~C. The City shall designate, as appropriate, one or more protected areas on any lot meeting the~~

509 ~~description in § 253-31 of this article when it is essential for the limited purpose of protecting~~

510 ~~the roots and trunk of a tree or trees during or after construction or demolition or other~~

511 ~~activity for which the application has been filed. [This is addressed in 253-31]~~

512

513 D. Tree plan review fee. A nonrefundable administrative fee of \$50 to offset the cost of

514 reviewing each plan required by this § 253-28 will be collected by the City, except when

515 submitting an application to remove a dead or diseased tree, in which case the fee shall be
516 waived.

517 **§ 253-29 Tree-removal permits.**

518
519 Tree-removal permits shall be applied for and obtained prior to beginning any activity on a
520 lot which is intended to or may reasonably affect any tree as described below in this section.
521

522 A. Tree removal.

523
524 (1) No person shall, directly or indirectly, cut down, substantially alter, destroy, remove,
525 relocate, damage, or authorize any such act involving a protected tree situated on any
526 land within the City of Rehoboth Beach without first obtaining a tree-removal permit. No
527 permit shall be issued to remove any protected tree unless removal is by a licensed tree
528 professional if, in the judgment of the City Arborist, professional removal is needed for
529 the protection of any property or persons. Before applying for a tree-removal permit, the
530 applicant shall clearly identify each tree to be removed by wrapping the tree trunk with a
531 red ribbon.

532
533 (2) Tree-removal permit.

534
535 (a) No tree-removal permit shall be issued unless the City finds that at least one of the
536 following criteria is satisfied with respect to each protected tree designated for
537 removal:

538
539 [1] In the case of an application for a building or demolition permit or for a
540 subdivision or site plan approval, the tree
541 i. is located within the net buildable area of a given lot as identified on the tree
542 plan, or
543 ii. the tree prevents reasonable development of a lot that is otherwise permissible
544 under City ordinances,
545 provided, however, that a tree-removal permit shall not be granted where the
546 applicant has failed to design and locate the proposed improvements,
547 demolition or subdivision so as to minimize the removal of trees consistent
548 with the permitted use of the lot and shall be granted only after reasonable
549 efforts have been made to save protected trees on a lot. Reasonable efforts
550 shall include, but not be limited to, alteration of building design; alternate
551 location of building, parking area and other impervious surfaces, water
552 retention or drainage infrastructure; or relocation of utilities;

553
554 [2] The tree is located within an existing or proposed public or utility company right-
555 of-way, and relocation of such right-of-way or the use thereof is not reasonably
556 practicable;

- 557
558 [3] The tree is located within an existing or proposed public easement, stormwater
559 management tract or facility, provided that only the minimum area reasonably
560 necessary for the public service or use shall be considered for purposes of
561 determining whether there is necessity for tree removal;
562
- 563 [4] The tree is located where it creates or will create a material safety or health hazard
564 ~~or nuisance~~ with respect to existing or proposed structures or vehicles or
565 pedestrian routes, and such hazard ~~or nuisance~~ is not innate to or commonly
566 associated with the existence of trees in general (for example, lightning, wet
567 leaves on the ground during rainstorms);
568
- 569 [5] The tree is located where it interferes with the installation, delivery or maintenance
570 of proposed or existing utility services to the lot and relocation of such services or
571 alteration of the tree is not reasonably practicable;
572
- 573 [6] The tree is determined by the City to be dead, significantly diseased, severely
574 injured or in danger of falling; ~~or~~
575
- 576 [7] The tree is located where it interferes with the root or crown development of a
577 ~~larger~~-healthy ~~protected specimen tree~~; or
578
- 579 [8] The tree is less than 12 inches D.B.H. and removal shall be mitigated by planting
580 a shade tree [other conditions? E.g., replacement within 4 feet of the location of
581 the removed tree].
582
- 583 (b) In the case of an application to remove 10 or more trees, no tree-removal permit shall
584 be issued unless the applicant provides a written erosion control plan [explain or
585 cross-reference] describing methods to control erosion which may be expected to
occur as a result of the proposed clearing or grubbing, and the applicant
demonstrates compliance with all other provisions of this article and state, county
and federal laws, rules and regulations.
- 586 B. Exempt activities. The following activities shall be exempt from the requirements of this
587 section:
588
- 589 (1) Removal of any tree in an existing utility easement or public right-of-way, provided such
590 work is done by or under the direct control of the operating utility company and said
591 company has received all necessary licenses or permits to provide utility service within
592 the easement and said company has documented the need for said removal. However, this
593 exemption shall not apply to the removal of any specimen tree or tree stand.
594
- 595 (2) Removal of any tree for the purpose of maintaining an existing legally required access to
596 a property.
597

598 (3) Removal of any tree which has been destroyed or damaged beyond saving, from extreme
599 weather conditions, insects, disease or fire, or which constitutes an immediate peril to life
600 or property, in any such case where it has been determined to be such by the City.
601

602 C. Display of permit. The applicant shall prominently display on the site the permit issued on a
603 sign prescribed by the Park and Shade Tree Commission. Such permit shall be displayed
604 continuously while trees are being removed or work done as authorized by the permit. As a
605 condition for the issuance of a permit, the applicant shall agree in writing to entry onto their
606 lot by representatives of the City to inspect the permit and activities at any time, and such
607 entry shall be lawful.
608

609 D. Application. Application for a tree-removal permit shall be made in writing on the form
610 provided by the City.
611

612 (1) The application shall include but not be limited to the following:
613

614 (a) Statement as to the ownership interest in the lot;
615

616 (b) Legal description of the lot and a boundary survey or accurately scaled drawing
617 thereof;
618

619 (c) A tree plan for the lot, if required, meeting the standards of § 253-28 or 253-32 of this
620 article;
621

622 (d) An erosion control plan, if required by § 253-28 of this article.
623

624 (2) If an application for building or demolition permit or for subdivision or site plan approval
625 contemplates activity on a lot which is intended to or may reasonably affect any tree as
626 described below in this section, then an application for tree removal permit shall be
627 submitted and processed concurrently. All items shown shall be properly dimensioned,
628 scaled and referenced to the property lines and setback requirements.
629

630 (3) The filing of an application shall be deemed to extend permission to the City to inspect
631 the property subject to such application, if inspection is found necessary for purposes of
632 evaluating the application.
633

634 (4) For those applications that are not being processed concurrently with an application for a
635 building or demolition permit or for a subdivision or site plan approval, in which case
636 longer periods of time may occur, the City shall have a reasonable time following the
637 receipt of a completed application within which to make a determination on whether a
638 permit shall be issued as requested. If the permit is not issued, the City shall indicate in
639 writing that the application is denied.
640

641 (5) Any permit issued hereunder shall remain valid for a term of six months and may be
642 renewed for a second six-month period upon request to the City or the City may require
643 re-application and full review. If a permit required by this section has been issued
644 concurrently with the building or demolition permit or approval of an application for a
645 subdivision or site plan, then such permit shall run concurrently with the building or
646 demolition permit or approved subdivision or site plan and may be renewed together
647 therewith.

648
649 (6) Issuance of a tree removal permit shall constitute approval of the tree plan.

650
651 E. Permit application fees.

652
653 (1) Tree-removal permit fee. A nonrefundable administrative fee will be collected by the
654 City:

655
656 (a) 1 to 5 trees: \$50

657
658 (b) 6 to 10 trees: \$100

659
660 (c) More than 10 trees: \$500

661
662 The fee shall be waived for any application to remove a dead or diseased tree [or an invasive species tree](#).

663 **§ 253-30 Tree plan inspection.**

664
665 Following the receipt of the completed application for a tree-removal permit or approval of a
666 tree plan, the City Arborist shall schedule and conduct an inspection of the proposed
667 development site within such period of time as may reasonably be required to verify the
668 information contained on the application. Following inspection, the City Arborist, consistent
669 with the purpose of this article, shall advise the applicant of any recommended changes in the
670 applicant's proposed tree removal, protection or replanting plans.

671 **§ 253-31 Tree protection during construction.**

672
673 ~~The City may designate, in special circumstances, a protected area.~~ [There shall be one or](#)
674 [more tree protection zones](#) on the site that shall [extend not less than six feet from the trunk](#)
675 [of any protected tree and from the trunk of any tree on an adjacent lot, and shall](#) be subject
to the following provisions:

676 A. No person shall encroach or place solvents, material, construction machinery or temporary
677 soil deposits within ~~six feet from the trunk of any protected tree or any tree within~~ a tree
678 protection zone, ~~including any tree on an adjacent lot for which the protection zone extends~~
679 ~~into the site~~, without prior approval of the City Arborist. The City Arborist may authorize,

680 for good cause, a reduction in the protected area to not less than four feet from the trunk of
681 ~~any protected tree or~~ any tree within a tree protection zone.

682

683 B. Before development, land clearing, filling or any land alteration, the developer shall ~~be~~
684 ~~required to~~ erect suitable active or passive protective barriers, signs, mulch and other tree
685 protection measures as required by the City Arborist. Authorization to remove the
686 protective ~~measures~~devices shall be in writing by the City Arborist or by the issuance of a
687 final certificate of occupancy. Inspection of tree protection ~~barriers~~measures is required
688 prior to any land disturbance or development. The City Arborist shall be contacted to
689 schedule an inspection time.

690 C. All tree protection measures~~devices~~ must remain in functioning condition until removal is
authorized

691 by the City.

692

693 D. ~~Whether or not the City has designated a protected area, a~~Any tree designated in the tree plan
694 to be saved, which is damaged during construction or as a result of construction, as
695 determined by the City Arborist, shall be treated in accordance with accepted ISA Standards,
696 or if removed, shall be mitigated in accordance with § 253-33. In addition, penalties specified
697 in § 253-36 shall apply.

698 **§ 253-32 Tree planting requirements.**

699

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

702

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

705

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

709

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

714

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

718

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

721 **§ 253-33 Mitigation of Protected Trees.**

722

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

726

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

729

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

731

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

734	D.B.H. of removed tree	Replacement trees
735	Less than 12 inches	1
736	12 inches to less than 24 inches	2
737	24 inches to less than 36 inches	3
738	36 inches or more	4

739

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

742

743 (5) The property owner shall be responsible for maintenance of the mitigation trees, such
744 responsibility to include replacement of unhealthy and dead mitigation trees. The
745 property owner shall submit to an on-site inspection of the planted/preserved trees 12
746 months after the approval of the tree plan or tree removal permit. If it is determined that
747 the planted tree is dead, diseased or otherwise not in compliance with provisions of this
748 code and the original approved mitigation in the tree plan, the property owner shall be
749 provided notice and directed to correct any such deficiencies and replace all
750 noncompliant materials within 60 days or such longer period specified by the City
751 Arborist taking into account planting seasons.

752

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

754

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

757

758 (a) With City approval, provide for use of a site on City public lands providing that the
759 applicant furnishes all necessary services incidental to such mitigation on public
760 property, including but not limited to funding of tree maintenance and labor.
761 Preference shall be given, where feasible, to off-site mitigation with new street trees
762 abutting the site, in which case the property owner shall be required to enter into a

763 written agreement for planting and maintenance thereof in accordance with §253-
764 12.C.

765
766 (b) Pay a fee in lieu of mitigation in the amount of \$500 for each replacement tree
767 required by Subsection A(3) that is not actually planted either on-site or pursuant to
768 approved off-site mitigation.

769
770 (32) Tree preservation account. Moneys received from the property owner as a fee in lieu of
771 mitigation will be placed in the City's Tree Preservation Account for planting trees on
772 public property, or as the City declares appropriate to preserve and manage trees on
773 public property for the purpose of protecting the health, safety and welfare of citizens of
774 Rehoboth Beach.

775
776 C Tree protection as justification for variance. The interest in preserving a specimen tree shall
777 be considered prima facie a unique or special condition or circumstance peculiar to the land
778 involved for the purpose of application for a variance from the literal requirements of a land
779 development ordinance, such as building setbacks, parking space requirements, or minor or
780 residential street right-of-way widths, providing adjustments are made elsewhere on the site
781 to preserve the maximum permitted lot coverage and the total minimum number of parking
782 spaces, and provided safety precautions are taken to offset any hazard resulting from
783 decreased right-of-way widths. Any such request shall be heard by the Board of Adjustment.

784 **§ 253-34 Waiver; Administrative appeals.**

785
786 A. If an application for a tree removal permit does not meet the requirements of § 253-29.A(2),
787 and the City Arborist, taking into account the natural area plan, is of the opinion that the
788 purposes of this ordinance would not be served by the denial of that application, then the
789 Building Inspector may make a written request the Park and Shade Tree Commission to
790 approve a waiver of the pertinent requirement of § 253-29.A(2). The request of the Building
791 Inspector shall set out the professional opinion of the City Arborist and factual findings in
792 support of that opinion. If, upon review at a public hearing, the Park and Shade Tree
793 Commission makes a finding that the purposes of this ordinance would not be served by the
794 denial of the application, then the Building Inspector may approve the application, in whole
795 or in part.

796
797 B. Any person aggrieved by a decision involving the grant or denial of an application for a tree-
798 removal permit may appeal to the City Park and Shade Tree Commission. A written notice of
799 appeal must be filed with the City Manager within 30 days of the date of the decision which
800 is the subject of the appeal.

801
802 (1) Notice of appeal. A notice of appeal must be in writing and shall include the applicant's
803 grounds for appeal. The notice of appeal must identify the error upon which the appeal is
804 based and the grounds for reversal of the Building Inspector's decision. Any additional

805 exhibits or evidence which the applicant would like the Park and Shade Tree Commission
 806 to consider on appeal may be filed with the notice of appeal. Upon the filing of a notice
 807 of appeal, the Building Inspector shall transmit to the City Manager all the papers
 808 constituting the record of the basis for the Building Inspector's decision.

809
 810 (2) City response; hearing. Within 15 days of the filing of a notice of appeal, the Building
 811 Inspector may file a written response to the notice of appeal with the City Manager. A
 812 copy of any written response shall be mailed to the applicant by the City. The Park and
 813 Shade Tree Commission shall then set a reasonable time for a hearing of the appeal and
 814 give public notice, as well notifying the parties in interest, and decide the appeal within a
 815 reasonable time. Any party to the appeal may appear at the hearing in person, by agent, or
 816 by attorney.

817
 818 (3) Authority of the Park and Shade Tree Commission. The Park and Shade Tree
 819 Commission shall have the authority to hear and decide appeals where it is alleged that
 820 there is error in any decision made by the Building Inspector on an application for a tree-
 821 removal permit. In exercising its authority, the Park and Shade Tree Commission may
 822 reverse or affirm, wholly or in part, or may modify the Building Inspector's decision, only
 823 if it finds that the Building Inspector's decision is contrary to a specific provision of this
 824 ordinance, is not supported by substantial evidence, or is arbitrary or capricious.

825
 826 (4) Additional restrictions. In deciding appeals, the Park and Shade Tree Commission may
 827 impose any such additional restrictions or standards as may be necessary to protect the
 828 health and safety of workers and residents in the community, and to protect the value and
 829 use of property in the City.

830
 831 C. Administrative appeal fee. An administrative appeal fee in the amount of \$250 shall be paid
 832 to the City upon the filing of a notice of appeal.

833 **§ 253-35 Enforcement and remedies.**

834
 835A. While any application is pending for an action for which a permit is required under this
 836 article or after the grant of any such application, or while a request for approval of a tree plan
 837 is pending or after the grant of any such approval, the City may inspect a lot to determine if
 838 any activities have occurred in violation of this article or contrary to an approved tree plan.
 839 Violations of this article, or failure to maintain all required trees as reflected in the approved
 840 tree plan:
 841 1. Shall be subject to the noncompliance fee in the amount of four times the applicable
 842 tree-removal permit fee;
 843 2. Shall be subject to the applicable fee in lieu of mitigation if the property owner shall
 844 fail to obtain approval for a mitigation plan;

- 845 3. Shall be grounds for action by the City Arborist, the Board of Adjustment, the Park
 846 and Shade Tree Commission and any other appropriate City official or entity for
 847 appropriate action, including but not limited to:
- 848 a. postponement of action or denial of a pending application,
 - 849 b. revocation of any issued building or demolition permit or certificate of
 850 occupancy,
 - 851 c. revocation of any issued permit for tree removal or land clearance, and
 - 852 d. specific performance or other equitable relief in the Chancery Court.

853 **§ 253-36 Violations and penalties.**

854

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

863

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

866 **§ 253-37 Severability; repealer.**

867

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

871

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

874 **§ 253-38 When effective.**

875

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

880

881

882 *Proposed DRAFT amended Tree Code as approved by the Planning Commission on June 13, 2014.*

Revised Red-Line Draft By B. Patterson 4/16/2016
Incorporates Suggestions By L. Lingo, City Arborist (4/8/2016)

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**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

June 13, 2014

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:31 p.m. by Chairman Preston Littleton on Friday, June 13, 2014 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Mr. Francis Markert called the roll:

Present: Mr. Brian Patterson (arrived at 6:36 p.m.)
 Mr. Harvey Shulman
 Mr. Paull Hubbard
 Mr. David Mellen
 Chairman Preston Littleton
 Mr. Francis Markert, Jr.
 Ms. Lynn Wilson
 Mr. Michael Strange

Absent: Mrs. Jan Konesey

Also Present: Ms. Terri Sullivan, Chief Building Inspector

Also Absent: Mr. Glenn Mandalas, City Solicitor

A quorum was present.

VERIFICATION OF MEETING NOTICE

Ms. Ann Womack, City Secretary, verified that the Agenda was posted at City Hall, Building and Licensing Department and the City website on June 6, 2014. The Agenda was sent to Cape Gazette, Coast Press and Delaware State News on June 6, 2014. An E-News blast was also sent out on June 6, 2014.

APPROVAL OF MINUTES

No minutes were available for approval.

CORRESPONDENCE

Correspondence received will be read into the record when the Other Business portion of the meeting is held.

OLD BUSINESS

There was none.

NEW BUSINESS

Building Inspector Terri Sullivan received a request for a 60 day extension with regard to the conditionally approved partitioning for 49 Park Avenue.

Chairman Littleton noted that Delmarva Power has not connected electricity to the house. This violates the ability to declare the house a living unit. The deadline for the approval of the partitioning is July 10, 2014. The next meeting of the Planning Commission is July 11, 2014. Notification came in less time to be able to post it on this Agenda. This matter will be placed on the Agenda for the July 11, 2014 Planning Commission Meeting.

OTHER BUSINESS

Chairman Littleton called for continued discussion of the impact on adjacent neighbors of swimming pools being constructed within residentially zoned areas and possible recommendations.

Correspondence:

1. Letter received June 14, 2014 from John and Leah Rogers, 45 Oak Avenue, that due to noise with swimming pools, they are requesting that swimming pools should not be allowed to be constructed with the two houses being built on the properties which abut their property, and a second issue is with

- lessening the noise from existing pools on rental properties in residential areas.
2. Email received June 13, 2014 from City Solicitor Glenn Mandalas regarding noise and swimming pools. Enforceability of a zoning regulation depends upon whether the regulation addresses a health, welfare or safety concern within the community. Based upon that standard, it is unlikely an absolute ban on swimming pools would be sustainable if the ban was challenged. The explanations of noise that typically accompanies or is generated by a swimming pool and the lot coverage created by a swimming pool do not seem to be of the type that would be necessary for a swimming pool prohibition.

Chairman Littleton noted that in the report to the City Commissioners at the Planning Commission's last meeting, there was a brief statement from the members to inform the City Commissioners that this matter of swimming pools has been on the agenda. Feedback provided to Chairman Littleton was that there had been discussion among the City Commissioners and the public, and this matter would be addressed in the future. Since then, this matter had alerted builders/developers and property owners who have issues concerning swimming pools.

Mr. Harvey Shulman disagreed with City Solicitor Glenn Mandalas' email. Different things happen on properties concerning structures and uses. A structure can have different uses. There are reasons why there is zoning that do not only deal with whether the structure can be built, but also what kind of uses take place on a property. In the Zoning Code, there are restrictions specifically on certain types of structures and uses. The Code imposes certain restrictions on garage apartments, signage, etc. All of these things somehow relate to some finding about public health, welfare and environment. The notion, without any research or study for someone to say that restrictions cannot be put on swimming pools, is a completely uninformed opinion. The Planning Commission has heard and seen enough that swimming pools are unique structures. There are effects that swimming pools may have on the environment, neighbors of the community and the lot itself which are different from other structures. All of the facts need to be considered when looking at pools. If there are significant problems in terms of the structure of pools, what it does to the lot and how pools are used in terms of what they attract, whether it is people, noise, etc., there may be a basis for the City to treat swimming pools differently from other structures. With regard to the other aspects of the pool problem, the noise levels and rules during the day are different than the noise levels at night. The City has a noise ordinance which says that after 11:00 p.m. until 8:00 a.m., there cannot be noise from an adjacent lot that is plainly audible inside a residence on a neighboring lot. The problem is that frequently the "plainly audible" standard is not enforced in the City. A lot of the problems that relate to pools particularly late at night could be dealt with by better enforcement of the noise ordinance. Equipment such as pumps are structures, and according to the Code, these types of structures are only to be located in certain areas. The noise ordinance applies to noise from pumps. Mr. Shulman suggested that the Planning Commission should look at the issue of pools particularly because a lot of pools are responsible for the destruction of trees. The Planning Commission should look at pools with regard to what issues they present, and the noise issues.

Ms. Lynn Wilson thought that noise from pools is a health, safety and welfare concern. There should be immediate action, and a moratorium on swimming pools.

Mr. David Mellen said that there are concerns with pools and rental properties. There should be a moratorium until the issues around pools can be defined and studied and written into code. Facilities around pools can be designed better than what has been done in the past. Equipment could be located inside the house or in the crawlspace. Lighting can be only ground lighting which would not shine onto neighbors' properties. Noise barriers can be defined. There are issues around the way pools are currently being used. The City has to study this and come up with a solution.

Chairman Littleton said that the uniqueness about pools is that there is another foundation which impacts trees. The contour of land is affected because of water runoff. He noted that this is a Board of Commissioners issue rather than a Planning Commission issue. Articulate the issue and pass it to the Commissioners.

Mr. Markert noted that this is an issue which has significant impact to trees and the future of maintaining the urban forest. The behavioral aspects regarding pools aside from the structural ones seems to be coming from the notion that these are rental properties, and that is significant. The Planning Commission needs to bring its awareness to the attention of the Commissioners.

Mr. Michael Strange said that with the update to the Comprehensive Development Plan (CDP) coming up, several issues could be addressed. The context can be much larger than it was in the past with regard to zoning and the building code. Many properties that have been developed are not in the context of a residential community. They are being developed as a commercial enterprise within a residential setting. The Code and

zoning have not been able to deal with that so there is a spillover of noise, etc.

Mr. Brian Patterson said that another health, safety and welfare issue which needs to be addressed is the discharge of chlorinated water into the stormwater system which then goes into the lakes. Noise, light and impact on trees are all things that are not unique to swimming pools and could be addressed more comprehensively and thoughtfully. The nature of the community during the summer in particular has changed a lot since the series of building booms. The business of residential rentals in the City can be addressed immediately and should be properly regulated. Informing renters, enforcing the rules, having penalties and confiscating deposits, etc. does not happen near as often as it should. The rental issue is the key.

Chairman Littleton thought that it would be worthwhile to schedule a joint meeting of the Planning Commission and the Board of Commissioners to have a discussion on this matter. The Planning Commission should forward a recommendation letter to the City Commissioners with the letter from John and Leah Rodgers, 45 Oak Avenue attached.

Public Comment:

1. John and Leah Rogers, 45 Oak Avenue, voiced concern about neighbors with swimming pools, rentals and noise. They feel their rights have been violated.

Building Inspector Terri Sullivan was requested by the Planning Commission to assemble a list of swimming pools permits for three years.

The Planning Commission will communicate with the City Commissioners that this is an issue and recommend a joint meeting.

Chairman Littleton called for the review and discussion of the draft transmittal report and recommendations to the Board of Commissioners with regard to the resolution regarding the City's Trees passed by the Mayor and City Commissioners asking the Planning Commission to research and propose amendments, as necessary, to the City's ordinances, regulations or procedures which are designed to protect and augment the City's urban forest in order to ensure the environmental health, beauty and enjoyment of Rehoboth Beach's trees; review, discussion and possible finalization of the working draft of an amended City Tree Ordinance; the identification of any additional data needs and plan to attain the same; and public comment.

Edits to the draft are:

1. Line 40. Change "...special matter of question..." to "...special matter or question..."
2. Line 135. Change "him" to "the owners".
3. Line 502. Change "...by wrapping the tree..." to "...by wrapping the tree **trunk**..."
4. Line 591. Change "...meeting the standards of §25328 or 253-31..." to "...meeting the standard of **§253-28 or 253-32**..."
5. Lines 812-21. Rewrite to read. Violations of this article, or failure to maintain all required trees as reflected in the approved tree plan:
 - Shall be subject to the noncompliance fee in the amount of four times the applicable tree-removal permit fee,
 - Shall be subject to the applicable fee in lieu of mitigation if the property owner shall fail to obtain approval for a mitigation plan,
 - Shall be grounds for action by the City Arborist, the Board of Adjustment, the Parks and Shade Tree Commission and any other appropriate City official or entity for appropriate action, including but not limited to postponement of action or denial of a pending application, revocation of any issued building or demolition permit or certificate of occupancy, revocation of any issued permit for tree removal or land clearance, and action for specific performance or other equitable relief in the Chancery Court.

Mr. Markert made a motion, seconded by Mr. Strange, to approve the draft revision to the tree ordinance as corrected and be provided with recommendations and the cover to the Commissioners.

Mr. Shulman read his statement. "Rehoboth Beach's tree ordinance addressing the treatment of trees on private property has been in effect for eight years since 2006. At the time it was enacted, it was a groundbreaking ordinance, and it was controversial with a number of property owners who disagreed about it drew the right balance between private property rights of individual landowners and the rights of the public at large to continued enjoyment of our treed environment. As is the case with almost any law, over the years complaints about the tree ordinance have grown with some residents complaining that our

precious City is still losing too many trees despite the existence of the tree ordinance, and with other residents complaining the tree ordinance is too restrictive in prohibiting the removal of trees and/or requiring the replacement of trees. Although there have also been complaints that parts of the tree ordinance are too complicated and should be simplified, and there is some justification for more simplicity, many of those complaints about simplicity cannot easily be separated from the more specific criticisms from the residents who simply believe the tree ordinance is too restrictive in prohibiting removal of trees. Faced with these complaints, the City Commission asked the Planning Commission to make recommendations in regard to the tree ordinance. As with every task the Planning Commission has taken on, it pursued this task conscientiously and carefully. The Chairman is to be commended for continuing to keep our efforts moving. Commissioner Patterson is to be commended for putting a great amount of time and thought into redrafting the tree ordinance for our initial review, and then redrafting it again and again. The Planning Commission has had several meetings to discuss the general principles that should guide us as well as the specific language for changes that might be recommended to the City Commission. That brings us to this day. It is with sincere regret, however, I must vote against the proposal we are presenting to the City Commission. There is only one significant benefit I can see in the Planning Commission's proposal. The redrafted ordinance does to some degree respond to complaints that the existing tree ordinance is too complicated, and it does so by proposing a somewhat simplified ordinance. But simplification in and of itself cannot divorced from the substance of the proposal, and is in this regard as the substance that the Planning Commission proposal falls far short in drawing the proper balance between private property rights and the public's interest in protection of the treed environment. Indeed, while the Planning Commission has listened to and acted upon complaints from those who wanted fewer restrictions on what can be done with trees on private property, unfortunately in my view, it has dismissed concerns about the ease with which too many trees, particularly large mature trees in setback areas, can be cut down. This is not just my own evaluation of the ordinance changes proposed today. Rather, midway through the process Commissioner Patterson candidly admitted it would be extremely difficult to add more tree protections to the tree ordinance. And so his draft was really directed at simplification and eliminating impediments to tree removal in some situations where the current tree ordinance prohibited removal, but there appeared to be reasons offered to allow removal. Commissioner Patterson honestly conceded his draft was not intended to find a way to protect against the destruction of large mature trees on lots where new construction is leading to destruction of all or almost all the trees on those lots. The existing tree ordinance is lengthy as is the Planning Commission's proposed redraft, and so although I can provide many, many examples where the Planning Commission's proposal fails, listing just a few of them will suffice. First, as I have just stated, there is not a single change proposed by the Planning Commission that will add more protection to the preservation of existing trees. To the contrary, the only honest evaluation of the Planning Commission proposal is that in terms of the effect on existing trees, the only thing it does is allow more trees to be taken down than is the case under the current tree ordinance. This failing is not just a hypothetical concern. We have all seen and the Planning Commission has received several complaints about the effects of new construction on multiple lots throughout the City. New large homes expanded to the maximum building area with additional patios and driveways, sometimes with in-ground swimming pools has led to the removal of multiple large mature trees, particularly within side setback areas and rear setback areas. That is the trees that are removed are entirely or almost entirely within the setback areas, not smack dab in the middle of the lot where of course they must be cut down if anything is to be built on the lot. The purported reasons for tree removal in these yard areas are many. Either the tree roots allegedly will be harmed by the new construction, and so the tree will die anyway, or the tree roots allegedly will eventually interfere with the new foundation of the new construction or the new swimming pool, and thereby harm the buildings or the swimming pool. Or the limbs of the trees that will overhang the new structure or new swimming pool are so large and heavy that even if they are healthy, they may nonetheless fall and damage the new structure and the inhabitants inside. Or the tree branches and leaves interfere with the sunshine that would otherwise fall upon the house or the swimming pool, and so on. In fact in one of the presentations the Planning Commission received from a tree expert, the expert stated that it would not be too difficult to find a tree expert who would be able to present his or her good faith professional opinion that trees in almost any setback areas of Rehoboth Beach on standard 5,000 square foot lots might be harmed by or might in turn cause harm to the adjacent structures. In other words, even though other tree experts might disagree with that conclusion and might find that trees in the setback areas can coexist with adjacent structures, a property owner would have no difficulty finding a professional to offer a good faith opposite conclusion. The result, of course in the eyes of many residents who complained to the Planning Commission, is that it is far too easy to remove large mature trees, especially in setback areas. The current tree ordinance actually provides a reasonable approach to protecting trees in the setback area. At least three parts of the current tree ordinance are relevant. First, §253-30(A)(2)(a)(7) specifically says that if a tree

prevents reasonable development of a lot that is otherwise permissible, then the tree can be removed unless the applicant has failed to design and locate the proposed improvements so as to minimize the removal of trees. Thus, it is clear from this section that the design and location of improvements must be done to minimize the removal of trees, not the other way around where the removal of trees can be done to minimize changes to the proposed structure and design locations. Second, §253-35(B) says that any protected tree, except historic trees, at least 24 inches caliper shall be preserved and protected in accordance with this section unless the tree prevents the reasonable development of the lot or is determined to be a material safety hazard or cause of material damage to structures or more desirable trees around it. But then there is a big "if". It says only if such hazard is not innate to or commonly associated with the existence of trees in general or if the tree is infected with significant disease from which it is unlikely to recover. Thus, because all trees have roots and limbs, it is hard to read this section to mean that the mere existence of tree roots and limbs in a setback area near a proposed structure means the trees should be removed as opposed to making design modifications in or relocating the proposed structure, or simply realizing that trees always innately present some risk. Third, §253-26(F) says that whether or not the tree density requirements in Subsection (A) of this section are met, all reasonable efforts must be 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, parking area, water retention or drainage infrastructure, or relocation of utilities. These words speak for themselves, and it is clear that if a large mature tree is in a setback area, to quote the law, all reasonable efforts including modestly changing the building design and/or relocating the building even by a few feet, should be made to preserve the tree. In other words, if a setback tree conflicts with a proposed structure, the proposed structure does not automatically win. In light of the above sections of the current tree ordinance, during the Planning Commission's months of deliberations, there were questions presented to the Building Inspector about how situations would be handled where large mature trees in the setback areas were claimed to be threatened by or be a threat to a proposed new structure. Specifically, the Building Inspector was asked how she has handled such situations. Although listening to the tapes of our meetings will provide the best details, it is fair to summarize her response as being that she would urge or in some cases require the property owner to flip a house or a porch or a garage or a driveway so as to minimize the interference between setback area trees and the structure or the driveway. But apart from flipping, she would not require any design change that might reduce the size of a planned structure. Apparently, even if that was a swimming pool or a porch, in one example when asked about a large porch that might be planned with a long length, i.e. 30 feet long x several feet wide, the question was raised about whether the property owner might be told that the porch can only be 27 feet long rather than 30 feet long because a smaller foundation would thus avoid a conflict with a large mature, healthy setback tree. The Building Inspector replied that she did not feel she had the authority under the tree ordinance to require a slightly smaller porch be built, and she argued that the tree ordinance should be specific if it is intended for her to have that authority. Likewise in another example, when asked about a proposed new house with a large basement that may require extensive excavation on a lot, the question was raised about whether the property owner might be told that the basement should be a few feet smaller in just one small corner, or in order to avoid a conflict with a large mature setback tree, or at least whether the property owner might be told that he/she must do the excavation using one-sided sloping and trenching accompanied by protective walls on the other three sides that would prevent cave-ins and would be more likely to preserve the setback area trees as opposed to doing the quicker and cheaper three or four-sided sloping trenching that would almost assure destruction of every tree in the adjoining setback areas. In that case, the Building Inspector replied that she did not feel the tree ordinance gave her authority to require that more costly construction techniques be used, assuming the alternative construction methods met OSHA requirements. And again she said that a more specific tree ordinance would be needed in her opinion to require this different type of construction technique. This can all be heard in the tapes. Although it is clear to many of us, the tree ordinance already gives Building & Licensing such authority, she urged such authority be more explicit if the City wants her to be able to take these protective steps. And yet, the Planning Commission has turned a deaf ear to these remarks. My point in giving the above examples is that they are real life situations that can and do occur in which the current tree ordinance is being interpreted not to minimize the removal of trees by using all reasonable methods. And although, as I said above, many residents believe the tree ordinance does give Building & Licensing such authority, apparently Building & Licensing does not think so. It is one thing for the Planning Commission to bemoan the loss of large mature setback trees in such situations, but it is an entirely separate thing for the Planning Commission to throw up its arms and refuse to clarify that such authority either currently exists or that the tree ordinance should be amended to specify such authority. If as part of its entire review process of the tree ordinance, the Planning Commission would have taken even one minor step to provide some greater protection for large mature setback area trees, I might find sufficient balance in the proposal to justify my favorable vote, but instead what the Planning

Commission has done in this instance and in other examples I could cite, is to declare that a new improved tree ordinance must allow for more tree removals. And nothing should be done in the language we proposed to impose or clarify restrictions that could prevent some types of tree removal desecrations that have taken place in the past several years associated with large new construction. My second example is more brief. It involves notice to the public about tree destruction, the posting of the removal permit and a meaningful right of the neighbor to appeal what may be the illegal grant of a removal permit. Right now, the tree ordinance says that any person who is aggrieved by the grant or denial of a tree removal permit can appeal the permit decision to the Parks & Shade Tree Commission. But of course this right to appeal is meaningless once the trees have been cut down. This is not like a building permit to build a structure that turns out to be illegal, and so a neighbor who appeals the building permit might get relief in the form of an order that requires the structure to be taken down or altered. With huge trees after they are cut down, you just cannot replant them. So if you come to your home one day and see that several huge trees on the lot next door are in the midst of being cut down, what is the sense of appealing? You may soon confront rainwater that pools up on your property because the water no longer soaks into the ground, or you may face the searing heat because a huge canopy that has been around for decades is now gone. But what can you do after the fact? The point is that in order for any appeal to be meaningful, a neighbor must know in advance there is a plan underway to cut down trees. And the tree ordinance provides for advance notice by saying in §253-30(C) that the applicant shall prominently display on the site the permit issued on a sign prescribed by the Commission. That is the current ordinance. But the testimony received by the Planning Commission showed it is common practice not to post the tree removal permit until the very moment or day that tree demolition begins, and sometimes the permit is not posted at all but it remains in the tree cutter's truck. Now one would think there is a simple common sense solution to the problem of non-display of tree removal permits, and in order to make it meaningful for a neighbor to appeal the issuance of a permit to the Parks & Shade Tree Commission, either the permit application itself should be displayed on the property even before the permit is granted or at least the permit should be displayed within 24 hours after it is issued, except for true emergencies. The display of the permit would put neighbors on notice that important natural resources are about to be removed and would give neighbors some time, days, maybe longer, to appeal the grant of the permit. In other words, it is the posting of the removal permit that makes the right to appeal meaningful. In an analogous situation, the City requires that permits for demolition of structures must be posted at least 30 days before demolition occurs. The City realizes that once a structure is demolished as a practical matter, it cannot be rebuilt. And the posting of a demolition permit may allow neighbors to talk with a lot owner to see if there are alternatives to demolition or at least to minimize the negative effects of demolition. This analogy is even stronger when it comes to tree removals. Why not posting of tree removal permits for a period of time prior to the trees actually being destroyed? Yet, despite this commonsense simple solution, the Planning Commission has refused to come up with a redraft of the posting section of the ordinance that requires some time period in non-emergency situations between the grant of the removal permit and the actual removal of trees. Instead, the Planning Commission has continued to perpetuate the charade that an aggrieved neighbor has a right to appeal the grant of a tree removal permit even though the Planning Commission knows this right is practically meaningless in just about every situation. This is yet another reason why I cannot vote for this proposal. My third example of the many problems with the Planning Commission's proposal involves the so-called macro-recommendations where the Planning Commission offers ideas, not specific ordinance changes, but just ideas for the City Commissioners to consider as possible future Code changes. But this is where the hard work needs to be done. This is where the Planning Commission itself should have pursued many of those ideas with exact language to change the tree ordinance. And for those ideas that are novel or outside the general contours of the existing tree ordinance such as Commissioner Konesey's suggestion that we look at an alternative approach to tree conservation that is being used in Columbus, Indiana. The Planning Commission should have made more of an effort to look at these novel ideas instead of tinkering with the existing tree ordinance to recommendations that serve only to undermine the concept of tree preservation. To sum up, as I said earlier, I can provide many more reasons why the Planning Commission's proposal should be rejected by the Board of Commissioners, but the principle that underlies all of my objections is a principle that appears at the very beginning of the tree ordinance, and it is the principle to which the Planning Commission has given very little weight. In §253-21, the City lays out findings about the need to protect trees. This section says in key parts that the City's Comprehensive Development Plan calls for preservation, protection and conservation of trees within the City. That the City 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. That the abundance of trees contributes to the City's unique, wooded seaside character and distinguishes the City from any other coastal community. That the appearance of Rehoboth Beach contributes to the economic prosperity and general welfare of the City.

Growth and development in the City of Rehoboth Beach often results in the removal of trees, thereby contributing to their depletion. And that 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. Regretfully, I do not see how it could reasonably be said that the action of the Planning Commission that is being taken today is consistent with these findings in §253-21. As I've said, all we are doing is making it easier to take down trees and making it a certainty that more trees will be taken down. The Planning Commission is not preserving, protecting and conserving. The Planning Commission is not making the City a desirable place by valuing the unique, wooded seaside character of the City. The Planning Commission is not protecting and managing trees as valuable assets in order to protect and enhance the health, safety and welfare of the citizens. Instead, the Planning Commission is actively encouraging the type of growth and development that often results in removal of trees, thereby contributing to their depletion. In my mind, the Planning Commission has not embraced the findings that underlie the tree ordinance, but instead, has effectively abandoned many of those findings. For all of these reasons, I cannot vote in favor of the Planning Commission's end result despite my admiration for the time and effort that has gone into its preparation."

(Patterson – aye, Shulman – nay, Hubbard – aye, Mellen – aye, Littleton – aye, Markert – aye, Wilson – aye, Strange – aye.) Motion carried.

Chairman Littleton noted that what he did in the recommendations section of the Trees in the City of Rehoboth Beach – Goals, Realities and Opportunities document was to incorporate the wording from the discussion at the last Planning Commission Meeting.

Edit prior to the recommendations:

The Planning Commission by a vote of 7-1 recommended the attached ordinance. In addition, the Planning Commission has the following other recommendations.

Edits to the recommendations are:

1. Strike "[T]he Planning Commission recommends that the Board of Commissioners take such action as necessary to amend/replace the current tree ordinance with the revised tree ordinance presented in Exhibit 2."
2. The Planning Commission recommends that:
 - i. The Parks and Shade Tree Commission be afforded necessary training and assistance, including professional help as required, in order to best carry out its responsibilities in accord with the proposed revised tree ordinance.
 - ii. That the Parks and Shade Tree Commission develop, upon its approval by the Board of Commissioners, the City's Comprehensive Tree Plan and update it annually per §253-4.
 - iii. That in developing the Comprehensive Tree Plan that representatives from the Board of Commissioners, Board of Adjustment, Planning Commission, Streets & Transportation Committee, City Arborist and interested citizen volunteers be involved.
 - iv. That the Board of Commissioners budget necessary funds to implement the City's approved Comprehensive Tree Plan.
3. The Planning Commission recommends that a searchable computer based record system be implemented whereby all tree plans and permits be entered and their outcome recorded. (Mr. Markert is providing a rewrite of this recommendation.)
4. The Planning Commission recommends that tree permit application forms and instructions be made available on the City's website. (The Planning Commission further recommends that all City application forms and instructions be made available on the City's website.)
5. The Planning Commission recommends that tree permit applications or notice thereof be posted, upon submission, on the City's website. (The Planning Commission further recommends that all City permits be posted upon submission on the City's website.)
6. The Planning Commission recommends that the City take necessary action to inform real estate companies and agents doing business in the City that the minimum tree requirements for a lot become effective upon conveyance of any real estate within the City.
7. The Planning Commission recommends that the Board of Commissioners take such action as necessary to increase the natural area requirements of the Zoning Code in order to provide more space for the planting of new trees and/or survival of existing trees.
8. The Planning Commission recommends that the Chief Building Inspector be given clear authority to specify the type of foundation excavation or construction technique where it would result in saving protected trees.

9. The Planning Commission recommends that the Board of Commissioners take such action as necessary to increase substantially the planting and maintenance of appropriate street trees. Such action should include:
 - a. The City assume the responsibility of maintaining/repairing any damage to sidewalks and/or streets caused by street trees.
 - b. The City takes necessary action to plant, maintain or replace as needed all street trees.
10. Whenever there is a modification or extensive repair of an existing street, the City should increase the number of street trees by such means as:
 - a. The creation of “bump-outs” near intersections that would provide tree planting space.
 - b. Where there is sufficient right-of-way, explore the creation of median islands with tree planting space.
 - c. In areas where there are no sidewalks, the planting of trees on the public right-of-way.
11. The City should maintain its “Tree City” designation and implement a comprehensive public information and education program to inform its citizens not only of the importance of trees to the environment and character of the City, but also to inform them of the tree ordinance and its provisions.
12. The Planning Commission recommends that the City conducts annually an event that makes available, either free or at cost, desirable trees for planting by property owners on their private property.
13. The Planning Commission recommends that the City initiate a special effort to increase the number of trees on both private and public property in areas of the City that are deficient of trees. Particular action should be taken, in collaboration with the Country Club Estates Property Owners Association, to increase the number of trees in the Country Club Estates area of the City.
14. The Planning Commission recommends that the City explore with the Delaware State legislative and executive officials action that can be taken to ensure that insurance companies doing business in the State do not require unwarranted tree trimming or removal by its clients and provide that municipal tree arborists have the means to challenge such insurance company requirements when they conflict with the municipality’s ordinances.
15. Other Recommendations – the Planning Commission needs to discuss if there are other recommendations that it wants to make.

Chairman Littleton noted that Mr. Markert and Mr. Patterson are currently working on the synoptic highlights of the changes between the existing tree ordinance and the proposed tree ordinance. He suggested that a clean copies of the “Trees in the City of Rehoboth Beach – Goals, Realities and Opportunities” and the synoptic highlights of the changes between the existing tree ordinance and the proposed tree ordinance are forwarded to the Planning Commission members for their review before the next meeting and approval at the next meeting.

Mr. Mellen noted that within the realm of maintaining and increasing the City’s tree canopy, there is a possibility for doing tree surveys and having them as a layer within the GIS mapping system. He noted that there are current aerial photographs of the entire state, but there is no guarantee that when the surveys are done they will be done every year or at the same time during the year. There is technology by the University of Vermont to extract canopy information, but it is quite expensive. Chairman Littleton suggested that Mr. Mellen draft a macro-recommendation supporting that effort. Mr. Mellen noted that the City is committed to establishing the GIS information. He will work on an insert for the macro-recommendations.

Chairman Littleton noted that the discussion of the site plan review application fees and Code and possible recommendations to the Board of Commissioners would be deferred to the next meeting.

Chairman Littleton called to discuss possible change to the current requirement for two on-site parking spaces for homes constructed in the residential district that would take into account occupancy density.

Mr. Mellen said that this issue should be addressed with the Comprehensive Development Plan update by July 2015. This item may be part of the discussion at the Joint Meeting with the Board of Commissioners.

Chairman Littleton called for the Building Inspector’s Report.

There was nothing to report.

Chairman Littleton called for the City Solicitor’s Report.

There was nothing to report.

Chairman Littleton called for the report, discussion and possible action concerning those activities or actions taken at Regular or Workshop Meetings of the Mayor and Commissioners that directly relate to the Planning

Commission.

Chairman Littleton noted that the merger/un-merger topic has been deferred until after the city-wide reassessment has completed.

City Commissioner Toni Sharp noted that on June 19th and June 20th, there will be reassessment appeal hearings.

No new subdivision applications have been timely submitted to date.

The next meeting of the Planning Commission is scheduled for August 8, 2014 at 6:30 p.m.

There being no further business, Mr. Mike Strange made a motion, seconded by Mr. Markert to adjourn the meeting at 9:28 p.m.

RECORDED BY

(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON
JANUARY 9, 2015**

(Francis Markert, Secretary)

Below is my proposed rewrite of the sections of the zoning code related to restaurants and dinner theaters. This is to be paired with similar revisions to Chapter 215 which set out the permit of compliance process. Some of the goals and highlights:

- The major change is to go from a limit of 5,000 square feet for the total area of a restaurant to 2,500 square feet of combined seated dining and bar area. This change allows for unlimited support areas such as kitchen, food storage and restrooms. This figure was shown during previous discussions to be consistent with restaurants that have received a certificate of compliance under the current rules.
- By setting a limit based on the combined seated dining and bar area an incentive is created to reduce the size of the bar area in order to have more seating.
- All definitions have been moved to Section 270-4 where all other zoning code definitions are found whereas previously a number of definitions were contained in the body of the code and duplicated definitions have been removed.
- Many of the requirements previously contained in the definitions have been moved to the body of the code and more generic definitions have been used.
- A few additional requirements have been added.
- Previously there was a reference that a patio was to have a “special permit of compliance”, but did not develop this in anyway. The proposed calls for a “supplemental permit of compliance” for what is being termed a dining patio.
- Requirements for brewery-pubs are set out and they are required to obtain a supplemental permit of compliance. This has the effect of making brewery-pubs a special class of restaurant subject to all the requirements of a restaurant plus the additional brewery-pub requirements.

Version 2 changes

- Section 270-53-Relocation of nonconforming restaurant was added to this document and then shown as being deleted from the code.
- Section 270-54-Relocation of nonconforming patio was added to this document and then shown as being deleted from the code.

1 270-4 Definitions

2
3 **BAR AREA**

4 ~~The floor space, not classified as permanent seated dining area, in any restaurant where~~
5 ~~alcoholic liquor is served or consumed. It shall include but not be limited to the bar counter and~~
6 ~~the contiguous floor and seating area where alcoholic liquor is dispensed or consumed, any~~
7 ~~dance floor area and any area occupied by persons providing entertainment. Patron restrooms~~
8 ~~are specifically excluded. The floor space in any restaurant or dinner theater that is used~~
9 ~~primarily for the service or consumption of alcoholic liquor and not secondary to food~~
10 ~~consumption. It shall include but not be limited to the bar counter and the contiguous floor and~~
11 ~~seating area where alcoholic liquor is dispensed or consumed, together with all other areas of~~
12 ~~the restaurant, except the permanent seated dining area, whether contiguous to the bar or not,~~
13 ~~where patrons are served or consumed alcoholic liquor.~~

14
15 **BREWERY-PUB**

Commented [SC1]: This was added but I believe it has been practice.

Commented [SC2]: This was added.

16 An establishment which conforms to the requirements of a restaurant and where beer is
17 manufactured on the premises.

18
19 **CABARET**

20 An establishment where patrons are entertained by performers who dance, sing, play
21 instruments or perform other legal acts for entertainment, but not to include a dinner theater,
22 and where such entertainment may be performed during or after service of dinner, and where a
23 minor, as defined at 4 Del. C. § 713, is to be denied admission to or permission to remain on the
24 premises after 9:00 p.m., official eastern time, unless accompanied by a parent or by a legal
25 guardian.

26
27 **CAFE**

28 An establishment, not a restaurant, where food and liquor is served or consumed.

29
30 **CATERER**

31 Any proprietorship, partnership or corporation engaged in the business of providing food and
32 beverages at social gatherings, such as weddings, dinners, benefits, banquets or other similar
33 events, for consideration on a regular basis and duly licensed by the state as caterers, with at
34 least 60% of its gross receipts resulting from the sale of food.

35
36 **DANCE HALL**

37 Any establishment other than a restaurant where dancing by the patrons takes place.

38
39 **DINING PATIO**

40 A deck or porch whether covered, uncovered, raised or at grade, used in connection with a
41 restaurant and not necessarily attached thereto.

42
43 **FOOD ESTABLISHMENT**

44 An establishment, not a restaurant, which serves various refreshments, not including alcoholic
45 beverages, for consideration.

46
47 **NIGHTCLUB, INCLUDING AFTER HOURS CLUB**

48 An establishment open for business in the evening and early morning hours which is not a
49 restaurant but at which entertainment is provided and food or alcoholic beverages are served or
50 consumed.

51
52
53 **PERMANENT SEATED DINING AREA**

54 The floor space in any restaurant or dinner theater where complete meals are served. A
55 permanently marked dance floor may be located in the permanent seated dining area, but the
56 square footage of its floor space shall not be included in the calculation of the square footage of
57 the permanent seated dining area, but rather shall be included in the calculation of the square
58 footage of the bar area. ~~Tables and chairs in the permanent seated dining area may not be~~
59 ~~temporarily moved so as to increase the space where patrons can consume alcoholic liquor~~
60 ~~without such consumption being secondary to food consumption while seated at tables. Patrons~~
61 ~~may not consume alcoholic liquor in the permanent seated dining area unless seated at tables.~~

~~The square footage of floor space of a dining patio, as defined at § 270-19A(1), shall not be included as part of the permanent seated dining area or as part of the bar area. The square footage of floor space of a patio which is not a dining patio, as defined at § 270-19A(1), shall be included as part of the bar area.~~

RESTAURANT

An establishment where meals are, for compensation, prepared and served on the premises and when alcohol is sold or consumed complies with §270-19.

~~A. Where no alcoholic liquor is sold or consumed on the premises, any establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for consideration, and which has seating at tables for 35 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook. The service of only such food and victuals as sandwiches or salads shall not be deemed to be the service of meals.~~

~~B. Where alcoholic liquor is sold or consumed on the premises, a totally enclosed, except where a special patio license has been granted, commercial establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for consideration and which has seating and tables for 35 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook. The service of only such food and victuals as sandwiches or salads shall not be deemed to be the service of meals. The bar area shall be no more than 25% of the square footage of the permanent seated dining area, but not to exceed a maximum of 1,000 square feet, except that any restaurant regardless of its permanent seated dining area may have a bar area of 350 square feet. The occupancy capacity must conform with the Fire Marshal's guidelines.~~

TAPROOM

An establishment provided with special space and accommodations and operated primarily for the sale by the glass and for consumption on the premises of alcoholic liquors with the sale of food as a secondary object as distinguished from a restaurant where the sale of food is the primary object.

TAVERN

Any establishment with special space and accommodations for the sale by the glass and for consumption on the premises of beers.

270-19 Use Restrictions

A. Restaurants

In addition to the standards of the relevant zoning district an establishment that meets the definition of a restaurant where alcoholic liquor is sold or consumed on the premises shall comply with the following:

- 1) Be totally enclosed, excepting any area included in a validly issued dining patio supplemental certificate of compliance,

- 107 2) Is regularly used and kept open principally for the purpose of serving complete meals. The
108 service of only such food and victuals as sandwiches or salads shall not be deemed to be the
109 service of meals.
- 110 3) Revenue from food sales shall constitute more than 50 percent of the total business
111 revenues.
- 112 4) Have seating and tables for a minimum of 35 patrons, and suitable kitchen facilities
113 connected therewith for cooking an assortment of foods under the charge of a chef or cook.
- 114 5) The sum of the floor space devoted to permanent seated dining area and bar area in any
115 dining area shall not exceed 2,500 square feet, except that where a restaurant occupies space
116 in a building also housing a hotel/motel containing at least 25 bedrooms, the area so
117 devoted may be up to but not more than 3,750 square feet.
- 118 6) The bar area shall be no more than 25% of the square footage of the permanent seated
119 dining area, but not to exceed a maximum of 500 square feet, except that any restaurant
120 regardless of its permanent seated dining area may have a bar area of 350 square feet.
- 121 7) Tables and chairs in the permanent seated dining area may not be temporarily moved so as
122 to increase the space where patrons can consume alcoholic liquor without such
123 consumption being secondary to food consumption while seated at tables.
- 124 8) Patrons may not consume alcoholic liquor in the permanent seated dining area unless
125 seated at tables.

Commented [SC3]: This has been added and I got it from Georgetown's code. This split of revenues has been a topic in the past and I add it for discussion.

Commented [SC4]: This substitutes for the current total square foot restriction.

Commented [SC5]: This number is reduced from the current 1,000 sq. ft. The current 1,000 sq. ft. limitation is unrealistic in that the other 4,000 sq. ft. allowed would have to be all seated dining.

126 A-B.Dining Patios.

127 Dining Ppatios, as defined herein, licensed, constructed or expanded after June 14, 1991, and
128 located in a commercial zone shall only be used for consumption of food and beverages consistent
129 with the following conditions:
130

- 131 1) The gross area devoted to dining patio purposes shall be limited to 750 square feet per
132 restaurant, which area shall be permitted in addition to the limitation contained in §270-
133 19A(5). "Patio" shall mean a deck or porch, of no more than 750 square feet, whether
134 covered, uncovered, raised or at grade, used in connection with a restaurant and not
135 necessarily attached thereto.
- 136 2) Food and beverages may be served only to seated patrons and no patrons may await
137 seating on the dining patio for seating.
- 138 3) There shall be no live entertainment on the dining patio.
- 139 4) There shall be no external speakers or amplifiers on the dining patio and no internal
140 speakers from the premises are to be directed to the dining patio.
- 141 5) There shall be no bar on the dining patio.
- 142 ~~5)6)~~ There shall be a physical barrier around the perimeter of the dining patio no less than 42
143 inches high constructed of wood, concrete, plastic, wrought iron, dense vegetation or other
144 approved material such that entry and exit will be restricted to no more than two discrete
145 locations.
- 146 ~~6) (Reserved)~~
- 147 7) No one shall construct or operate a dining patio unless it is included in a special
148 supplemental permit of compliance issued pursuant to Chapter 215 of the Municipal Code
149 of Rehoboth Beach, Delaware.

Commented [SC6]: This was added in response to recent discussions and the granting of recent permits of compliance.

- 152 ~~8) For all patios, any overflow of patrons onto public ways, pedestrian or vehicular, is~~
153 ~~prohibited.~~
- 154
- 155 ~~9) For all patios, the blocking of the public ways, pedestrian or vehicular, by related activities is~~
156 ~~prohibited.~~
- 157
- 158 ~~10)8) A dining~~ patio existing as of June 14, 1991, shall be considered a legal nonconforming
159 use but shall be subject to all of the provisions of this chapter if expanded pursuant to a
160 supplemental permit of compliance.

161

162 C. Brewery-pubs.

163

164 In addition to the standards of the relevant zoning district an establishment that meets the
165 definition of a brewery-pub shall comply with the following:

- 166 1) The brewery-pub must be situated on the premises of and be physically a part of a
167 restaurant which holds a valid certificate of compliance issued by the city.
- 168 2) No more than 50 percent of the total gross floor area of the establishment shall be used for
169 the brewery function including, but not limited to, the brewhouse, boiling and water
170 treatment areas, bottling and kegging lines, malt milling and storage, fermentation tanks,
171 conditioning tanks and serving tanks.
- 172 3) Retail carryout sale of beer produced on the premises shall be allowed in containers having
173 a capacity of no more than one U.S. gallon (3,785 ml / 128 US fluid ounces).
- 174 4) No beer produced on the premises shall be sold at wholesale, however beer may be
175 removed from the premises for serving at events where the purpose of the event is not for
176 commercial profit and where the beer is not wholesaled to the event sponsors but is
177 instead, dispensed by employees of the brewpub.
- 178 5) All aspects of the brewing process shall be completely confined within a building.
- 179 6) No outdoor storage of raw materials, supplies, beer containers (either full or empty) shall be
180 allowed. This prohibition includes the use of fixed or portable storage units, cargo
181 containers and tractor trailers.
- 182 7) The brewery function shall be designed and operated so as to have no offensive brewery-
183 related air-borne or water-borne emissions including odors from storage of solid or semi-
184 solid waste or by-product and create no public or private nuisance.
- 185 8) No one shall construct or operate a brewery-pub unless it is included in a supplemental
186 permit of compliance issued pursuant to Chapter 215 of the Municipal Code of Rehoboth
187 Beach, Delaware.

188

189 D. Dinner Theaters

190

191 In addition to the standards of the relevant zoning district an establishment that meets the
192 definition of a dinner theater where alcoholic liquor is sold or consumed on the premises shall
193 comply with the following:

- 194 1) Be totally enclosed.
- 195 2) Is regularly used and kept open for the purpose of presenting public performances featuring
196 live actor(s) in dramatic or musical productions after and not simultaneously with the

Commented [SC7]: Moved to Chapter 215. This does not belong here since it applies to all patios, including those grandfathered.

Commented [SC8]: Moved to Chapter 215. This does not belong here since it applies to all patios, including those grandfathered.

Commented [SC9]: These requirements were pulled together from a number of other codes, but principally Georgetown.

Commented [SC10]: This is intended to prevent the wholesaling of beer but allow brewery-pubs to market/promote their business at tasting events, festivals and the like.

- 197 servicing of complete meals. The service of only such food and victuals as sandwiches or
198 salads shall not be deemed to be the service of meals.
199 3) Must serve complete meals to at least 3/4 of the patrons at each performance, and they
200 shall be served in the permanent seated dining area in front of or surrounding the stage.
201 Seating at tables shall be provided for each patron.
202 4) Have seating and tables for a minimum of 35 patrons, and suitable kitchen facilities
203 connected therewith for cooking an assortment of foods under the charge of a chef or cook.
204 5) There shall be no more than one dinner theater in any public building, and, except for
205 motels and hotels, a dinner theater shall not share a building with any other commercial
206 activity.
207 6) No more than 2,500 square feet of floor space in any dinner theater shall be devoted to
208 permanent seated dining area.
209 7) Shall not have a bar area where patrons consume alcoholic beverages but may have a
210 service bar area where alcoholic beverages are stored and delivered to waiters for service to
211 the patrons seated in the permanent seated dining area.
212 8) Shall not serve alcoholic beverages more than one hour before the service of the complete
213 meal begins or more than two hours before the live stage production begins, whichever is
214 less. Alcoholic beverages may also be served during intermissions but not during or after the
215 performance.
216 9) The rules set forth herein apply to each and every performance. When repeated
217 performances are to be given, all patrons from the first performance must leave the
218 establishment before seating can begin for the next performance.
219 10) Shall close and all patrons must leave by 12:00 midnight.

Commented [SC11]: This was adapted to be consistent with the change limiting the patron area as opposed to total area, otherwise no change in the requirements for dinner theaters has been made.

220
221 **B.E.** Certain prohibited uses citywide.

222
223 No structure or land shall be used or occupied anywhere in the City of Rehoboth Beach, regardless
224 of whether the land is zoned residential or commercial, for the following uses: taproom, tavern,
225 dance hall, cabaret, nightclub, after-hours club or cafe. Anything contained in Article II, Use
226 Regulations, or any other portion of Chapter 270, Zoning, of the Municipal Code of Rehoboth Beach,
227 Delaware, which is inconsistent herewith is to the extent of such inconsistency repealed.

228
229 ~~1) Nothing in this section shall apply to restaurants or dinner theaters, as defined herein, whether~~
230 ~~now existing or established in the future, even if such restaurant or dinner theater is licensed to~~
231 ~~sell alcoholic beverages, and nothing in this section shall operate to restrict the right of the~~
232 ~~owner of such a restaurant or dinner theater to sell, transfer or relocate the restaurant or dinner~~
233 ~~theater license.~~

234
235 ~~2) As used in this section, in addition to their usual meaning, the following terms shall have the~~
236 ~~meanings indicated:~~

237 **CABARET**

238 ~~An establishment where patrons are entertained by performers who dance, sing, play instruments~~
239 ~~or perform other legal acts for entertainment, but not to include a dinner theater, and where such~~
240 ~~entertainment may be performed during or after service of dinner, and where a minor, as defined at~~
241 ~~4 Del. C. § 713, is to be denied admission to or permission to remain on the premises after 9:00~~
242 ~~p.m., official eastern time, unless accompanied by a parent or by a legal guardian.~~

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CAFE

~~An establishment, not a restaurant, where food and liquor is served or consumed.~~

DANCE HALL

~~Any establishment other than a restaurant where dancing by the patrons takes place.~~

DINNER THEATER

- ~~A. A totally enclosed commercial establishment which has seating and tables for 35 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook which is regularly used and kept open for the purpose of presenting public performances featuring live actor(s) in dramatic or musical productions after and not simultaneously with the serving of complete meals. The establishment must close and all patrons must leave at 12:00 midnight. The service of only such food and victuals as sandwiches and salads shall not be deemed to be complete meals.~~
- ~~B. Each dinner theater and related activities in a building shall be limited in area to not more than 5,000 square feet. There shall be not more than one dinner theater in any public building, and, except for motels and hotels, a dinner theater shall not share a building with any other commercial activity. The occupancy capacity must conform to the Fire Marshal's guidelines.~~
- ~~C. A dinner theater must serve complete meals to at least 3/4 of the patrons at each performance, and they shall be served in the permanent seated dining area in front of or surrounding the stage. Seating at tables shall be provided for each patron.~~
- ~~D. The establishment, when licensed to serve alcoholic beverages, shall not have a bar area where patrons consume alcoholic beverages but may have a service bar area where alcoholic beverages are stored and delivered to waiters for service to the patrons seated in the permanent seated dining area. Such establishment shall not serve alcoholic beverages more than one hour before the service of the complete meal begins or more than two hours before the live stage production begins, whichever is less. Alcoholic beverages may also be served during intermissions but not during or after the performance.~~
- ~~E. The rules set forth herein apply to each and every performance. When repeated performances are to be given, all patrons from the first performance must leave the establishment before seating can begin for the next performance.~~

NIGHTCLUB, INCLUDING AFTER HOURS CLUB

~~An establishment open for business in the evening and early morning hours which is not a restaurant but at which entertainment is provided and food or alcoholic beverages are served or consumed.~~

RESTAURANT

- ~~A. Where no alcoholic liquor is sold or consumed on the premises, any establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for consideration, and which has seating at tables for 35 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook. The service of only such food and victuals as sandwiches or salads shall not be deemed to be the service of meals.~~

288 ~~B. Where alcoholic liquor is sold or consumed on the premises, a totally enclosed, except where a~~
289 ~~special patio license has been granted, commercial establishment which is regularly used and~~
290 ~~kept open principally for the purpose of serving complete meals to persons for consideration~~
291 ~~and which has seating and tables for 35 or more persons and suitable kitchen facilities~~
292 ~~connected therewith for cooking an assortment of foods under the charge of a chef or cook. The~~
293 ~~service of only such food and victuals as sandwiches or salads shall not be deemed to be the~~
294 ~~service of meals. The bar area shall be no more than 25% of the square footage of the~~
295 ~~permanent seated dining area, but not to exceed a maximum of 1,000 square feet, except that~~
296 ~~any restaurant regardless of its permanent seated dining area may have a bar area of 350~~
297 ~~square feet. The occupancy capacity must conform to the Fire Marshal's guidelines.~~

299 **TAPROOM**

300 ~~An establishment provided with special space and accommodations and operated primarily for the~~
301 ~~sale by the glass and for consumption on the premises of alcoholic liquors with the sale of food as a~~
302 ~~secondary object as distinguished from a restaurant where the sale of food is the primary object.~~

304 **TAVERN**

305 ~~Any establishment with special space and accommodations for the sale by the glass and for~~
306 ~~consumption on the premises of beers.~~

309 **270-28 Limitation on Size of Restaurants**

311 ~~The area in a given building devoted to restaurant purposes where alcoholic liquor is consumed on the~~
312 ~~premises shall not be larger than 5,000 square feet of floor space, including seated dining area, food~~
313 ~~storage and preparation area, passageways and entrance foyer, restrooms, dance floor and bar area,~~
314 ~~except that where a restaurant occupies space in a building also housing a hotel/motel containing at~~
315 ~~least 25 bedrooms, the area devoted to restaurant purposes may occupy up to but not more than 7,500~~
316 ~~square feet.~~

Commented [SC12]: This is eliminated because it becomes unnecessary with the other changes.

319 **270-53 Relocation of nonconforming restaurant.**

321 ~~The owner or lessee of a restaurant where alcoholic liquor is served or consumed which does not~~
322 ~~comply with the internal dimensional ratios found at § 270-4 of this chapter under the definition of~~
323 ~~"restaurant" but which is validly nonconforming under § 215-7 of the Municipal Code of Rehoboth~~
324 ~~Beach, 1974, as amended, may relocate the restaurant to another lot in an appropriately zoned district,~~
325 ~~if approved as a special exception by the Board of Adjustment, subject to the following special~~
326 ~~requirements:~~

Commented [SC13]: This section was added in Version 2 and shown as being deleted.

- 327 ~~A. The restaurant structure may not encroach on any of the setback or yard requirements of the~~
328 ~~zoning district in which it is relocated.~~
- 329 ~~B. The total floor area of the relocated restaurant cannot exceed the floor area of the existing~~
330 ~~restaurant.~~
- 331 ~~C. The ratio of the bar area and the permanent seated dining area of the relocated restaurant~~
332 ~~cannot exceed the ratio of the existing restaurant.~~

- 333 ~~D. Only one relocation may be permitted by the Board of Adjustment as to any nonconforming~~
- 334 ~~restaurant~~
- 335 ~~E. Upon the relocation of such restaurant the building from which it is relocated will lose its~~
- 336 ~~nonconforming use status under §§ 270-4 and 215-7 of the Municipal Code of Rehoboth Beach,~~
- 337 ~~Delaware, 1974, as amended.~~

338

339

340 ~~270-54 Relocation of nonconforming patio.~~

341

342 ~~The owner or lessee of a patio associated with a restaurant where alcoholic liquor is served or~~

343 ~~consumed which does not comply with the requirements of § 270-19 of this chapter, but which is validly~~

344 ~~nonconforming under § 270-19 may relocate the patio with the restaurant but not without the~~

345 ~~restaurant to another lot in an appropriately zoned district, if approved as a special exception by the~~

346 ~~Board of Adjustment, subject to the following special requirements:~~

- 347 ~~A. The patio structure may not encroach on any of the setback or yard requirements of the zoning~~
- 348 ~~district in which it is relocated.~~
- 349 ~~B. The total floor area of the relocated patio cannot exceed the floor area of the existing patio.~~
- 350 ~~C. Only one relocation may be permitted by the Board of Adjustment as to any nonconforming~~
- 351 ~~patio.~~
- 352 ~~D. Upon the relocation of such patio the building or lot from which it is relocated will lose its~~
- 353 ~~nonconforming use status under §§ 270-19 and 215-7 of the Municipal Code of Rehoboth Beach,~~
- 354 ~~Delaware, 1974, as amended.~~

Commented [SC14]: This section was added in Version 2 and shown as being deleted.

Below is my proposed rewrite of Chapter 215 of the City Code titled Restaurants. Some of the goals and highlights:

- Coordinate the definitions that are used here and in the zoning code by referencing the zoning code definition in this chapter.
- Create Supplemental Permits of Compliance for dining patios and brewery-pubs that are approved in conjunction with permits of compliance for a restaurant where appropriate.
- Add a bit more specificity to what is required on the plans submitted with an application for a permit of compliance.
- Introduce and make clear that a suspension or revocation could be applied to a supplemental certificate of compliance when the violation(s) is related to a dining patio or brew-pub operation.
- Specify that the fee to accompany each application is \$1,000 no matter what is requested.
- Bring two provisions that refer to the blocking of a public way by the use of a dining patio over from the zoning code.
- Set, consistent with state law and rules, the hours when alcohol can be served and consumed in existing restaurants and new restaurants of 2,500 or fewer square feet of combined seated dining and bar area.
- Require that new restaurants of more than 2,500 square feet of combined seated dining and bar area stop the service and consumption of alcohol two hours earlier.
- Require, consistent with state rules, that a restaurant make food available at all hours that alcohol is available.

Version 2 changes

- A new Section 215-14 was added requiring that a necessary building permit and State approval be obtained within one year or else a permit of compliance expires.

1 Article I Definitions

2
3 215-1 Definitions

4
5 Unless the particular provision or the context otherwise requires, the definition provisions contained in
6 this section shall govern the construction, meaning and application of words and phrases used in this
7 chapter:

8
9 **BAR AREA**

10 ~~As found at §270-4. The floor space in any restaurant or dinner theater that is used primarily for the~~
11 ~~service or consumption of alcoholic liquor and not secondary to food consumption. It shall include~~
12 ~~but not be limited to the bar counter and the contiguous floor and seating area where alcoholic~~
13 ~~liquor is dispensed or consumed, together with all other areas of the restaurant, except the~~
14 ~~permanent seated dining area, whether contiguous to the bar or not where patrons are served or~~
15 ~~consume alcoholic liquor.~~

16
17 **BREWERY-PUB**

18 As found at §270-4

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DINING PATIO

As found at §270-4

DINNER THEATER

As found at §270-4.

- ~~A.—A totally enclosed commercial establishment which has seating and tables for 35 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook which is regularly used and kept open for the purpose of presenting public performances featuring live actor(s) in dramatic or musical productions after and not simultaneously with the serving of complete meals. The establishment must close and all patrons must leave at 12:00 midnight. The service of only such food and victuals as sandwiches and salads shall not be deemed to be complete meals.~~
- ~~B.—Each dinner theater and related activities in a building shall be limited in area to not more than 5,000 square feet. There shall be not more than one dinner theater in any public building, and, except for motels and hotels, a dinner theater shall not share a building with any other commercial activity. The occupancy capacity must conform to the Fire Marshal's guidelines.~~
- ~~C.—A dinner theater must serve complete meals to at least 3/4 of the patrons at each performance and shall be served in the permanent seated dining area in front of or surrounding the stage. Seating at tables shall be provided for each patron.~~
- ~~D.—The establishment, when licensed to serve alcoholic beverages, shall not have a bar area where patrons consume alcoholic beverages but may have a service bar area where alcoholic beverages are stored and delivered to waiters for service to the patrons seated in the permanent seated dining area. Such establishment shall not serve alcoholic beverages more than one hour before the service of the complete meal begins or more than two hours before the live stage production begins, whichever is less. Alcoholic beverages may also be served during intermissions but not during or after the performance.~~
- ~~E.—The rules set forth herein apply to each and every performance. When repeated performances are to be given, all patrons from the first performance must leave the establishment before seating can begin for the next performance.~~

LIQUOR LICENSE

A license issued by the Delaware Alcoholic Beverage Control Commission to an owner or lessee of a restaurant for the purchase, sale and dispensing of alcoholic beverages pursuant to Title 4, Delaware Code, § 511 et seq.

PERMANENT SEATED DINING AREA

~~As found at §270-4. The floor space in any restaurant or dinner theater where complete meals are served. A permanently marked dance floor may be located in the permanent seated dining area, but the square footage of its floor space shall not be included in the calculation of the square footage of the permanent seated dining area but rather shall be included in the calculation of the square footage of the bar area. Tables and chairs in the permanent seated dining area may not be temporarily moved so as to increase the space where patrons can consume alcoholic liquor without such consumption being secondary to food consumption while seated at tables. Patrons may not consume alcoholic liquor in the permanent seated dining area unless seated at tables. The square footage of floor space of a dining patio, as defined at § 270-19A(1)(b), shall not be included as part of the permanent seated dining area or as part of the bar area. The square footage of floor space of~~

66 ~~a patio which is not a dining patio, as defined at § 270-19A(1)(c), shall be included as part of the bar~~
67 ~~area.~~

68

69 **PERSON**

70 Any individual, partnership, corporation or other entity which either owns, manages, directs or
71 controls activities authorized by this chapter.

72

73 **RESTAURANT**

74 As found at §270-4.

75 ~~A.—Where no alcoholic liquor is sold or consumed on the premises, any establishment which is~~
76 ~~regularly used and kept open principally for the purpose of serving complete meals to persons~~
77 ~~for consideration and which has seating at tables for 35 or more persons and suitable kitchen~~
78 ~~facilities connected therewith for cooking an assortment of foods under the charge of a chef or~~
79 ~~cook. The service of only such food and victuals as sandwiches or salads shall not be deemed to~~
80 ~~be the service of meals.~~

81 ~~B.—Where alcoholic liquor is sold or consumed on the premises, a totally enclosed, except where a~~
82 ~~special patio license has been granted, commercial establishment which is regularly used and~~
83 ~~kept open principally for the purpose of serving complete meals to persons for consideration~~
84 ~~and which has seating and tables for 35 or more persons and suitable kitchen facilities~~
85 ~~connected therewith for cooking an assortment of foods under the charge of a chef or cook. The~~
86 ~~service of only such food and victuals as sandwiches or salads shall not be deemed to be the~~
87 ~~service of meals. The bar area shall be no more than 25% of the square footage of the~~
88 ~~permanent seated dining area, but not to exceed a maximum of 1,000 square feet, except that~~
89 ~~any restaurant regardless of its permanent seated dining area may have a bar area of 350~~
90 ~~square feet. The occupancy capacity must conform with the Fire Marshal's guidelines.~~

91

92

93 Article II Permit of Compliance

94

95 215-2 Permit Required.

96

97 No person shall operate, maintain or carry on the business of a restaurant or dinner theater governed by
98 this chapter until the owner or lessee has received a permit of compliance from the City stating that said
99 restaurant or dinner theater is in compliance with all of the City's applicable zoning and licensing
100 requirements. A copy of such permit of compliance shall be issued by the City to the Office of the
101 Delaware Alcoholic Beverage Control Commissioner~~Delaware Alcoholic Beverage Control Commission.~~

102 A. No person shall construct or operate a dining patio unless the owner or lessee has received a
103 supplemental permit of compliance for same in conjunction with a validly issued permit of
104 compliance for a restaurant.

105 A.B. No person shall construct or operate a brewery-pub unless the owner or lessee has received a
106 supplemental permit of compliance for same in conjunction with a validly issued permit of
107 compliance for a restaurant.

108

109 215-3 Application for ~~restaurant or dinner theater~~ permit of compliance.

110

111 Any person desiring a restaurant or dinner theater permit of compliance and/or dining patio and/or
112 brewery-pub supplemental permit of compliance, as required by this chapter, shall file a written
113 application with the City Building Inspector on a form to be furnished by the Building Inspector. The
114 applicant shall accompany the application with a tender of the correct application fee as hereinafter
115 provided and shall, in addition, furnish the following information:

- 116 A. The type of ownership of the business, i.e., whether individual, partnership, corporation or
117 otherwise.
- 118 B. The name, style and designation under which the business or practice is to be conducted.
- 119 C. The business address and all telephone numbers where the business is to be conducted.
- 120 D. The plan of the proposed new, expanded or otherwise modified restaurant or dinner theater ~~or~~
121 ~~proposed expansion of an existing restaurant or dinner theater~~. Said plan shall show the
122 following information:
 - 123 1) The location of the restaurant or dinner theater.
 - 124 2) The location's zoning classification.
 - 125 3) The number and sizes of bar areas in the restaurant or dinner theater.
 - 126 4) The restaurant's or dinner theater's complete floor plan, including delineation of and square
127 footage of all areas of use including but not limited to permanent seated dining, bar,
128 restrooms, food storage and food preparation.
 - 129 5) The restaurant's or dinner theater's seating capacity.
 - 130 ~~6) The designated areas for storage and for preparation of food service.~~
 - 131 6) The distance to the nearest property line of the nearest church, public park and a lot zoned
132 residential from the proposed restaurant or dinner theater or existing restaurant or dinner
133 theater property.
 - 134 7) If the application includes a dining patio, the location, floor plan, area calculation and details
135 of the perimeter barrier.
 - 136 ~~7)8) If the application includes a brewery-pub, the location floor plan and area calculation of all~~
137 areas devoted to the brewing of beer and the storage of raw materials, waste matter and
138 finished product related thereto.
- 139 E. A statement that the establishment's primary purpose shall be that of a restaurant or dinner
140 theater as defined herein.
- 141 F. A statement containing an approximate percentage of projected revenue to be derived from the
142 sale of alcoholic beverage as compared to the percentage of projected revenue to be derived
143 from the sale of food.
- 144 G. An authorization for the City, its agents and employees to seek information and conduct an
145 investigation as to the truth of the statements set forth in the application
- 146 H. Written and dated declaration by the applicant, under verification, oath or affidavit, that the
147 foregoing information contained in the application is true and correct with said declaration
148 being duly dated and signed in the City.

149
150 215-4 Verification by Building Inspector required.

151
152 The Building Inspector shall verify the completeness and accuracy of the application and shall forward
153 said application to the City Manager within five days of the filing of said application.

154
155 215-5 Hearing required.

156

- 157 A. No applicant shall receive a permit of compliance or a supplemental permit of compliance from
158 the City until after a public hearing, at which hearing interested parties and citizens shall have an
159 opportunity to be heard. The City Manager shall place said application on the agenda for a
160 public hearing at the next scheduled regular meeting of the Mayor and Commissioners if the
161 date of such meeting is more than 25 days from the date the application is filed with the City;
162 otherwise the application shall be heard at the second scheduled regular meeting of the Mayor
163 and Commissioners or at a special meeting to be scheduled pursuant to the provisions of the
164 City's Code.
- 165 B. A permit of compliance or supplemental permit of compliance shall not be issued to the
166 applicant or to the Delaware Alcoholic Beverage Control Commission except by the favorable
167 vote of a majority of the members of the City Commissioners. In reaching their decision, the
168 Commissioners shall consider the following factors, including but not limited to:
- 169 1) Whether the applicant has demonstrated that the establishment's primary purpose will be
170 that of a restaurant or dinner theater as defined in this chapter.
 - 171 2) Whether the establishment meets all of the City's applicable zoning and licensing provisions.
 - 172 3) Whether the establishment would be a detriment to the peace, order and quiet of the
173 neighborhood and the City.
 - 174 4) Whether the establishment will have an adverse impact on the neighboring properties or on
175 the City of Rehoboth Beach, considering the impact on traffic, parking and noise.
 - 176 5) Whether the applicant had made any false representation or statements to the City's
177 employees or the Commissioners in order to induce or prevent action by the City not only in
178 regard to the pertinent pending application under this chapter, but also in regard to the
179 issuance of a building permit or business license for the subject establishment.

180
181 215-6 Notice of hearing.

182
183 At least 15 days' notice of the time and place of such hearing shall be sent to all City property owners
184 whose boundaries are within 200 feet of the boundaries of the proposed restaurant or dinner theater or
185 existing restaurant or dinner theater property. Notice shall be sent by regular United States mail to the
186 last known address to which City tax bills are sent, said mailing to be done by the City.

187
188 215-7 Applicability.

- 189
- 190 A. The provisions of this chapter shall apply to:
- 191 1) All restaurants or dinner theaters established on or after June 14, 1991, where alcoholic
192 liquor is to be sold or consumed.
 - 193 2) Any existing restaurant or dinner theater, where alcoholic liquor is sold or consumed,
194 desiring to extend or modify its premises, regardless of the date that said restaurant or
195 dinner theater was established.
 - 196 3) Any existing restaurant or dinner theater, where alcoholic liquor is sold or consumed, that is
197 being moved to a new location in the City, regardless of the date that said restaurant or
198 dinner theater was established.
- 199 B. An existing restaurant or dinner theater, where alcoholic liquor is sold or consumed, established
200 prior to June 14, 1991, is not required to obtain a permit of compliance pursuant to this chapter
201 unless required as a condition of extension or modification of the premises of the restaurant or

202 dinner theater. However, all such existing restaurants or dinner theaters shall have filed a floor
203 plan, including any patio areas, with the City Manager on or before May 15, 1992.

204 C. Where an existing restaurant or dinner theater, regardless of the date that said restaurant or
205 dinner theater was established, where alcoholic liquor is sold or consumed, is being transferred
206 to a new owner at the existing site, the present owner must file with the City Manager
207 documentation to prove that the floor plan of said restaurant or dinner theater is substantially
208 the same as the most recent floor plan approved by the City. Such documentation shall include
209 but not be limited to a scalable floor plan showing the location and size of the permanent
210 seated dining and bar areas. If the City Manager determines that the floor plan in respect to the
211 total square footage of the restaurant or dinner theater and percentage of floor area devoted to
212 bar area and percentage of floor area devoted to permanent seated dining area is substantially
213 the same as the most recent floor plan approved by the City, no hearing shall be required
214 pursuant to § 215-5A.

215 D. For purposes of this section, in addition to any and all usual interpretations, "extensions or
216 modifications of premises," shall be interpreted to include the construction, expansion, location
217 or operation of dining patios and brewery operations pursuant to Chapter 270, Zoning, of the
218 Code of the City of Rehoboth Beach.

219
220 215-8 Enforcement.

221
222 The City Manager shall enforce the provisions of this chapter.

223
224 215-9 Revocation or suspension of permit; notice.

225
226 Any permit of compliance or supplemental permit of compliance issued pursuant to this chapter shall be
227 subject to suspension or revocation by the City Manager by reason of violation of any provision of this
228 chapter; provided, however, that before any permit of compliance or supplemental permit of
229 compliance is suspended or revoked ~~or suspended by~~ the City Manager, ~~he~~ shall give 10 days' written
230 notice in advance by certified mail with return receipt requested, directed to the permit holder at the
231 restaurant's or dinner theater's address within the corporate limits of the City of Rehoboth Beach, of the
232 reason for the intended suspension or revocation ~~or suspension~~, and upon the correction of the defect
233 within 15 days following receipt of said notice as determined by the City Manager, no suspension or
234 revocation ~~or suspension~~ shall take effect for the first offense. Upon a second or subsequent offense of
235 a similar nature, the City Manager shall suspend the permit of compliance or supplemental permit of
236 compliance and shall immediately notify the permit holder by certified mail, with return receipt
237 requested, directed to the permit holder at the restaurant's or dinner theater's address within the
238 corporate limits of the City of Rehoboth Beach. The period of suspension shall be for 10 days. A second
239 or subsequent offense shall be an offense occurring within 30 days of the preceding offense. If the
240 holder of a permit commits five similar offenses within a twelve-month period, the permit of compliance
241 shall be revoked by the City Manager, and notice of such revocation shall be given to the permit holder
242 as provided herein. The suspension or revocation of a permit of compliance shall include the suspension
243 or revocation of any associated supplemental permit of compliance under the same conditions, however
244 a supplemental permit of compliance may be suspended or revoked without suspending or revoking the
245 associated permit of compliance when the violation is solely related to the substance of the
246 supplemental permit of compliance.

247

248 215-10 Appeals from determination of revocation or suspension.

249

- 250 A. Any permit holder may appeal the decision of the City Manager to suspend or revoke ~~or~~
251 ~~suspend~~ a permit of compliance to the Commissioners of Rehoboth Beach. Such appeal shall be
252 in writing, setting forth the reasons for the appeal, and shall be filed with the Secretary of the
253 Commissioners of Rehoboth Beach by certified mail, with return receipt requested, together
254 with an appeal processing fee of \$500, within 10 days after the receipt of the notice from the
255 City Manager suspending the permit of compliance. Upon receipt of the notice of appeal, the
256 ~~City Manager~~Mayor shall fix a time and place for a public hearing of the appeal, with said time
257 for the hearing of the appeal to be not more than 30 days following receipt thereof by the
258 Secretary of the Commissioners of Rehoboth Beach.
- 259 B. The hearing shall be conducted by the Commissioners, and a record of the hearing shall be
260 made and kept by the Commissioners. All testimony shall be recorded but need not be
261 transcribed. The record shall include the evidence, the Commissioners' findings of fact, the
262 Commissioners' decision and a brief statement of the reasons therefor. At said hearing the
263 permit holder shall be entitled to legal representation and to present witnesses.
- 264 C. The filing of an appeal by a permit holder shall operate as a stay of the determination of the City
265 Manager to revoke or suspend the permit of compliance or supplemental permit of compliance.
266 However, if the appeal is withdrawn or if the suspension is upheld, the period of suspension
267 shall commence on the anniversary date of the original suspension. For example, if a ~~license~~
268 permit is suspended commencing July 1, 1991, and because of an appeal a stay occurs and the
269 issue is not finally resolved until December 1991, the permit ~~of~~ suspension will commence July
270 1, 1992.

271

272 215-11 Modification of floor plan.

273

- 274 A. It shall be illegal for any restaurant or dinner theater to substantially modify its floor plan,
275 seating arrangement and/or the location and number and sizes of bar areas and permanent
276 seated dining areas from the plans submitted to the City pursuant to the provisions of this
277 chapter without a public hearing and ~~certificate new permit~~ of compliance, except that a floor
278 plan may be substantially modified without a hearing with the approval of the City Manager if
279 ~~he the City Manager~~ determines that the changed plan does not violate the provisions of this
280 chapter and does not result in an increase of the bar area. This section shall be interpreted to
281 include dining patios. The Building Inspector shall inspect all restaurants or dinner theaters at
282 least annually to ensure compliance with this chapter.
- 283 B. "Modification," as used herein, means internal rearrangements limited to the interior walls of
284 only that portion of the structure used for restaurant or dinner theater purposes as shown on
285 the floor plan on file with the City Manager. It shall not authorize the extension of the
286 restaurant or dinner theater use into other parts of the structure not shown on the floor plan
287 filed with the City Manager.
- 288 C. Should the City Manager deny a request to modify a floor plan, the applicant may appeal his
289 decision to the Commissioners of Rehoboth Beach, who shall schedule a hearing on said appeal
290 within 45 days. The issue on appeal shall be whether the proposed modified floor plan violates
291 the provisions of this chapter or results in an increase in the size of the bar area.

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293 215-12 Violations and penalties.

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Any person violating any of the provisions of this chapter, upon conviction thereof, shall be fined not less than \$100 nor more than \$200 for each offense and shall pay the costs of prosecution. For the purpose of this chapter, a separate offense shall be deemed to be committed on each day during or on which a violation occurs or continues after receipt of notice of violation.

215-13 Application fee.

Each application for a permit of compliance shall be accompanied by a fee payable to the City in the amount of \$1,000, which fee shall include any supplemental permits of compliance requested at the same time, however a supplemental permit of compliance application filed independent of a permit of compliance shall be accompanied by fee of \$1,000.-

215-14 Expiration of permits of compliance

A permit of compliance or supplemental permit of compliance shall expire if the applicant fails to obtain any necessary building permit or fails to receive the applicable license and/or approvals from the Office of the Delaware Alcoholic Beverage Control Commissioner within one year from the date the permit of compliance or supplemental permit of compliance was issued. The Commissioners may grant one extension of this time limit for a maximum of six months based on a showing of good cause.

215-~~14~~-15 Reapplication.

No new application shall be acted upon by the City Commissioners, if within a six-month period immediately preceding the filing of the new application they have rendered a decision regarding the same application. However, this limitation shall not be applicable if the Commissioners shall find that the facts and circumstances existing at the time of their prior decision have undergone a substantial change justifying the Commissioners' reconsideration.

215-~~15~~-16 Notice of request for variance.

The owner or licensee of any restaurant subject to the provisions of this chapter shall notify the City Manager prior to requesting a variance from the Office of the Delaware Alcoholic Beverage Control Commissioner~~Delaware Alcohol Beverage Control Commission~~ with respect to a liquor license.

Article III Dining Patios

215-17 Overflow of patrons prohibited from public ways.

For all dining patios, any overflow of patrons onto public ways, pedestrian or vehicular, is prohibited.

215-18 Blocking of public ways prohibited.

For all dining patios, the blocking of the public ways, pedestrian or vehicular, by related activities is prohibited.

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342 Article IV Hours of Service

343

344 215-19 Hours of alcohol sale and consumption.

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346 No restaurant shall sell alcoholic liquor between the hours of 1:00 a.m. and 9:00 a.m. and no alcoholic
347 liquor shall be consumed on the premises between the hours of 2:00 a.m. and 9:00 a.m., except that for
348 any restaurant receiving a permit of compliance after [Date of Adoption] which has more than 2,500
349 square feet of floor space devoted to permanent seated dining area plus bar area alcoholic liquor shall
350 not be sold between the hours of 11:00 p.m. and 9:00 a.m. following and no alcoholic liquor shall be
351 consumed on the premises between the hours of midnight and 9:00 a.m. following.

352

353 215-20 Food service.

354

355 Food shall be available at all hours that any restaurant is open for the sale of alcoholic liquor.

1 **AN ORDINANCE TO AMEND CHAPTER 258 OF THE MUNICIPAL CODE**
2 **OF THE CITY OF REHOBOTH BEACH, DELAWARE, 2001**
3 **RELATING TO PARKING AND TRAFFIC**

4 **BE IT ORDAINED**, by the Commissioners of the City of Rehoboth Beach, in session
5 met, in the manner following to-wit:

6 **Section 1.** Chapter 92, Section 92-69, of the Municipal Code of Rehoboth Beach,
7 Delaware, 2001, as amended be and the same is hereby further amended by adding to Subsection
8 92-69(D) one reference to “Rehoboth Avenue” with an associated description of “From the
9 Boardwalk to Second Street, north and south sides, except for meters designated as thirty-minute
10 parking pursuant to §92-69C”.

11 **Section 2.** Chapter 92, Section 92-73, of the Municipal Code of Rehoboth Beach,
12 Delaware, 2001, as amended be and the same is hereby further amended by deleting from
13 Subsection 258-73(A) the language “Two-dollar-per-hour meters. One quarter for each seven-
14 minute-thirty-second period or fraction thereof for parking meters designated at the following
15 locations, excepting those meters designated in § 92-69C for which the maximum parking is 30
16 minutes:” as it appears therein and replace it with the language “Two-dollar-per-hour spaces.
17 Twenty-five cents (\$0.25) for each seven-minute-thirty-second period or fraction thereof for
18 parking spaces designated at the following locations, excepting those spaces designated in § 92-
19 69C for which the maximum parking is 30 minutes”.

20 **Section 3.** Chapter 92, Section 92-73, of the Municipal Code of Rehoboth Beach,
21 Delaware, 2001, as amended be and the same is hereby further amended by deleting from
22 Subsection 258-73(B) the language “Two-dollar-per-hour meters. One quarter for each seven-
23 minute-thirty-second period or fraction thereof for parking meters designated at the following
24 locations, excepting those meters designated in § 92-69C for which the maximum parking is 30
25 minutes:” as it appears therein and replace it with the language “Two-dollar-per-hour spaces.
26 Twenty-five cents (\$0.25) for each seven-minute-thirty-second period or fraction thereof for
27 parking spaces designated at the following locations, excepting those spaces designated in § 92-
28 69C for which the maximum parking is 30 minutes”.

29 **Section 4.** Chapter 92, Section 92-73, of the Municipal Code of Rehoboth Beach,
30 Delaware, 2001, as amended be and the same is hereby further amended by deleting from
31 Subsection 258-73(C) the language “One quarter for each seven-minute-thirty-second period or
32 fraction thereof for parking meters designated in § 92-69C, for which the maximum parking is
33 30 minutes.” as it appears therein and replace it with the language “Twenty-five cents (\$0.25) for
34 each seven-minute-thirty-second period or fraction thereof for parking meters designated in § 92-
35 69C, for which the maximum parking is 30 minutes.”.

36 **Section 5.** Chapter 92, Section 92-74, of the Municipal Code of Rehoboth Beach,
37 Delaware, 2001, as amended be and the same is hereby further amended by deleting said section
38 in its entirety and inserting in lieu thereof a new Section 92-74 to read as follows:

39 **§92-74. Payment required.**

40 The operator of any vehicle parked within a space regulated by this Article, during any
41 applicable time, shall pay, in advance, the appropriate fee for the length of time the
42 vehicle is to be parked in such space. Failure to pay the appropriate fee shall be a
43 violation of this article. Payment may be made by one of the following means:

- 44 A. Depositing twenty-five cent coins of the United States, commonly referred to as
45 quarters, in the parking meter that controls the relevant parking space,
- 46 B. By a credit card approved for acceptance by the City where the meter controlling the
47 relevant space is equipped to accept credit cards. There shall be added to each credit
48 card transaction a service fee of fifty cents (\$0.50),
- 49 C. By electronic means through a third party vendor contracted by the City for such
50 purpose. There shall be added to each transaction processed by a contracted third-
51 party vendor a service fee of fifty cents (\$0.50).

52 **Section 6.** Chapter 92, Section 92-75, of the Municipal Code of Rehoboth Beach,
53 Delaware, 2001, as amended be and the same is hereby further amended by deleting from the
54 second sentence the phrase “deposit additional coins” as it appears therein and replace it with the
55 phrase “pay for additional time by an approved means”.

56 **Section 7.** Chapter 92, Section 92-78, of the Municipal Code of Rehoboth Beach,
57 Delaware, 2001, as amended be and the same is hereby further amended by deleting said section
58 in its entirety and inserting in lieu thereof a new Section 92-78 to read as follows:

59 **§92-78. Meter types.**

60 Three types of parking meters are approved for use in the City. The City Manager shall
61 determine which type of meter is used at each parking space covered by this Article. The
62 three types of meters are:

- 63 A. Single space meters where each parking space has a meter that accepts payment only
64 for that space and the only identification is the location of the meter.
- 65 B. Multi-space meters where the meter accepts payment for more than one parking space
66 and the parking spaces for which the meter can accept payment are identified by an
67 individual number.
- 68 C. Pay and Display meters where a group of parking spaces are serviced by a meter
69 which prints a receipt showing transaction date, time, expiration time, and amount
70 paid. The user displays this receipt print side up on the dashboard inside the parked
71 vehicle so as to be visible from outside the vehicle through the windshield. In
72 addition to other penalties contained in this Article, failure to display the required
73 receipt in the manner specified, shall be a violation of this article and shall be subject
74 to a fine in accordance with § 92-80.

75 **Section 8.** Chapter 92, Section 92-79, of the Municipal Code of Rehoboth Beach,
76 Delaware, 2001, as amended be and the same is hereby further amended by deleting said section
77 in its entirety and inserting in lieu thereof a new Section 92-79 to read as follows:

78 **§92-79. Collection of coins from meters; parking meter funds.**

79 The City Manager shall be responsible for the collection of coins from the parking
80 meters. The City Manager shall designate an employee of the City or appoint a suitable
81 person to make such collections under such rules and regulations as the City Manager
82 shall establish. All money collected by way of parking meters shall be deposited by the
83 City Manager to the credit of the City and shall be uniquely identifiable from all other
84 revenues of the City.

85 **Section 9.** If any provision of this Ordinance shall be deemed or held to be invalid or
86 unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect
87 any other provision of this Ordinance which may be given effect without such invalid or
88 unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to
89 be severable.

90 **Section 10.** This Ordinance shall become effective immediately upon its adoption by the
91 Commissioners of the City of Rehoboth Beach.

92 Adopted by the Commissioners
93 of the City of Rehoboth Beach
94 _____, 2016

95 _____
96 Secretary of the Commissioners of
97 the City of Rehoboth Beach

98 **SYNOPSIS:** This Ordinance provides for alternative forms of payment for parking
99 meters, provides for a fifty cent surcharge for alternative forms of payment and
100 simplifies addressing the different types of parking meters in use.