Ordinance No. 500

An Ordinance to amend and restate Chapter 74 relating to the Tree Commission and Chapter 210 of the Code of the City of New Castle relating to Street Trees

WHEREAS, Chapter 74 of the Code of the City of New Castle establishes the City's Tree Commission; and

WHEREAS, Chapter 210 of the Code of the City of New Castle relates to the planting, maintenance and removal of street trees in the City of New Castle; and

WHEREAS, Council has determined to re-write both Chapter 74 and Chapter 210 of the Code of the City of New Castle to modernize and clarify the role of the Tree Commission and the manner in which City street trees are managed and maintained.

NOW, THEREFORE, be it ordained by the Council of the City New Castle, as follows:

SECTION 1: Chapter 74 of the Code of the City of New Castle is hereby amended so that such section shall read, in its entirety, as follows:

Chapter 74. TREE ADVISORY COMMISSION

§ 74-1. Creation of Commission; appointments; submission of nominations; terms of office; Chairperson.

A. Creation of Commission; Appointments. There is hereby created a Tree Advisory Commission of New Castle. It shall consist of five members. Of the five members, two shall be appointed by the Mayor of New Castle and confirmed by City Council and three shall be appointed by City Council. Members shall be selected on the basis of education, experience, or demonstrated interest in related fields. Members do not need to be City residents. The chair shall be selected by the members annually. All members of the Tree Advisory Commission shall serve without compensation.

B. Terms of office. Tree Advisory Commission members shall be appointed to serve for a term of three years. Vacancies shall be filled by nominees of the appropriate nominating group or entity and, if appointed, shall serve for the remainder of the unexpired term. A member of the Tree Advisory Commission shall hold over and continue to serve as a member until ~~his or her~~ their replacement is appointed. No member may serve more than two (2) consecutive terms. The City Council may remove any appointed member of said Commission from office prior to the expiration of their term, with or without cause by an affirmative vote of City Council.

§ 74-2. Powers and duties.

The powers and duties of the New Castle Tree Advisory Commission are primarily advisory and shall be as follows:

A. To serve as a source of advocacy, outreach and education in regard to tree preservation in the City.

B. To identify and recommend to the City Administrator locations on public lands where trees should be planted and tree maintenance would be beneficial.

C. To make recommendations to the City Administrator for the remediation or removal of trees on private property deemed to endanger public safety, health or welfare.

D. To make recommendations to the City Administrator for tree species suitable for streetscape plantings

E. To make recommendations for "Urban Tree Guidelines."

§ 74-3. Organization; quorum quota; meetings.

A. The Tree Advisory Commission shall keep minutes of its meetings, which shall be written and made public.

B. Three members of the Tree Commission shall constitute a quorum.

C. The Tree Advisory Commission will hold a minimum of four public meetings per year at the call of the Chairperson. One of the required meetings will be held in the fall and the second in the spring. Notice of meetings will be publicly displayed so as to inform and encourage the public to attend.

SECTION 2. Chapter 210 of the Code of the City of New Castle is hereby amended so that such ~~section~~ chapter shall read, in its entirety, as follows:

Chapter 210. STREET TREES

§ 210-1. Short title.

This Chapter shall be known and may be cited as the "Street Tree Ordinance of the City of New Castle."

§ 210-2. Intent and purpose.

A. The purpose of this Chapter is to define and establish responsibility for the management of the trees located within City rights-of-way and on City-owned property.

B. The intent of this Chapter is to:

(1) Protect existing individual trees and the City tree canopy on City property;

(2) Provide replacement trees when trees must be removed from City property;

(3) Protect the natural environment of the City;

(4) Recognize that large trees make an aesthetic contribution to the community;

(5) Reinforce the historic nature of the downtown area;

(6) Promote the livability of all areas in the City;

(7) Provide trees in the public rights-of-way;

(8) Address privately owned trees that are diseased or pose a public danger;

(9) Provide conditions for healthy trees.

C. The City of New Castle believes that street trees serve a useful purpose in an urban setting and are a valuable addition to the City of New Castle, its appearance and to the quality of life of its residents. It is the purpose of this Chapter to promote and protect the public health, safety and general welfare by providing for the regulation of the planting, maintenance and removal of trees both on public rights-of-way and public lands within the City. This Chapter shall address trees on private property where it is believed the trees will pose a threat to persons or property. In general, it is the intent of this Chapter to protect and increase property values, to conserve and enhance the City's physical and aesthetic environment and to generally protect and enhance the quality of life and welfare of the City residents.

§ 210-3. Definitions.

For the purposes of this Chapter, the following definitions shall apply:

BASAL FLARE - The portion of a tree where there is a rapid increase in diameter at the confluence of the trunk and root crown.

BOARD OF ADJUSTMENT - The Board of Adjustment, established under § 230-53 of the Code for the City of New Castle.

BUILDING AREA - The area of a parcel upon which, under applicable zoning regulations, a structure may be built without the requirement of a variance.

BUILDING FOOTPRINT - The two-dimensional configuration of an existing building's perimeter boundaries as measured on a horizontal plane at ground level.

CALIPER - The diameter of any tree trunk measured at six inches above ground level.

CERTIFIED ARBORIST – An individual trained in the art and science of planting, caring for, and maintaining individual trees. ~~A professional who would advise the City on ordinance and contract standards, provide expert advice on the treatment of diseased or hazardous trees and otherwise on matters related to maintaining a healthy tree stock in the City.~~ This individual shall possess a current International Society of Arboriculture arborist certification.

CITY - The City of New Castle, a municipal corporation of the State of Delaware, acting through the City Administrator.

COMMISSION - The Tree Advisory Commission of New Castle created under Chapter 74 of the City Code.

CONSULTING ARBORIST – A professional who would advise the City on safety, health and preservation of trees. The role of the Consulting Arborist is to bring a comprehensive, objective viewpoint to the diagnosis, appraisal, and evaluation of arboricultural issues. This individual shall possess a current American Society of Consulting Arborists certification.

DEVELOPMENT - Any improvement upon any property in the City which requires a subdivision, variance, building permit, demolition permit, or other City approval, or which involves excavation, landscaping or construction within the dripline area of a protected tree.

DRIPLINE AREA - The area within X distance from the perimeter of the trunk of the tree at 4 1/2 feet (54 inches) above natural grade, where X equals a distance 10 times the diameter of the trunk as measured 4 1/2 feet (54 inches) above natural grade.

EXCESSIVE PRUNING - The removal of more than 1/4 of the functioning leaf and stem area of a tree in any twelve-month period, or removal of foliage so as to cause the structural unbalancing of a tree. For example, lion tailing and topping are prohibited, as those practices constitute excessive pruning.

HAZARDOUS - An imminent hazard or threat to the safety of persons or property.

PERSON - Any public or private individual, group, company, firm, corporation, partnership, association, society, or any other combination of human beings, whether legal or natural.

PUBLIC NUISANCE - Any condition that may endanger the security or usefulness of any public street, sewer, sidewalk or other public amenity, or the full and safe operation of public utility wires.

REMOVAL - The actual removal or causing the effective removal of a tree through damaging, poisoning or other direct or indirect actions resulting in the death of a tree.

REMOVE - Refers to any of the following:

A. Complete removal, such as cutting to the ground or extraction, of a tree;

B. Taking any action leading to the death of a tree or permanent damage to its health, including, but not limited to, excessive pruning, cutting, girdling, poisoning, overwatering, unauthorized

relocation or transportation of a tree, or trenching, excavating, altering the grade or paving within the dripline area of a tree.

STREET TREE - Any tree on property over which the ~~Mayor and Council of~~ City of New Castle now or hereafter have jurisdiction. A street tree shall include ~~constitute~~ those portions of defined vegetation which grow above grade, as well as root systems growing below grade.

TREE - a woody perennial plant having a single usually elongate main stem generally with few or no branches on its lower part. ~~Any woody plant that has a trunk one inch or more in diameter at 4 1/2 feet above natural grade level. This does not apply to newly planted trees planted by the City. COMMENT: WHAT IS THE PURPOSE OF THE SECOND SENTENCE HERE? IS THIS TO SAY THAT SMALLER TREE PLANTED BY THE CITY ARE STILL CONSIDERED TREES?~~

TREE ADVISORY COMMISSION - The ~~Tree~~ Commission created under Chapter 74 of the City Code.

TREE PERMIT - A permit required by the City for tree maintenance, pruning, removal or planting of street trees requested and performed by private citizens or entities.

TREE REPORT - A report prepared by an arborist and certified by the International Society of Arboriculture or another nationally recognized tree research, care and preservation organization.

URBAN TREE GUIDELINES - Guidelines developed by the City to implement this Chapter and provide proper tree care.

§ 210-4. Jurisdiction over trees in public lands/rights-of-way.

All trees planted on public lands in the City are the property of the City and shall be designated as "street trees." The City shall have exclusive jurisdiction and supervision over all street trees. The City shall have the authority to plant, trim, prune, spray, treat, preserve and remove trees on public lands to ensure public safety, to eliminate public nuisance trees, to preserve the symmetry and beauty of such public places, and to prevent endangerment of public and private property.

§ 210-5. Location and planting of street trees.

A. The City shall determine a selection of sites and species of trees that are appropriate for specific areas.

B. Where the sidewalk grass strip (between the sidewalk and the street) is less than three feet in width, steps should be taken to plant on the side of the sidewalk farthest from the street or on private property, or larger planting areas may be developed in the sidewalk area; however, at a minimum, no tree shall be planted in an area of less than 16 square feet of ~~impervious~~ pervious surface.

C. The City shall specify the distance trees shall be planted from street intersections.

D. The City shall abide by pertinent codes when determining the placement of trees.

§ 210-6. Utilities pruning; notification.

~~Utilities~~ Utility companies are ~~encouraged~~ required to notify the City Administrator in writing a minimum of three (3) business days prior to pruning, treating or removing street trees for line clearance~~. The utility companies planning to prune trees in the City are encouraged to contact the City concerning notification of such pruning activities~~ by reporting the nature of the pruning, treating or removal work, and where and how long they will be engaged in such ~~pruning~~ work. Except in emergency situations where persons or property are in imminent danger, the City shall have the right to notify the utility of its intent to have the street tree(s) affected by the pruning, treating or removal inspected by a consulting arborist to provide instruction on how the street tree(s) shall be pruned, treated or removed by the utility in the manner least damaging to ~~the~~ any affected street tree(s). The utility shall abide by the instructions of the consulting arborist to the maximum extent possible in conducting the pruning, treating or removal of the affected street tree(s) so as to best ensure their health and vitality, any those of any other affected street trees. Nothing herein shall be deemed to deprive the utility company of the right to fully exercise its lawful and enforceable easement rights. Any damage to or removal of street trees resulting from the violation of this section shall be a violation of this Chapter subject to fine and enforcement action under § 210-17 of this Chapter. This section shall ~~does~~ not apply to the Municipal Services Corporation.

§ 210-7. Effect of development; responsibilities of developers.

A. Building permits, grading permits, site plans or any other form of modification or action that would affect a street tree shall be reviewed by the City for compliance with this Chapter. If the proposed activity requires action impacting upon a street tree either by the City or the applicant, the permit shall be referred to the City Administrator for action.

(1) Where a planned action includes the development of a new public or private street, the construction plans shall include the location, size and species of all street trees. The City shall install the street trees on any public street and provide the first three years of maintenance at the expense of the developer or owner of a property to be developed. The City, at its sole discretion, may permit the developer to install the street trees as part of the project construction. The developer shall provide a bond or other approved security to cover the costs of installation, replacement and maintenance of the street trees for three years from the date of installation.

(2) No street tree shall be planted, pruned or removed during any construction activity without the approval of the City.

(3) The applicant will be responsible for posting a bond in the amount of 100% of the value of the affected tree or trees as determined by the City or a ~~certified~~ consulting

arborist hired by the City to pay for any damage to street trees which may occur during construction.

(4) Any damage to or removal of street trees without a permit or prior approval shall be a violation of this Chapter subject to fine and enforcement action under § 210-17 of this Chapter.

B. Any person who proposes to do work within the dripline area, or access work through the dripline area, of a street tree shall install a protective barrier. The protective barrier shall be placed around the street tree prior to permitted activities and shall remain in place until all construction activity is terminated. No equipment, chemicals, soil deposits or construction materials shall be placed within the protective barriers.

C. Any person who proposes to do work within the dripline area, or access work areas through the dripline area, of a street tree shall obtain and provide to the City a security and performance bond in the amount of 100% of the value of the tree or trees as determined by the City or a ~~certified~~ consulting arborist hired by the City. The security and performance guarantee shall be issued by an insurance company, bank or other entity approved by the City and shall be conditioned upon the faithful performance of all work in close proximity to the tree or trees involved and shall specify that if the City determines that the person responsible for the work has failed to faithfully perform or is in default under any of ~~his or her~~ their obligations as to such trees, the obligor shall make good and reimburse the City such funds as may be necessary to pay damages incurred by the City.

§ 210-8. Disclosure of information regarding existing trees.

A. Any application for development, or for a building or demolition permit, shall be accompanied by a statement by the property owner or authorized agent which discloses whether any street trees exist within 30 feet of the property which is the subject of the application, and describes each such tree, its species, size, dripline area, and location. This requirement shall be met by including the information on plans submitted in connection with the application.

B. In addition, the location of all other trees on the site and in the adjacent public right-of-way which are within 30 feet of the area proposed for development, and trees located on adjacent property with canopies overhanging the project site, shall be shown on the plans~~,~~ and identified by species and size.

C. The City may require submittal of such other information as may be necessary to further the purposes of this Chapter, including, but not limited to, photographs.

D. Disclosure of information pursuant to this section shall not be required when the development for which the approval or permit is sought does not involve any change in building footprint nor any grading or paving.

E. Knowingly or negligently providing false or misleading information in response to this disclosure requirement shall constitute a violation of this Chapter.

§ 210-9. Inspection; removal of trees at direction of City.

It shall be the responsibility of every property owner or occupant to maintain the trees on ~~his or her~~ their property in a safe and healthy manner and to keep trees properly trimmed and pruned so as to avoid hazards to persons, property and other vegetation.

A. The City and its designated agents shall have the right, from time to time, to enter upon private property in order to inspect the trees and shrubs located upon such private property. The City shall seek the property owner's permission to conduct such an inspection, but in no event shall any entry upon private property by the City or its agents or contractors for purposes authorized by this Chapter be deemed a trespass. Should a condition of extreme danger be observed by the City, and should the City Administrator make a finding that any tree or part thereof constitutes an immediate danger to persons, property or other vegetation, the City shall direct the property owner to remove the tree, or the portion thereof constituting a danger, forthwith.

B. The method of notification to the property owner shall be in one or more of the following ways:

(1) By personal delivery of the order to the owner or owners.

(2) By delivering the order to an adult residing on the premises.

(3) By mailing the order by registered or certified mail to the last known address of the owner on the premises.

(4) By publishing the order in a local newspaper for three consecutive days.

C. The order shall set forth the time limit for compliance, which shall depend upon the degree of danger created by the tree, but shall in no case be longer than thirty (30) days. In cases of extreme danger, the City shall have the authority to require immediate compliance.

D. If, at the end of the time set forth in the order, the tree has not been removed, the City shall have the tree, or the portion thereof constituting a danger, removed. The costs of this service, including labor, equipment and materials, shall be assessed to the property owner. If the costs of remedying the condition are not paid within 30 days after receipt of a statement from the City, the amount shall become a lien upon the property to be included in the tax bill rendered to the property owners and shall be collected in the same manner as other taxes against such property.

§ 210-10. Hazardous trees.

A. When a tree, regardless of its location, has partially failed, or it is apparent it is about to fail, and persons or property are threatened, the tree may be removed without City review or approval. The City does not require ~~a~~ consulting arborist's report before the removal of a tree in this instance.

B. When a street tree is removed as a hazardous tree, the hazard must be substantiated after the fact by the property owner and ~~tree professional~~ certified arborist with photographs, abatement information, insurance claim or other relevant information. This information shall be submitted to the City within five days after removal.

C. Any hazardous tree removed from public lands may be replaced at the discretion of the City.

§ 210-11. Diseased trees.

Because diseases of trees on private property can be spread to street trees, it shall be the responsibility of any person, for any tree or other vegetation on ~~his or her~~ their property, to treat or remove any tree or vegetation so diseased or insect infested as to constitute a hazard to persons, property or other vegetation, if directed by the City.

A. Upon determining that any tree upon private property is diseased or infested with insects, the City shall notify the property owner, in writing, describing the condition, stating the actions necessary for correction and setting forth a reasonable time in which the action must be taken.

B. In the event the property owner fails to take the required corrective action, the City is authorized, in the public interest, to enter the property to spray, trim, prune, treat or remove ~~any part or all of~~ the diseased tree or any part thereof. The cost of this service, including labor, equipment and materials, shall be assessed to the property owner and shall constitute a lien upon the relevant property. No such entry on to private property by the City, its employees, agents and contractors shall be deemed a trespass.

C. If, after utilizing all techniques, methods and procedures which could reasonably be expected to save a tree, said tree is deemed to be dead, dying, in a dangerous condition, unsafe or likely to cause damage, the tree shall be declared an immediate danger and abated as set forth in § 210-9A of this Chapter.

D. The City shall cause to be made periodic inspections for Dutch Elm Disease, shall take samples, and require treatment as may be necessary to control the spread of such disease. ~~Infected tree barks shall not be stored for fuel or similar future use, unless the bark has been stripped.~~ Infected tree wood and bark shall not be stored for fuel or similar future use; and shall be transported to a licensed landfill for appropriate and lawful disposal. Elm trees found to be infected with Dutch Elm Disease and determined to be untreatable shall be abated as set forth in this section.

E Public Nuisance Trees - Any tree or shrub growing on public or private property, which tree or shrub is endangering, or which in any way may endanger, the security or usefulness of any public street, sewer, or sidewalk or the full and safe operation of public utility wires, is hereby declared to be a public nuisance and may be removed at the discretion of the City.

F. Tree Permit - The City is responsible for the maintenance of the ~~urban forest~~ street trees ~~in~~ on City owned property, rights-of-ways, medians, parks, and City-owned easements. The City will not maintain trees that are ~~not on public~~ on privately owned property except as provided in this Chapter. The City will maintain street trees, in order to remove dangerous debris and tree material for public safety and welfare.

With the advance written approval of the City, property owners abutting ~~City~~ street trees on City-owned easements, parks, medians, and rights-of-ways ~~can~~ may, at the property owner's expense, ~~may~~ have trees trimmed by a certified ~~tree~~ arborist or ~~a certified~~ other qualified and insured

contractor ~~tree company~~ approved and licensed by the City, or under the supervision ~~or~~ of a Tree Commission Member or City employee.

A Tree Permit is required for the planting, removal or pruning of branches of street trees. ~~larger than 2" in diameter.~~ Root pruning of street trees and any disturbance or compaction within the dripline area requires a Tree Permit. A resident must obtain a Tree Permit to ensure that proper ~~tree~~ care is given to street trees. Street tree work completed without a permit shall be a violation of this Chapter subject to fines and enforcement actions under § 210-17 of this Chapter. ~~as well as is subject to fines and replanting requirements as determined by City Council.~~

G. Private parties, whether acting pursuant to a Tree Permit or not, are responsible for the cost of repairing or replacing any City curbing or sidewalks damaged as a result of the pruning or removal of any tree or tree root. If a private party fails to repair or replace a damaged curb or sidewalk, the City may do so after ~~30~~ 60 days' written notice. If the cost of repairing or replacing the affected curbing or sidewalk is not paid within ~~30~~ 60 days after receipt of a statement from the City, the amount shall become a lien upon any real estate owned by the private party located in the City and shall be included in the tax bill rendered to such property owner and shall be collected in the same manner as other taxes against such property.

§ 210-12. Prohibited acts.

A. No person shall, without a valid Tree Permit ~~written permission of the City~~, remove, destroy, break, cut or deface any street tree ~~growing in the public right-of-way or any tree in public lands~~. ~~For purposes of this Chapter, subsection,~~

B. No person shall directly or indirectly permit any toxic chemical or any toxic substance to seep or drain or be emptied on or about any street tree. ~~growing in the public right-of-way or any tree growing upon public lands.~~

C. No person shall directly or indirectly place stone, cement or other impervious materials about any ~~protected~~ street tree ~~growing in the street right-of-way~~ that will impede the free entrance of water or air to the roots of such trees without leaving an open and pervious space of ground about the trunk of such tree of not less than 16 square feet.

D. No person shall remove, damage, misuse or attach any foreign object to any guard or device placed or intended to protect any street tree ~~growing in the street right-of-way or upon public lands~~.

E. No person shall attach or place any rope, wire, sign, handbill or any other thing on any street tree ~~growing in the public right-of-way~~.

F. No person shall plant any tree in the public right-of-way unless the City grants a Tree Permit for such installation. The City may prepare a list of tree species recommended as street trees.

G. In the case of erection, demolition or repair of any building or structure, the owner thereof shall place or cause to be placed such guards around all nearby street trees to prevent injury to them.

H. It shall be a violation of this Chapter for anyone to remove or cause to be removed a street tree, except as shall be permitted in this section:

(1) In the absence of conflicting development, street trees shall not be removed unless it is determined by the City, or on the basis of a tree report prepared by a ~~certified~~ consulting arborist, that the tree should be removed because it is dead, is hazardous, is a public nuisance, is a detriment to or is crowding an adjacent protected tree.

(2) Street trees shall not be removed unless the trunk or basal flare of the protected tree is touching or within the building footprint of a new structure, or the City has determined, or on the basis of a tree report prepared by a ~~certified~~ consulting arborist with other relevant information, that the tree should be removed because it is dead, is hazardous, is a detriment to or is crowding an adjacent protected tree.

(3) If no building footprint exists for new structures, street trees shall not be removed unless the City has determined, or on the basis of a tree report prepared by a ~~certified~~ consulting arborist with other relevant information, that the tree should be removed because it is dead, is hazardous, is a detriment to or is crowding an adjacent protected tree.

(4) If removal is allowed because the tree trunk or basal flare is located in the building footprint or because the City has determined that the tree is so close to the building area that construction would result in the death of the tree, the tree removed shall be replaced in accordance with the Urban Tree Guidelines.

(5) In all circumstances in which the City has allowed for the removal of street trees, such trees shall be replaced at the discretion of the City.

I. Except in case of immediate necessity for the protection of life or property, willful injury or disfigurement of any street tree ~~growing in a public place (e.g., on public land or in rights-of-way) within the City~~ shall be a violation of this Chapter.

J. No person shall:

(1) Attach any sign, notice or other object to any street tree or fasten any wires, cables, nails, spikes or screws to any street tree in a manner that could prove harmful to the tree, except as necessary in conjunction with activities in the public interest.

(2) Pour any material on any street tree or on nearby ground which could be harmful to the tree.

(3) Cause or encourage any unnecessary fire or burning near or around any street tree.

(4) Construct a concrete, asphalt, brick or gravel sidewalk or otherwise fill up the ground around any street tree so as to cut off air, light or water from the roots.

(5) Pile building material or equipment around any street tree so as to cause injury thereto.

(6) Discharge or pour salt, salt water, oil or other liquids or materials at any place or in

any manner that causes injury to any street tree.

(7) Without first obtaining a Tree Permit, place or maintain any stone, cement or other substance which impedes the natural passage of water and air to the roots of any street tree.

K. Protective barriers shall be placed around street trees, prior to land preparation or construction activities, and shall remain in place until all construction activity is terminated. No equipment, chemicals, soil deposits or construction materials shall be placed within the protective barriers.

§ 210-13. Effect on existing provisions.

Nothing in this Chapter limits or modifies the existing authority of the City under Chapter 213 (Subdivision of Land) and Chapter 230 (Zoning Ordinance) to require trees and other plants not covered by this Chapter to be identified, retained, protected and/or planted as conditions of the approval of development. In the event of conflict between provisions of this Chapter and conditions of any permit or other approval granted pursuant to Chapter 213 or Chapter 230, the more protective requirements shall prevail.

§ 210-14. Liability of City.

Nothing in this Chapter shall be deemed to impose any liability upon the City or upon any of its officers, employees or Commission members. The City and its officers, employees and Commission members shall be immune from suit for damages as a result of any lawful action taken pursuant to the terms of this Chapter. Nothing in this Chapter shall relieve the owner or occupant of any private property from the duty to keep trees upon private property in a safe condition.

§ 210-15. Urban Tree Guidelines.

The City Council may issue and amend guidelines to assist in the implementation of this Chapter, which shall be known as the "Urban Tree Guidelines." Copies of the Urban Tree Guidelines will be made readily available to the public.

§ 210-16. Administration and enforcement.

A. The City, acting through the City Administrator, shall have the following powers and duties with regards to this Chapter:

(1) Approval of planting, maintenance and removal of all street trees.

(2) Approval of the list of recommended street trees.

(3) Development of guidelines for the planting, maintenance, protection and replacement

of street trees.

(4) Approval of pruning of street trees by utility companies.

(5) The granting, with or without conditions, of Tree Permits.

(6) Such other powers as may be necessary to implement the provisions of this Chapter.

~~B. The Board of Adjustment shall have the power and duty to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by City Administrator in the enforcement of this Chapter.~~ COMMENT: ALREADY COVERED BY §210-18.

C. The City shall have the following powers and duties with regard to this Chapter:

(1) To review building permit applications based upon the requirements of this Chapter and shall make a recommendation to the Building Official if a permit meets the criteria to be approved and issued;

(2) To recommend that the Building Official issue a temporary stop-work order to halt activities in violation of this Chapter;

(3) To initiate legal proceedings in the name of the City, after appropriate consultation with the City Solicitor, in order to enforce the provisions of this Chapter;

(4) To advise the City on the compliance of any subdivision, site plan or building permit with the provisions of this Chapter;

(5) To inspect trees on public and private property as provided in this Chapter.

D. It shall be unlawful for any person to hinder, prevent, delay or interfere with the City while engaged in the lawful execution or enforcement of this Chapter.

§ 210-17. Remedies for violation; civil penalties; costs.

A. It shall be a violation of this Chapter for any property owner, or agent of the owner, to fail to comply with any development approval condition concerning preservation, protection and maintenance of any street tree. The City shall be responsible for the enforcement of this Chapter.

B. In addition to all other remedies set forth in this Code or otherwise provided by law, the following remedies shall be available to the City for violation of this Chapter:

(1) Stop work - temporary moratorium.

(a) If a violation occurs during development, the City may issue a stop-work order, suspending and prohibiting further activity on the property pursuant to the grading, demolition and/or building permit(s) (including construction, inspection and issuance of certificates of occupancy) until a mitigation plan has been filed with and approved by the City, agreed to, in writing, by the property owner(s), and either implemented or

guaranteed by the posting of adequate security. The mitigation plan shall include measures for protection of any remaining trees on public property and shall provide for replacement of each tree removed on public property at locations approved by the City. ~~The replacement ratio shall be in accordance with the standards set forth in the Urban Tree Guidelines set by the City and shall be at a greater ratio than that required where tree removal is permitted pursuant to the provisions of this Chapter. COMMENT: WILL WE INFACT BE ADOPTING GUIDELINES? THERE ARE NO "REPLACEMENT RATIOS" CURRENTLY THAT I'M AWARE OF. THAT MAKES THIS PROVISION IMPOSSIBLE TO ENFORCE.~~

(b) If a violation occurs in the absence of development, or while an application for a building permit approval is pending, the City may issue a temporary moratorium on development of the subject property, not to exceed 18 months from the date the violation occurred. The purpose of the moratorium is to provide the City an opportunity to study and determine appropriate mitigation measures for the tree removal, and to ensure measures are incorporated into any future development approvals for the property. Mitigation measures as determined by the City shall be imposed as a condition of any subsequent permits for development on the subject property.

(c) The City, by and with the assistance of the City Solicitor, may initiate a civil action in a court of competent jurisdiction in order to enforce the provisions of this Chapter, including, but not limited to, injunctive proceedings in a court of equity.

(2) Civil penalties.

(a) As part of any civil action brought by the City, a court may assess against any person who commits, allows or maintains a violation of any provision of this Chapter a civil penalty in an amount not to exceed $500 per violation.

(b) Where a violation has resulted in removal of a tree, the civil penalty shall be in an amount not to exceed $500 per tree unlawfully removed or the replacement value of each such tree, whichever amount is higher. Such amount shall be payable to the City. Replacement value, for the purposes of this section, shall be determined by a consulting arborist selected by the City utilizing the most recent edition of the Guide for Plant Appraisal, published by the Council of Tree and Landscape Appraisers, and shall include the cost incurred by the City for the retention of the consulting arborist.

(c) Injunctive relief. A civil action may be commenced to abate, enjoin or otherwise compel the cessation of such violation.

(d) Costs. In any civil action brought pursuant to this Chapter in which the City prevails, the court shall award to the City all costs of investigation and preparation for trial, the costs of trial, reasonable expenses, including expert witness fees, overhead and administrative costs incurred in prosecuting the action, and reasonable attorneys' fees.

(3) Notwithstanding the fines provided hereinabove, any person who damages a street tree in violation of this Chapter by any activity whatsoever shall be responsible for paying the repair cost or, if the tree dies, the replacement cost up to the full value of each, as well as all costs related to replanting.

§ 210-18. Appeals.

A. Any person seeking the City's approval to plant, maintain or remove a street tree pursuant to this Chapter and who is aggrieved by a decision of the City may appeal such decision to the Board of Adjustment by filing a written appeal with the office of the Board of Adjustment within 30 days of the date of such decision.

B. Any person adversely affected by a decision in the enforcement or interpretation of any terms or provisions of this Chapter may appeal such decision to the Board of Adjustment by filing a written appeal with the office of the Board of Adjustment within 30 days of the date of such decision.

§ 210-19. Severability.

Should any part or provision of this Chapter be declared by a Court of competent jurisdiction to be invalid, the same shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part declared to be invalid.

SECTION 3. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase irrespective of the fact that any one or more thereof is declared unconstitutional or invalid.

SECTION 4. Ordinances or parts of Ordinances in conflict herewith are hereby repealed; provided that any such repeal shall not abate a right of action already accrued under any repealed Ordinance.

SECTION 5. This Ordinance shall become effective immediately upon passage.

First Reading December 9, 2014

Second Reading February 10, 2015

Signed this 13th day of February 2015

Linda Ratchford

Linda Ratchford

President of Council

I hereby certify that the foregoing Ordinance was duly approved by the Council of the Mayor and Council of New Castle upon the dates above set forth and signed by the President of Council.

Janet E. Wurtzel, City Clerk

Approved this 21 day of FEB., 2015

Donald A. Reese, Mayor