

**AN ORDINANCE TO AMEND CHAPTER 114, TREES,
OF THE MUNICIPAL CODE OF THE TOWN OF HENLOPEN ACRES, DELAWARE, BY
AMENDING SECTIONS 114.1 THROUGH 114.5 AND ADDING NEW SECTIONS 114.6
THROUGH 114.10 RELATING TO TREES.**

WHEREAS, the Mayor and Town Commissioners of the Town of Henlopen Acres deem it appropriate to amend Chapter 114 of the Municipal Code of the Town of Henlopen Acres relating to Trees.

BE IT ORDAINED by the Commissioners of the Town of Henlopen Acres, in session met, a quorum pertaining at all times thereto, in the manner following to-wit:

Section 1. Chapter 114, Trees, of the Municipal Code of the Town of Henlopen Acres, as amended, be and the same is hereby further amended by deleting Chapter 114 in its entirety and inserting in lieu thereof a new Chapter 114, Trees, as follows:

Chapter 114: Trees

§ 114-1 Intent.

Trees and Town Vegetation, as hereinafter defined, are declared to be beneficial public resources. To that end, it shall be unlawful to cut down, damage, poison or in any other manner, destroy or cause to be destroyed any Trees or Town Vegetation covered by this chapter, except in accordance with the provisions of this chapter.

§ 114-2 Tree Committee.

There is hereby created and established a Town Tree Committee for the Town of Henlopen Acres, Delaware, which shall consist of the Mayor, Planning Commission Chairman and a minimum of three, but not more than five at-large members appointed by the Mayor and approved by the Board of Commissioners. The at-large members shall serve three year terms.

§ 114-3 Duties and responsibilities.

It shall be the responsibility of the Tree Committee to study, investigate, counsel and develop a plan for the care, preservation, pruning, planting, replanting, removal or disposition of Town Vegetation, as hereinafter defined. Such plan will be presented annually to the Board of Commissioners as part of the Town's Annual Budget meeting and, upon approval or modification by the Board of Commissioners, shall constitute the official Town Tree Plan for that budget year. The Tree Committee, when requested by the Board of Commissioners, shall consider, investigate, make findings, report and recommend upon any special matter of question coming within the scope of its work. The Board of Commissioners shall have the right to review the actions and decisions of the Town Tree Committee.

§ 114-4 Definitions.

For the purpose of this chapter, certain terms are defined as follows:

LAND CLEARING

The clearing of or removal from a parcel of land all or part of the natural elements existing thereon, including but not limited to trees.

PERSON

Any individual, partnership, corporation, association or other legal entity, including the plural as well as the singular, and including all tree removal companies and persons removing trees on behalf of others.

REMOVE OR REMOVAL

The actual removal of a tree by digging up, cutting down or the effective removal through damage.

TOWN VEGETATION

Trees, shrubs, bushes and all other woody vegetation in public rights of way, parks, marina and any other parcel owned by the Town.

TREE

A species normally identified as a tree such as an oak, pine, cypress, magnolia, etc. that is at least 4 feet tall and as measured 12 inches above the ground has a circumference not less than 3 inches.

§ 114-5 Removal or damage prohibited.

- A. It shall be unlawful for any person to remove or damage any Town Vegetation, except in accordance with the provisions of this chapter.
- B. Emergency removal of Town Vegetation. No Town Vegetation shall be removed except under the direction of the Town Manager.
- C. Except as may otherwise be provided in Town ordinances or other law, it shall be unlawful for any person to perform land clearing or remove or damage any Trees, bushes or ground cover on a vacant lot in preparation or anticipation of the excavation, erection, construction, or demolition of any building without first obtaining a zoning certificate as required by § 130-37(A) of the Zoning Code of the Town of Henlopen Acres.

§ 114-6 Public tree care.

The Town, in its discretion, will plant, maintain, and remove Town Vegetation, as may be necessary to insure public safety or preserve or enhance the Tree canopy and the beauty of public grounds.

§ 114-7 Pruning; corner clearance.

Owners, occupiers, and agents of such owners or occupiers shall maintain Trees and shrubs on their private property such that they do not interfere with the proper spread of light along the street from a streetlight or interfere with visibility of any traffic control device or sign. Failure to do so shall constitute a "nuisance" for purposes of Section C-28 of the Town Charter.

§ 114-8 Dead or diseased Tree removal on private property.

Owners, occupiers, and agents of such owners or occupiers shall remove any dead or diseased Trees on their private property, when such Trees constitute a hazard to life and property, or harbor insects or disease which constitutes a potential threat to other Trees within the Town. Failure to do so shall constitute a "nuisance" for purposes of Section C-28 of the Town Charter.

§ 114-9 Violations and penalties.

- A. Any violation of any provision of this chapter is declared to be a civil offense and is subject to the voluntary assessment and other procedures described in Chapter 55 of this Code. Any person,

including but not limited to the owner, agent, architect, contractor, or any other person who commits, takes part or assists in any such violation shall pay a civil assessment of \$200 and shall pay the Town's court costs including its attorneys' fees. Each day any violation of this chapter occurs or continues to exist shall constitute a separate violation and may be subject to a separate civil assessment.

- B. A violation of any provision of this chapter shall be deemed a nuisance and may be abated in the same manner provided by the Town for the abatement of any other nuisance in addition to the provisions of this chapter. In addition to any other remedy provided by law, an appropriate legal proceeding, whether by legal process or otherwise, may be instituted or taken to prevent action, construction, planting, removal, or use, or to restrain, or correct, or abate such violation to prevent any act, conduct or use contrary to the terms of this chapter.
- C. Order for compliance.
 - (1) Public Property Encroachments. Upon failure, neglect, or refusal of any owner, occupier, or agent of such an owner or occupier to comply with the requirements of this chapter within 10 days after receipt of written notice sent by certified mail or registered mail, the Town Manager is authorized to remove, prune, or otherwise remedy public property encroachments.
 - (2) Private Property Violations. Upon failure, neglect, or refusal of any owner, occupier, or agent of such an owner or occupier to comply with the requirements of this chapter within 60 days after receipt of written notice sent by certified mail or registered mail, the Town Manager is authorized to remove, prune, or otherwise remedy violations of this chapter on private property.
- D. Whenever the Town effects a removal or pruning, or enforces compliance with the terms of this chapter, pursuant to the provisions of this chapter, the actual cost thereof, together with an additional charge of 20% of the actual charge to defray administrative expenses, along with the Town's related costs and expenses, including its attorneys' fees, together with accrued interest at the rate of 6% per annum from the date of completion of the work by the Town, shall be charged to the owner or occupier of such property and the Town may proceed to collect the same as it would any other obligation due the Town.
- E. Additional assessment for illegal Tree damage or removal. In addition to the penalties and assessments provided herein, any person who damages or removes a Tree or Trees in violation of any provision of this chapter shall forfeit and pay to the Town a civil assessment equal to the total value of those Trees illegally damaged or removed, as computed from the International Society of Arboriculture shade Tree value formula. Said sum shall accrue to the Town and may be recovered in a civil action brought by the Town. Said sum so collected shall be placed in a special fund and shall be expended for the purchase of Tree(s) for placement in public properties in the Town. Replacement of illegally removed or damaged Trees may be required as restoration in lieu of monetary assessment. A combination of monetary assessment and Tree replacement may be required.

§ 114-10 Withholding of certificates of occupancy or permits.

The Town Manager may withhold the issuance of the required certificate of occupancy, or permits and inspections, on any development as required until the provisions of this chapter are met.

Section 2. If any provision of this Ordinance shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Ordinance which

may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to be severable.

Section 3. This Ordinance shall take effect immediately upon its adoption by the Commissioners of the Town of Henlopen Acres.

I, Beatrix Richards, Secretary of the Commissioners of the Town of Henlopen Acres, do hereby certify that the foregoing is a true and correct copy of the ordinance passed by the Commissioners at their meeting held on June 9, 2017, at which a quorum was present and voting throughout and that the same is still in full force and effect.


Secretary

SYNOPSIS: This Ordinance replaces former Chapter 114, relating to Trees, in its entirety.