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**AN ORDINANCE
IMPOSING A MORATORIUM ON
SEVERELY CUTTING BACK, TOPPING, DAMAGING, OR
REMOVING CANOPY TREES IN
CERTAIN RESIDENTIAL LOT SETBACK AREAS
WITHIN THE MUNICIPAL LIMITS OF
THE TOWN OF HENLOPEN ACRES**

WHEREAS, the Mayor and Commissioners are committed to the sustainability and long-term protection of canopy trees within the Town of Henlopen Acres;

WHEREAS, the 2014 Henlopen Acres Comprehensive Development Plan provides “This along with our significant tree canopy of 43.2% provides a very special environment that needs to be preserved.”

WHEREAS, the 2014 Henlopen Acres Comprehensive Development Plan further provides “The Plan recommends instituting a standard of minimum trees per lot, in particular on the 20 foot right of way owned by the Town.”

WHEREAS, the draft 2025 Henlopen Acres Comprehensive Development Plan provides “This, along with a tree canopy of 74.9%, as measured by the State Department of Agriculture in 2014, provides a very special environment to be preserved.”

WHEREAS, the draft 2025 Henlopen Acres Comprehensive Development Plan further provides:

This Plan recommends that these various efforts be continued and the minimum tree planting density requirement for new homes be increased to require a higher percentage of deciduous canopy trees. During the planning process, members of the Tree Committee provided comments on a range of provisions to protect trees on private property, including enforcing a minimum tree density on all lots and requiring residents to obtain a Town permit to remove any tree from their property. The Tree Committee also highlighted that the Town currently has the densest tree canopy in Sussex County and is listed as one of the top 5 in the State. The Committee suggested that maintaining these standings be an aspirational goal for the Town and as such, that is what this Plan recommends. To accomplish this, this Plan recommends that current Code provisions be effectively implemented and enforced to sustain the Town’s canopy, and that further measures focusing on retaining mature trees throughout the Town be considered by the Board of Commissioners, especially those pertaining to new home construction. Over the last 12 years, nearly 45% of home sales result in a new home being built, and this new construction has the largest potential impact on the existing tree

canopy. (2025 Draft Henlopen Acres Comprehensive Development Plan, p. 20).

WHEREAS, the Mayor and Commissioners desire to consider amendments to Chapter 114, Tress, consistent with the objectives of the Comprehensive Development Plan;

WHEREAS, the Mayor and Commissioners deem it critical to maintain the status quo of the existing tree canopy during the reviewing, planning, and drafting process, which may result in changes relating to the planting and removal of trees within the Town of Henlopen Acres; and

WHEREAS, the Mayor and Commissioners consider that imposing a moratorium on severely cutting back, topping, damaging, or removing canopy trees within certain residential lot setback areas is reasonably calculated to prevent further depletion of the tree canopy while the existing tree regulations are reviewed and potentially amended.

BE IT ORDAINED by the Mayor and 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. Notwithstanding the provisions of any other existing Ordinance, Regulation, Resolution, or Policy of the Town of Henlopen Acres, a moratorium is hereby declared on severely cutting back, topping, damaging, or removing a canopy tree, as defined below, on private property located in the first 10-feet of the front yard closest to the Town right-of-way, or in any part of the side and rear yards.

CANOPY TREE – A tree that normally grows to a mature height of 40 or more feet whose branches and foliage create substantial shade underneath. Includes large deciduous trees such as oaks, maples, beech, hickory, sycamore, and tulip poplar trees, but also includes certain tall evergreens such as loblolly pines as outlined on the Town of Henlopen Acres Approved Tree List.

Section 2. The Town Manager, for good cause shown, may authorize a canopy tree in the protected setback areas to be severely cut back, topped, or removed.

Section 3. This moratorium **shall continue until and including July 10, 2025**, unless sooner lifted by the Mayor and Commissioners, for the purpose of providing the Mayor and Commissioners with an opportunity to review and consider possible legislative amendments and to prepare any appropriate ordinance, conduct any necessary public hearing, and take any action deemed appropriate to preserve tree canopy consistent with the Comprehensive Development Plan.

Section 4. This moratorium shall not apply to: (1) tree removals previously approved by the Environmental Approval Committee but not yet removed and (2) tree removals, for which there is a tree removal contract, predating the April 11, 2025

introduction of this Ordinance, and the site plan pending for 47 Pine Reach and to be reviewed on April 16, 2025 by the Environmental Approval Committee.

Section 5. This Ordinance is subject to the pending ordinance doctrine. Upon its introduction at the April 11, 2025 public meeting of the Mayor and Commissioners, no person shall remove a canopy tree in a manner prohibited by this Moratorium Ordinance

Section 6. 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 7. The Town Manager is hereby directed to: (1) publish the title and synopsis of this Moratorium Ordinance in the Cape Gazette and Coastal Point; and (2) post the same at Town Hall and on the Town's website.

Section 8. This Ordinance shall take effect immediately upon its adoption by the Mayor and Commissioners of the Town of Henlopen Acres.

I, Tiffany Derrickson, 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 adopted by the Board of Commissioners at its meeting held on April 11, 2025, at which a quorum was present and voting throughout and that the same is still in full force and effect.

Secretary

SYNOPSIS: This Ordinance establishes a moratorium, effective immediately, on severely cutting back, topping, damaging, or removing a canopy tree, as defined herein, on private property located in the first 10-feet of the front yard closest to the Town right-of-way, or in any part of the side and rear yards.