

**TOWN OF ODESSA**  
P.O. BOX 111  
ODESSA, DELAWARE 19730-0111

**Ordinance 2023-03**  
**Odessa Street and Park Tree Ordinance**

**Title**

This ordinance shall be known as the Odessa Street and Park Tree Ordinance and hereby replaces Ordinance Nos 2002-1 and 2005-3, including any amendments thereto, which are hereby rescinded in their entirety.

**Purpose**

The purpose of this ordinance is to promote and protect public health, safety, and general welfare by providing for the regulation of planting, maintenance, and removal of trees, shrubs and other plants on public lands within the Town of Odessa. It defines and establishes responsibility for and authority over the management of Odessa's street and park trees through a Town Tree Commission. Its jurisdiction is intended for trees on public land, and not those located on private lands except as they affect public land and public streets.

**Authority**

This ordinance is made under the authority vested in the Mayor and Council of the Town of Odessa by its Charter granted by the General Assembly of the State of Delaware.

**Section 1. Definitions**

**ANSI A300** is the American National Standards Institute, Inc. Standard titled "Standard Practices for Tree Care Operations – Tree, Shrub and Other Woody Plant Maintenance".

**Commission** as used herein means the Tree Commission.

**dbh** stands for the diameter of the tree trunk measured at a height of 4.5 feet above the ground.

**ISA** stands for International Society of Arboriculture.

**Large Tree** means a tree that will be 70 feet or more in height at maturity.

**Medium Tree** means a tree that will be 30 feet to 70 feet in height at maturity.

**Park Tree(s)** is herein defined as a tree or shrub in public parks, public open spaces, and all areas to which the public has free access. A listing of all park trees compiled by the Delaware Department of Agriculture, Forest Service (Urban & Community Forestry Program) shall be maintained by the Tree Commission, and a copy this listing will be available at the Town Office for public inspection.

**Person** as used herein means a natural person, individual, partnership, corporation, limited liability company, trust, association, club, society, or any group of persons acting as a group.

**Small Trees** means a tree that will be 30 feet in height or less at maturity.

**Street Tree(s)** is herein defined as a tree or shrub located on land lying between the curb or the edge of any street, lane or alley and the sidewalk, or if there is no sidewalk, the land lying between the curb or the edge of any street, lane or alley and a line one foot behind the line of utility poles along the street, lane or alley. A listing

of all street trees compiled by the Delaware Department of Agriculture, Forest Service (Urban & Community Forestry Program) shall be maintained by the Tree Commission and a copy of this listing will be available at the Town Office for public inspection.

## **Section 2. Creation and Establishment of a Town Tree Commission**

- 2.1 There is hereby created and established a Town Tree Commission which shall consist of 5 members, who shall be appointed by the Mayor with the approval of Council. The members shall consist of a certified tree professional or degreed horticulturalist and four (4) residents of the Town.
- 2.2 The term of each Commission member shall be three years, except for the first sitting of the Commission when two of the members appointed shall be for a term of one year, two members shall be appointed for a term of two years, and one member shall be appointed for a term of three years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed by the Mayor with the approval of Council for the unexpired portion of the term.
- 2.3 Members of the Commission shall serve without compensation.
- 2.4 The Commission shall choose its own officers, make its own rules and regulations for conducting its meetings, and it shall keep a record of all its proceedings. A majority of the members shall be a quorum for the transaction of business. All meetings of the Tree Commission shall be public except executive sessions according to 29 Del. Code § 10004.

## **Section 3. Duties and Responsibilities of the Tree Commission**

- 3.1 It shall be the responsibility of the Commission to:
  - (a) Maintain the street/park tree inventory and update this inventory every two years.
  - (b) Develop and maintain a street/park tree master plan for the Town of Odessa. This plan shall contain a recommended tree species-planting list and shall govern the size of trees that can be planted in the areas of the Commission's jurisdiction.
  - (c) Study, investigate, develop, or update a written plan for the care, preservation, pruning, planting, replacing, removal, or disposition of street and park trees. This plan will be presented annually to the Town Council at the regularly scheduled February Council Meeting, and on its acceptance and approval by Council, shall constitute the official Comprehensive Tree Plan for the Town of Odessa.
  - (d) Prepare and submit a proposed tree planting and maintenance budget to Town Council no later than the regularly scheduled February Council Meeting. This proposal shall be discussed during budget-planning workshops held by Council in its overall budgeting process.
  - (e) Assist Mayor and Council in making application for grants and to receive contributions of money, technical assistance, and labor from any person. All grant monies and contributions received or designated for the Commission shall be transferred immediately to and controlled by the town treasurer and may be dispersed by the treasurer for specific projects relating to the planting, management, care of street and park trees as authorized by the Commission according to the written plan and budget approved by Mayor and Council or as otherwise approved by Mayor and Council.
  - (f) Define work specifications in order to request bid submissions from qualified contractors, initiate contracts and arrangements for the proper care, planting and/or preservation of trees.
  - (g) Educate the public about the benefits of trees and their proper care.
  - (h) When requested by the Council, consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work.
  - (i) Grant permits to property owners to plant, spray, prune, remove, cut above or below the ground, or otherwise disturb a street tree located on or contiguous to their property, or grant variances to



property owners concerning provisions under this ordinance recommended by the Commission for planting, removal, or maintenance of a street tree on or contiguous to their property.

- 3.2 The Commission shall appoint an educational liaison from its membership to work with the public. When a greater level of expertise is needed the Commission can request assistance from the County Cooperative Extension Agency and/or the Delaware Department of Agriculture Forest Service (Urban & Community Forestry Program), or if such does not exist, the successor agency or one of similar purpose.

#### **Section 4. Specifications for Planting**

- 4.1 Spacing of trees: The spacing of street trees will be in accordance with the growth characteristics of the ultimate tree canopy with the three species size classes; except in special plantings designed by a landscape architect at the request and approval of the Commission. Such design work will be handled by a standard competitive bid process. Suggested spacing for trees:

Small - trees no closer than 20' apart

Medium - trees no closer than 30' apart

Large - trees no closer than 40' apart

The spacing of shrubs and bushes will be in accordance with the growth characteristics of the species at maturity.

No street tree shall be planted so as to create a safety hazard.

- 4.2 Utilities: No street trees shall be planted so as to constitute a hazard to utilities.
- 4.3 Tree size: All street trees shall conform to the American Association of Nurserymen Standards and be at least one & one-fourth to one & one-half inches in dbh and at least eight to ten feet tall when planted unless special conditions exist and the Commission approves a deviation.
- 4.4 Planting: Delaware Department of Agriculture Forest Service Urban and Community Forest Program recommended planting techniques for the type of tree to be planted (balled & burlap, containerized, bare root) shall be followed. Such specifications are to be given contractors each time a contract for tree planting is awarded.
- 4.5 Species to be planted: The Tree Commission shall determine the appropriateness of trees within the Town. No person is allowed to plant on public grounds or along public streets without first receiving written permission from the Commission. The Comprehensive Tree Plan and recommended species list must be followed as the guidelines for both the Town and persons planting on public grounds.

#### **Section 5. Maintenance**

- 5.1 The Town shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, parks and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such grounds. The Commission will provide a plan for adequate maintenance for all Town park trees and street trees.
- 5.2 The Commission may remove or order the removal of any street tree, park tree or part thereof (using ANSI A300 Standards) which is in a hazardous condition or which by reason of its nature is injurious to sewer lines, electric power lines, gas lines, water lines, or other public improvements, or is infected with disease or infested with pests. The Commission will work with the various utility companies serving the Town so



that all power line/utility clearance pruning is done according to the ANSI A300 Pruning Standards. The Commission will coordinate where possible to have the utility maintain or remove such tree, and if the removal is to be done under the direction of the Commission, the Commission will in advance, get any necessary authorization from the utility.

- 5.3 No property owner shall plant, spray, prune, remove, cut above or below ground, or otherwise disturb any street or park trees without first receiving permission from the Commission. Any street or park trees removed by a property owner shall be replaced at the property owner's expense.
- 5.4 A property owner (or hired contractor) using pruning practices other than those defined in ANSI A300 to prune a street or park tree, shall be responsible for the cost of subsequent correct pruning and/or replacement with a new tree.
- 5.5 Any individual or firm contracted by the Commission or a private property owner to provide pruning maintenance on street or park trees is required to follow ANSI A300 standard practices.
- 5.6 Tree topping/pollarding: Except as otherwise stated, it shall be unlawful for any person, firm, town agent or employee, or utility company to "top" any street tree, park tree, or other tree on public property. No street or park trees are to be exempted from this specific practice.
- 5.7 Pruning of Overhanging Trees; Cost: Every property owner of any tree overhanging any street right-of-way within the Town shall prune (under ISA Standards) the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection. Trees or other vegetation shall also be pruned to provide a clear space above the surface of sidewalks and streets to allow for unobstructed passage of pedestrians and vehicles. Said owners shall remove all dead, diseased or hazardous trees, or broken or decayed limbs that constitute a hazard to the safety of street intersection. Upon finding any of the above conditions, the Commission shall request the Town Council to notify the property owner of the problem(s) and direct the property owner to correct the problem(s) in a timely manner. The property owner shall have thirty (30) days from the date of that notice to comply and have the tree(s)/shrub(s) pruned. If such owner does not agree with such directive, he or she may appeal to Mayor and Council within the thirty (30) days. However, after that time period the Mayor and Council shall notify the property owner in writing that he or she is in violation of this ordinance and shall assess fines as prescribed herein. The Mayor and Council shall also have the right to bring suit to compel the property owner to correct the hazardous condition. Any damage, whether to private or public property, that results from failure of the property owner to correct the hazardous condition shall be the responsibility of the property owner.
- 5.8 Removal/treatment of dead, diseased, pest infested or otherwise hazardous trees; Cost:
  - a. The Commission shall have the right to remove any dead, pest-infected or other hazardous trees on Town owned property when such items constitute a hazard to life or property in the public right-of-way.
  - b. The Commission shall have the right to request that Mayor and Council notify private property owners to have dead, diseased or pest infested trees on their property treated by an ISA certified arborist or removed when said trees are in such close proximity to Town trees so as to pose a threat to the health of Town owned trees or a threat to the public. If such owner does not agree with such directive, he or she may appeal to Mayor and Council within thirty (30) days. However, after that time period, the Mayor and Council shall notify the property owner in writing that he or she is in violation of this ordinance and shall assess fines as prescribed herein. Mayor and Council shall also have the right to bring suit to compel the property owner to correct the hazardous condition. Any damage, whether to private or public property, that results from failure of the property owner to correct the hazardous condition shall be the responsibility of the property owner.



- c. When a street or park tree listed in the October 5, 2001 Tree Survey, which is incorporated herein as the official survey of street and park trees, or a tree planted by the Commission with the approval of Mayor and Council causes damage to sidewalks and curbs, the costs involved in removing the tree/stump and repairing damage to sidewalks and curbs will be paid by the Town.
- d. In the case of an extreme emergency where there is immediate danger to persons or property, the Town may enter private property and remove or trim the tree to alleviate the emergency situation.

5.9 Removal of Stumps: All stumps of street and park trees shall be removed to 6" below grade at the time the tree is removed so they do not pose a hazard to the public.

5.10 Replacement/Mitigation Policy: Unless prevented by an emergency removal, a tree is to be planted and allowed to become established in close proximity to a declining tree, for a period of at least five years prior to the removal of the declining tree. When such replacement/establishment policy cannot be followed due to time constraints, prior to removal of the declining tree, any tree that is removed by the Commission shall be replaced by one or more trees of an appropriate species as noted in the table below. One of the required number of trees shall be planted in as close proximity to the one removed as is feasible and the remaining specified number within one year from the date of removal on other public lands including street rights-of-way or parks within the Town of Odessa's corporate limits. The Comprehensive Tree Plan and recommended species list must be followed as the guidelines for all tree replacements.

<u>dbh of Tree Removed</u>	<u>Replacement Quantity</u>	<u>dbh of Replacements</u>
less than 6"	1	1-3/4" minimum
6" – 9"	2	1-3/4" minimum
9" – 12"	2	1-3/4" minimum

5.11 Any request for a permit pursuant to Section 3.1(i) or a variance from the requirements of this ordinance shall be made in writing by the property owner to the Commission. The Commission's consideration of such permit or variance and the decision concerning them shall be made at a public hearing. The applicant shall be provided written notice of the date, time, and location of the hearing at least 15 days prior to the hearing. Notice of the public hearing shall be posted on the subject property at least 15 days prior to the hearing. The hearing notice shall include the date, time, location of the public hearing, a brief description of the subject property, and a description of the permit or variance being requested. The decision shall be in writing. Notification of the decision and the written decision shall be mailed to the requesting property owner by certified mail, return receipt requested. The decision may be appealed to the Mayor and Council within thirty days of the date the written decision was mailed in accordance with the provisions outlined in Section 10. Any work performed under a permit or variance shall be at the expense of the property owner. The Commission shall not grant a permit or variance that is contrary to the stated purpose of this ordinance.

## **Section 6. New Developments; Street Renovation Projects**

- 6.1 In new residential or commercial developments, the developer is responsible for new street tree plantings. The Zoning Administrator, the Planning Commission and the Historic Commission, if Historic review is required, are responsible for making prospective developers aware of this requirement prior to the project design phase. The Tree Commission shall be responsible for assisting the developer with placement, spacing and species selection. The developer shall purchase and plant street trees in the public right-of-way no smaller than 1-1/2" in caliper [dbh] which conform in species and spacing as noted in this document and in the developer's master plan.
- 6.2 Projects disturbing more than one-half acre in any six-month period shall prepare and submit to the Tree Commission a scaled plan showing the location of all trees three or more inches dbh. The plan shall indicate which trees the property owner intends to remove and show how the root zones of the trees which are



proposed to be preserved will be protected during construction. The proposal should utilize the standards of the International Society of Arboriculture.

- 6.3 Trees which are removed shall be replaced by trees approved by the Tree Commission according to the following criteria:

<u>dbh of Tree Removed</u>	<u>Replacement Quantity</u>	<u>dbh of Replacements</u>
2" – 4"	1	1-3/4" minimum
5" – 6"	2	1-3/4" minimum
7" – 8"	3	1-3/4" minimum
9" -10"	4	1-3/4" minimum
11" -12"	5	1-3/4" minimum
13" -15"	6	1-3/4" minimum
15" +	7	1-3/4" minimum

Diversity among required plant material shall be required not only for visual interest, but also to reduce the risk of losing large populations of plants due to disease. No one (1) species shall make up more than twenty (20) percent of the planting stock. All trees are to be hardy in USDA Hardiness Zones 5-7. All trees shall be inspected and approved by a representative of the Tree Commission prior to planting. The handling, planting and maintenance of all tree and plant material shall conform to Tree Care Industry Association ANSI A300 standards. Trees are to be guaranteed for one full year, and any tree which, in the sole opinion of the designee of the Tree Commission, is dead or dying shall be replaced by the property owner. Failure to replace a tree shall be a violation of this ordinance. If the Town incurs costs to replace a tree due to the non-compliance of the property owner, the remediation costs shall be added to the property tax bill pursuant to 25 Del. C. § 2901(a)(1)(k) and collected in the same manner as unpaid taxes.

- 6.4 As an accommodation to the property owner, if the number of trees required in 6.3 of this Ordinance cannot be satisfied on the disturbed site, the property owner may apply to the Tree Commission for a cash payment in lieu of planting the trees. This payment shall be \$250 per tree, which reflects the cost of the tree, planting the tree, and maintaining the tree for one year. The replacement trees, upon approval by the Tree Commission will be planted on public lands, including street rights-of-way or parks. These funds may also be used for the maintenance of existing public trees. Payment shall be made at the time the project is approved by the Town. All payments shall be kept in a separate accounting to be designated as the Odessa Tree Bank Fund and not in the Town's General Fund. The Odessa Tree Bank Fund shall carryover any balance to the following year and be used for the purpose of planting and maintaining public trees. Annually, beginning January 1, 2024, the fee in lieu per tree shall automatically be increased to reflect inflation based upon changes in the consumer price index as established by the U.S. Department of Labor for the Philadelphia-Wilmington-Atlantic City (Pennsylvania, New Jersey, Delaware, Maryland) region for the preceding 12 months.
- 6.5 In new residential or commercial projects, the developer shall present long-range landscape projections and plans at the initial phases of development for approval by the Town. One large growing tree, two medium growing trees, or three small growing trees (size at maturity) are required for each fifty feet along a public right-of-way as a minimum. Unless constrained by utilities, the large growing trees are to be specified and planted. If a tree cannot be accommodated due to the existence of utilities (overhead or buried), the configuration of the right-of-way, the existence of fixtures within the right-of-way, or the likelihood of the tree not surviving to maturity in a particular location, the property owner may submit a request to the Tree Commission to pay a fee in lieu of planting the required number of trees per Section 6.4. These plans should consider the desirability of planting a proportional distribution of mature native trees. Protection of existing trees, hedgerows, and natural cover strips should be encouraged. The Commission may assist the developer in this planning effort.



- 6.6 Town street renovation projects shall make provisions for street tree plantings. The Commission shall work with the contracted project engineer/landscape architect during the design and implementation phases of the project and shall be responsible for making the final recommendations.

#### **Section 7. Interference with Commission Task**

It shall be unlawful for any person to prevent, delay or interfere with those doing Commission assignments, i.e. mulching, weeding, pruning, spraying or removing of any street tree, park tree, or those on Town owned or private property, as authorized in this ordinance.

#### **Section 8. Abuse of Street or Park Trees**

Unless specifically authorized in writing by the 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 gaseous liquid or solid substance which is harmful to such trees to come in contact with the tree or root zones; or set fire to burn when such fire or heat thereof will injure any portion of any tree on Town property.

#### **Section 9. Certification; Insurance**

- (a) Any firm contracted by the Commission or Mayor and Council to prune or remove a Town owned tree shall be familiar with and follow ANSI A300 standard pruning practices before a contract for the work can be awarded. Where bids are competitive in cost, the bid shall be awarded to an ISA Certified Arborist who shall provide proof of certification upon request.
- (b) Any firm contracted by the Commission, or its agents, to spray for or otherwise treat pests and diseases shall show proof that it holds a current Delaware Pest Control Operators license.
- (b) Firms contracted by the Commission, its agents, or Mayor and Council, shall provide to the Mayor and Council and the Commission, respectively, proof of Workers Compensation Insurance and adequate Liability Insurance coverage in the minimum amounts of \$1,000,000 for bodily damage and \$1,000,000 for property damage, indemnifying the Town or any person injured or damaged resulting from the pursuit of such endeavors as described herein.

#### **Section 10. Review of Commission Actions**

Mayor and Council shall have the right to review the conduct, acts, and decisions of the Commission. Any person may appeal any ruling or order of the Commission to the Mayor and Council within 30 days of the decision of the Commission, who may hear the matter and make a final decision. Any appeal must be in writing. The appellant shall be given at least 15 days' written notice of the date, time, and location of the hearing before Mayor and Council. The decision of Mayor and Council shall be in writing and be sent to the person bringing the appeal within sixty days (60) of the date Mayor and Council received the appeal.

#### **Section 11. Penalty**

Any person violating any provision of this Ordinance shall be, upon conviction or a guilty plea, subject to a fine not to exceed \$250 per incident. Each day a violation continues may be assessed as a separate violation. These funds shall be designated for the Commission and used to fund plantings, removals and maintenance under the approved written plan. In addition, the Town has the right to assess the individual/business for legal fees related to the enforcement of this ordinance as well as the Victim's Compensation Fund Assessments imposed by the courts. Jurisdiction for violations of this Ordinance shall be in the Justice of the Peace Court.

## Section 12. Disclaimer of Liability

Nothing contained in this Ordinance shall be deemed to impose any liability upon the Town, its officials, its commissioners, its employees or agents, nor to relieve the owner of any private property from the duty to keep any tree, shrub, or plant upon his or her property or under his or her control in such a condition as to prevent it from constituting a hazard or impediment to travel or vision upon and street, road, lane, alley, park or public land within the limits of the Town.

## Section 13. Severability.

The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that Town Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with Town Council's intent.

## Section 14. Effective Date.

This Ordinance shall become effective immediately upon its adoption.

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### SYNOPSIS

This Ordinance re-adopts the Odessa Street and Park Trees Ordinance, with a handful of changes. In addition to correcting some typographical errors and clarifying certain aspects of the Ordinance, this Ordinance provides definitions for small, medium, and large trees. The composition of the Tree Commission is clarified. The planting distance between trees is revised, and provisions are enhanced for appeals to the Tree Commission and Town Council. This Ordinance establishes tree planting plan requirements and the standards for replacing trees that have been removed. This Ordinance establishes procedures for paying for trees in lieu of planting trees, and penalties for failing to replace dead trees are included.

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This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Odessa at its regular Council meeting on August 07, 2023.

ATTEST:

Amy Marie Offinger  
Council Secretary

[Signature]  
Mayor

