

Current Requirements for Tree Removal

173-2A

Trees less than 20 inches in circumference measured 1 foot above the ground (diameter of 6.4 inches) may be removed without a permit. Any tree that is not a native species (see attached list from code) may be removed without a permit. (This was probably not the intent.)

173-2B & C

- **All trees 20 inches or greater in circumference** may not be removed without permission from the Town. Permission will be granted for any tree that is **less than 40 inches in circumference** (diameter of 12.7 inches) and:

- Is less than 25 feet in height; or
- Removal is necessary to protect people and property from immediate harm (applies to trees of any height); or
- The tree (any height) is in the footprint of any new construction, including the area needed to facilitate construction.

173-2D

- **Removal of any tree that is 40 inches or greater in circumference** must be supported by a signed statement from a licensed arborist or the Town stating the reason for removal.
 - What would be the acceptable reasons – protect from immediate harm, in footprint of new construction, diseased?

- The Town will permit removal of a tree or trees in a tree stand (grouping of 5 or more trees) if:
 - The tree stand spans less than 50 feet in all directions, and the trees in the stand are less than 25 inches in circumference (would allow all trees of any height in the stand to be removed); or
 - Removal of the tree or trees is necessary to protect people and property from immediate harm (applies to trees of any height); or
 - The tree (any height) is in the footprint of any new construction, including the area needed to facilitate construction.

173-3

- Although not explicit for trees in a tree stand, it seems likely that the intent was to require a statement from an arborist or from the town to justify removal of any tree that is 40 inches or greater in circumference.

- Acceptable reasons not clear

173-4

- **Topping** is prohibited but **pruning** is allowed, without the need for a permit.

173-5

- **Procedures for approval** require a reasonable sketch of the property showing the location of all trees and structures on the property, including any proposed new construction or additions, and listing the size and species of each tree sought to be removed or destroyed.

173-6

- **Violation of any provision** is a civil offense subject to a fine of \$500 and replacement of any tree **destroyed without permission**.

173-7

- Decisions may be appealed to the Board of Adjustment.

Possible Amendments

- **For trees less than 20 inches in circumference:**
 - Trees may be removed at owner's discretion without regard to species
- **For trees at least 20 inches in circumference but less than 40 inches:**
 - If "immediate harm" is the reason for removing a tree, require owner to provide statement from a licensed arborist
 - Town reserves the right to engage a consulting arborist before a final decision on issuing a permit
- **For trees at least 40 inches in circumference:**
 - Specify acceptable reasons for removing a tree
 - Immediate harm
 - In footprint of new construction
 - Diseased or other reason why tree is unlikely to survive
 - Retain requirement for arborist or Town statement of reason for removal
 - Town reserves the right to engage a consulting arborist before a final decision on issuing a permit
- **Trees in the Town right-of-way** of any size may not be removed without a permit
- **Delete 173-3 on tree stands** and treat all trees the same
- **Require a no cost permit for tree pruning** to alert Town and provide opportunity to review
- **Increase fine for violations**, possibly
 - \$1,000, or
 - \$5,000
- **Require that trees removed under a permit be replaced with native species trees** that meet minimum size requirements
 - 20 inches as minimum circumference
 - Minimum height 12 feet
 - Comparable size to tree removed
- **Change Town Code Enforcement Official to Building Official** throughout

Note: Is there a need to seek advice from a licensed arborist on circumference and height thresholds?

Chapter 173. Trees

[HISTORY: Adopted by the Commissioners of the Town of Dewey Beach 1-9-2010 by Ord. No. 672. Amendments noted where applicable.]

GENERAL REFERENCES

Property maintenance — See Ch. 138.

Subdivision of land — See Ch. 183.

Zoning — See Ch. 185.

ATTACHMENTS

173a Approved List of Trees 

§ 173-1. Definitions.

[1] *Editor's Note: Pursuant to Ord. 724, adopted 1-9-2016, all definitions throughout the Code were transferred to Ch. 1, Art. III, Definitions.*

§ 173-2. Removal of trees.

- A. Trees with a circumference of less than 20 inches measured one foot above ground level or trees that are not recognized by the Town as a native species may be removed without a permit.
- B. No tree taller than 25 feet in height measured from ground level and greater than 20 inches in circumference measured one foot above ground level, shall be removed or destroyed without written approval from the Town Code Enforcement Official, based upon the criteria set forth below.
- C. The Town Code Enforcement Official shall only permit the removal or destruction of a tree if:
 - (1) The tree is less than 40 inches in circumference, as measured one foot above ground level, and is shorter than 25 feet measured from ground level; or
 - (2) The removal or destruction of the tree is required to protect persons or property from immediate harm; or
 - (3) The tree is located within the footprint of any new construction, including the area necessary to facilitate such construction. All reasonable efforts shall be made during construction or renovation to protect from harm any and all trees otherwise protected under this chapter. To this end, the Town may identify and enforce protected areas for the protection of trees and roots during construction.
- D. No tree with a circumference of greater than 40 inches as measured one foot above ground level may be removed without a signed statement from a licensed arborist or the Town Code Enforcement Official stating the reason(s) for removal or destruction of each tree.

§ 173-3. Removal of trees within tree stands.

The Town Code Enforcement Official shall only permit the removal or destruction of one or more trees in a tree stand if:

- A. The tree stand spans less than 50 feet in all directions and has no trees larger than 25 inches in circumference, as measured one foot above ground level; or
- B. The removal or destruction of each tree or trees is required to protect persons or property from immediate harm; or
- C. The tree or trees to be removed are located within the footprint of any new construction, including the area necessary to facilitate such construction. All reasonable efforts shall be made during construction or renovation to protect from harm any and all trees otherwise protected under this chapter. To this end, the Town may identify and enforce protected areas for the protection of trees and roots during construction.

§ 173-4. Topping and pruning.

Topping of trees and tree stands shall be prohibited. Pruning for aesthetics or the health of the tree/tree stand is permitted, as is reduction when required directly under utility lines for safety.

§ 173-5. Procedures for approval.

Any person seeking permission from the Town to remove or destroy a tree or tree stand, whether in part or in total, must provide the Town Code Enforcement Official with a reasonable sketch of the property showing the location of all trees and structures on the property, including any proposed new construction or additions, and listing the size and species of each tree sought to be removed or destroyed. If any tree or trees to be removed are greater than 40 inches in circumference, a signed statement from a licensed arborist or the Town Code Enforcement Official stating the reason(s) for removal or destruction of each tree must also be provided.

§ 173-6. Violations and penalties.

A violation of any provision of this chapter is declared to be a civil offense pursuant to Chapter **80** of the Municipal Code of the Town of Dewey Beach, and shall be subject to an assessment of \$500 for each offense. Additionally, any person who violates this chapter by improperly removing or destroying one or more trees shall be required to replace each such tree with a tree of comparable size and a comparable species selected from the list of approved native species.

§ 173-7. Appeals.

Any person aggrieved by a decision of the Town Code Enforcement Official involving the denial of a request for tree-removal permit may appeal to the Board of Adjustment. A written notice of appeal must be filed with the Town Manager within 30 days of the date of the decision which is the subject of the appeal.

- A. Notice of appeal. A notice of appeal must be in writing and shall include the applicant's grounds for appeal. The notice of appeal must identify the error upon which the appeal is based and the grounds for reversal of the Town Code Enforcement Official's decision. Any additional exhibits or evidence which the applicant would like the Board to consider on appeal may be filed with the notice of appeal.
- B. Town response; hearing. Within 15 days of the filing of a notice of appeal, the Town Code Enforcement Official may file a written response to the notice of appeal with the Town Manager. A copy of any written response shall be mailed to the applicant by the Town. The Board of Adjustment shall then set a reasonable time for a hearing of the appeal and give public notice, notify the parties in interest, and decide the appeal within a reasonable time. Any party to the appeal or any interested citizens may appear at the hearing in person, by agent, or by attorney.

PRUNING

The selective removal of a portion of one or more branches to maintain tree safety and aesthetics. Pruning includes the removal of dead branches, removal of crowded or rubbing limbs, and elimination of hazards as a corrective or preventive measure.

TOPPING

The indiscriminate cutting of tree branches within a tree's crown to stubs or lateral branches that are not large enough to assume the terminal role to such a degree so as to remove the normal canopy and disfigure the tree. Other names for topping include "heading," "tipping," "hat racking," and "rounding over."