

Chapter 263

URBAN FOREST

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[HISTORY: Adopted by the Town Council of the Town of Chesapeake Beach 7-20-2023 by Ord. No. O-23-18 .¹ Amendments noted where applicable.]

§ 263-1. Purpose.

The purpose of this chapter is to protect, preserve and promote the urban forest of Chesapeake Beach, which is part of a larger ecosystem which contributes significantly to air, noise and visual pollution control, moderates climate extremes, promotes sound energy conservation, and has significant aesthetic value affecting property values and the community's quality of life; and to establish a Tree Board to regulate the planting, maintenance and removal of trees in public places, and certain trees located on private property.

§ 263-2. Applicability.

- A. The following trees are considered to be part of the Town's urban forest and are subject to the provisions of this chapter:
- (1) Public trees which are those trees in the public rights-of-way or on property owned by the Town or any governmental agency, including all trees in the public domain in Chesapeake Beach.
 - (2) Trees worthy of preservation which are:
 - (a) Trees on private property with trunks that measure at least 50 inches in circumference at 4 1/2 feet above ground level if located less than or equal to 50 feet from a public street or sidewalk.
 - (b) Trees on private property with trunks that measure at least 75 inches in circumference at 4 1/2 feet above ground level, if located more than 50 feet from a public street or sidewalk.
 - (3) If a tree divides into branches at less than 4 1/2 feet, the trunk shall be measured immediately beneath the dividing point.
 - (4) This chapter shall also apply to trees, regardless of size or location, that were planted:
 - (a) Pursuant to a reforestation requirement contained in a decision granting a permit by any

1. Editor's Note: This chapter was originally adopted as Ch. 112, but was redesignated as Ch. 263 to maintain the alphabetical sequence of the Code.

government or governmental unit;

(b) With government funding; or

(c) Pursuant to government programs.

(5) Removal of a tree shall include not only actual removal of a tree but also effective removal through a damaging or other intentional action or omission resulting in the death of a tree within one year of the action or omission.

B. This chapter shall not exempt any person from compliance with Chapter 290, Zoning, of the Town Code, and in particular the regulations governing, and permit requirement related to, tree and forest removal and planting in the official Critical Area District, or Article X, Forest Conservation, of Chapter 290. In the event of conflict between these regulations and this chapter, the strictest standards or regulations shall apply.

§ 263-3. Tree Board.

- A. Creation. There shall be created a board to be known and designated as the "Tree Board" composed of six members. Said members shall be appointed by the Mayor and confirmed by the Town Council. A minimum of two members shall be from the Town Green Committee. One member shall be a Town of Chesapeake Beach employee as designated by the Town Administrator. The term of office of the members appointed by the Mayor shall be three years. All non-Town employee members shall serve without pay. Non-Town employee vacancies caused by resignations or otherwise shall be filled by the Mayor and confirmed by the Town Council.
- B. Duties and responsibilities. It shall be the responsibility of the Board to study, investigate, counsel and assist the Town's designated employee in developing and/or updating a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public and private areas, as defined in § 263-2A(2) through (5) of this chapter. Such a plan will be presented annually to the Town Council and upon its acceptance and approval shall constitute the official comprehensive Town tree plan.
- C. Operations. The Board shall choose its own officers, make its own rules and regulations, and keep records of its proceedings. A majority of the members shall be a quorum for the transaction of business.
- D. The Tree Board shall prepare an annual report summarizing its activities; shall recommend changes in the law or other actions that the Mayor and Town Council may wish to take to protect and promote the urban forest; and shall notify the Mayor and Town Council of significant events related to the urban forest.
- E. The Tree Board shall perform the functions described in §§ 263-4 and 263-11 below.
- F. The Town shall retain, upon the advice of the Tree Board, a tree arborist who shall review applications pursuant to this chapter and make recommendations to the Tree Board of any action. The Tree Board shall have 10 days to revise the arborist recommendation by setting the application in for a hearing or the recommendation is hereby accepted by the Town.

§ 263-4. Prohibited acts and permits.

- A. No person shall remove or destroy or cause the removal or destruction of a public tree or a tree worthy of preservation, as defined in § 263-2 of this chapter or undertake construction or other action that

significantly and permanently detracts from the health or growth of a public tree or a tree worthy of preservation without first having obtained a permit from the Town of Chesapeake Beach which shall only be issued upon the presentation of an application. However, upon a determination by the Town that a tree protected by this chapter should be removed, pursuant to the tree being diseased, dead, dying or a hazard as outlined in § 263-5A, the person/entity responsible for the tree or its removal shall be exempt from obtaining a permit to remove the tree, but shall not be exempt from any of the removal and replacement requirements in § 263-6 of this chapter.

- B. The Tree Board shall develop an application consistent with this chapter for a tree removal permit.
- C. The Tree Board shall have the discretion to solicit public opinion upon the application for a permit.
- D. Ordinarily, the Director of Public Works or his/her designee shall be the municipal arborist unless the Town Administrator determines otherwise. The Town Administrator or the municipal arborist shall receive all permit applications and shall immediately notify the Tree Board which shall issue a recommendation regarding the application within the time frame stated in the notice or no later than 45 days.
- E. After the time for the Tree Board response has expired, the municipal arborist or his/her designee shall issue or deny a permit and may add reasonable conditions to the issuance or denial of such permit. This permit decision shall be in writing notifying the applicant of the right of appeal and be immediately mailed or delivered to the applicant.
- F. The property owner shall prominently display each tree permit, where it can be easily seen from the street as soon as possible after it is obtained and until seven days after tree work has been completed.
- G. Upon any evidence of a violation, the municipal arborist or other agent designated by the Town shall notify the Tree Board. The Town and the Tree Board shall investigate and if warranted the Town will issue a citation of municipal infraction.

§ 263-5. Permit standards.

- A. The Town shall ordinarily issue a permit if one of the following conditions applies:
 - (1) The tree is diseased beyond restoration, insect-infested beyond restoration, or injured beyond restoration.
 - (2) The tree is dead or dying.
 - (3) The tree constitutes a hazard to the safety of persons or property that cannot be addressed by using current tree care ANSI Z Standards (American National Standard Institute).
 - (4) The tree or its roots are encroaching on or could cause damage to Town infrastructure.
- B. The Town shall also consider the following factors before deciding on a permit:
 - (1) The overall health of the tree.
 - (2) The potential hazards associated with the tree.
 - (3) The desirability of preserving the tree by reason of its age, size or outstanding quality, such as uniqueness, rarity or status as a landmark or species variety.
 - (4) The degree of hardship suffered by the landowner.

- (5) The extent to which the area would be subject to environmental degradation due to removal of the tree or trees.
 - (6) The extent of the tree canopy in the immediate area.
 - (7) The applicable Town zoning, county, and state law.
- C. The Town is authorized to consult with experts concerning any of the above conditions. Any expert who is not a Town employee and who is consulted about a tree must do so separate of any work to remove or replace the tree. The contractor evaluating the tree may not bid, perform other services and/or profit directly or indirectly as to any work on the tree in question.

§ 263-6. Tree removal standards and replacement.

- A. If a tree measures 75 inches in circumference at 4 1/2 feet above ground level, an applicant or his/her agents shall require written proof and furnish a copy thereof that the person(s) removing a tree is/are bonded and insured.
- B. An applicant may be required to replace any tree that is removed pursuant to a permit. Such replacement shall occur within 180 days after issuance of a permit and may be in the following form:
- (1) Tree for tree replacement, a like number of trees removed, a like number of trees replaced.
 - (2) Specified percentage of canopy cover, replacement by trees, which at maturity will approximately duplicate the crown size of the trees removed. Replacement shall be on the applicant's property or on public properties within Chesapeake Beach at the Town's discretion.
- C. The Town of Chesapeake Beach shall attempt to adhere to the tree replacement provisions of this section following its removal of trees protected by this chapter on Town property or right-of-way.

§ 263-7. Official street tree species.

The official street tree species for Chesapeake Beach are those tree species listed in the current edition of Street Tree Factsheets, published by the Maryland Department of Natural Resources, as may be supplemented from time to time by the Tree Board upon receipt of advice by a professional arborist.

§ 263-8. Enforcement.

- A. Municipal infractions.
- (1) Any of the following shall constitute a municipal infraction for which a citation may be issued:
 - (a) Doing any of the acts prohibited in § 263-4 without a written permit.
 - (b) Any noncompliance with the terms of an issued permit, including conditions regarding removal and replanting of trees.
 - (2) The fine for each violation of § 263-8A(1)(a) shall be \$300 per tree affected, plus \$50 per inch of tree circumference greater than 50 inches, measured at 4 1/2 feet above ground level, with a maximum fine of \$1,000 per tree affected; and a fine of \$1,000 for each repeat of that offense.
 - (3) The fine for failing to comply with the terms of a permit or failure to replace a tree if the tree was removed without a permit shall be \$300 per tree affected, plus \$50 per inch of tree circumference greater than 50 inches, measured at 4 1/2 feet above ground level, with a

maximum fine of \$1,000 per tree affected; and a fine of \$1,000 for each repeat of that offense.

- (4) In the event the tree has been removed so that no accurate measurements can be taken to assess the fine, the fine, at the discretion of the municipal arborist, shall not exceed \$1,000 per tree.
- B. It shall be a misdemeanor to do any of the following:
- (1) Any of the acts forbidden by § 263-4A of this chapter to three or more trees within six calendar months, whether such trees are located on the same property.
 - (2) Removal of or harm to any tree that was subject to a permit request after the permit has been denied.
- C. A misdemeanor violation under § 263-8B shall be punishable by a mandatory fine for each tree affected of \$200 plus \$100 per inch of tree circumference greater than 50 inches, to a maximum per tree of \$2,000 or such other greater maximum as may be permitted by state law. The fine may be suspended only upon a finding that the violation was the first offense by the party charged, and that there was no willfulness involved.
- D. Injunctive relief may be sought to prevent the removal of trees for which a permit is required, where no such permit has been obtained. Mandatory injunctions may be sought to enforce any condition contained in a permit and to require replacement of trees.
- E. Remedial action.
- (1) Whenever any person is in violation of this chapter, is acting without a permit in violation of this chapter or is failing to comply with the terms and conditions of a permit issued pursuant to this chapter, in whole or in part, the municipal arborist or designee may issue a written order to stop work on the project, including the removal of or damages to trees, until the violation or failure to comply is corrected to the Town's reasonable satisfaction. In the event any Town employee discovers anyone removing or seriously damaging a public tree or a tree worthy of preservation, the employee is authorized to order an immediate temporary stop work by oral order. Within 48 hours the temporary stop-work order shall expire, unless the municipal arborist or designee issues a written stop-work order and posts it in the property.
 - (2) Continuing work in violation of any order issued pursuant to this subsection shall constitute a misdemeanor punishable by a \$1,000 fine and/or seven days in jail. For each tree that is damaged or removed in violation of an order there shall be a separate chargeable offense. Each day that work continues to be done shall also constitute a separate offense.
 - (3) A written order issued pursuant to this subsection posted on the property, in a conspicuous location, shall be sufficient service upon all persons physically on the property. A posted notice shall not be removed except under the authority of the Town Administrator or designee.

§ 263-9. Exceptions.

No permit shall be required when performing professionally accepted tree maintenance as outlined in the ANSI Z Standards (American National Standard Institute), except in the case of tree removal.

§ 263-10. Appeals.

- A. An applicant who is denied a permit by the municipal arborist or designee or who objects to the conditions in the permit may appeal the decision by filing the appeal to the Town Administrator in

writing within 20 days of the municipal arborist's decision.

- B. The appeal shall be heard by a three-person appeals panel ("appeals panel"), consisting of the Town Administrator, who shall chair the appeals panel, and two other members appointed by the Mayor, one of whom shall not be an employee of the Town. The appeals panel shall have the authority to affirm, reverse, or modify the decision of the tree arborist, including the conditions in the decision of the municipal arborist if, after a hearing, the appeals panel finds that such action will not adversely affect the public health, safety or welfare, nor the reasonable use of adjoining properties and can be permitted without substantial impairment of the purpose and intent of this chapter.

§ 263-11. Appeals procedure.

- A. Upon the filing of an appeal, the Town arborist shall within 10 days transmit to the Town Administrator the record pertaining to the appeal. In addition, the property shall be posted with a sign, which shall include the case number, nature of the application, and the date, time and place of the hearing. The sign shall be located so as to be readable from the roadway abutting the property and should be placed five feet from the sidewalk, if one exists, or five feet from the curb or the edge of the paved portion of the street if there is no curb. In the case of lots abutting more than one street, a sign shall be posted for each abutting street.
- B. At the hearing, any party may appear in person or by agent or by attorney. The decision by the appeals panel shall be made within 60 days following the hearing.
- C. In exercising its powers, the appeals panel may affirm the denial of a permit, may direct that a permit be issued, or may order that a permit be issued upon such conditions, terms or restrictions as the appeals panel may deem necessary in keeping with this chapter.
- D. A recording shall be made of all appeal hearings and records shall be kept of the Town's examinations and other official actions, all of which shall be filed in the office of the Town Administrator and shall be a public record. The decision of the appeals panel shall be final.

§ 263-12. Factors considered on appeal.

The appeals panel shall consider the following factors in deciding whether to approve, disapprove or modify the decision of the municipal arborist:

- A. Those specified in § 263-5 above if relevant to the appeal.
- B. The reasons cited by the applicant for wanting to remove or destroy the tree.
- C. The reasons, if any, cited by residents who are either in favor of or in opposition to the issuance of the permit.
- D. Whether tree clearing is necessary to achieve proposed development, construction or land use otherwise permitted under the Town Code, and the extent to which there is no reasonable alternative.
- E. Whether the applicant proposes reforestation.
- F. Hardship to the applicant if a permit for the requested action is denied.
- G. The desirability of preserving a tree by reason of its age, size or outstanding qualities, including uniqueness, rarity or species specimen.
- H. Such other relevant matters as will promote fairness and justice in deciding the particular case.