

1 **AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF LEWES,**  
2 **CHAPTER 197 ZONING, TO CREATE 197-78.2 CONSTRUCTION PERIOD TREE**  
3 **PROTECTION, AS IT RELATES TO THE PROTECTION OF TREES DURING**  
4 **CONSTRUCTION.**

5  
6 **WHEREAS**, the Mayor and City Council deem it appropriate to consider the question of  
7 whether it is in the public interest to amend Chapter 197, Zoning, of the Municipal Code of the  
8 City of Lewes, Delaware, as amended, by creating regulations to protect trees during construction;  
9

10 **WHEREAS**, Title 22, Chapter 3, Section 301 of the Delaware Code provides that “[f]or  
11 the purpose of promoting health, safety, morals or the general welfare of the community, the  
12 legislative body of cities and incorporated towns may regulate and restrict the height, number of  
13 stories and size of buildings and other structures, percentage of lot that may be occupied, the size  
14 of yards, courts and other open spaces, the density of population, and the location and use of  
15 buildings, structures, and land for trade, industry, residence or other purposes”;

16  
17 **WHEREAS**, Section 38 of the City's Charter provides that “[f]or the purpose of protection  
18 against fire, promoting health, safety, morals or the general welfare of the community, the City  
19 Council is hereby empowered to adopt ordinances to regulate and restrict the height, number of  
20 stores [sic], size of buildings and other structures, the density of population and the location and  
21 use of buildings, structures, and lands for trade, industry, residence or other purposes”;

22  
23 **WHEREAS**, Article XV, Chapter 197, Section 104, Text and map amendments, of the  
24 Municipal Code of the City of Lewes provides that any amendment to the Zoning Ordinance shall  
25 be made after a public hearing following fifteen (15) days’ notice by publication in an official  
26 paper or a paper of general circulation in the City;

27  
28 **WHEREAS**, a public hearing was conducted on \_\_\_\_\_;

29  
30 **WHEREAS**, at least fifteen (15) days notice of such hearing was provided by publishing  
31 notice of the time and place of such hearing in an official paper or newspaper of general circulation  
32 in the City; and

33  
34 **WHEREAS**, the proposed amendment will promote the health, safety, and general welfare  
35 of the Lewes community.

36  
37 **BE IT ORDAINED** by the Mayor and City Council, in session met, a quorum pertaining  
38 at all times thereto, in the manner following to-wit:

39  
40 **Section 1.** Chapter 197 Zoning, 197-78.2 Construction Period Tree Protection of the  
41 Municipal Code of the City of Lewes, Delaware, be the same and is hereby amended by adding  
42 the underlined text.

43  
44 **A. Purpose**

- 45 **1. To protect a tree or mass of trees, that will remain on the property as designated**  
46 **on the plan.**

47 **B. Applicability**

- 48 1) This section shall apply to major subdivisions, minor subdivisions, site development  
49 plans, and construction of new residential dwellings.  
50 2) This section shall apply to all trees that will remain on the property during  
51 construction.

52 **C. Definitions**

- 53 1) Dripline - Area encircling the base of a tree, the minimum extent of which is  
54 delineated by a vertical line extending from the outer limit of a tree's branch tips  
55 down to the ground.  
56 2) Tree Protection Area – The area within the dripline, or the dripline of the perimeter  
57 of a mass of trees.

58 **D. General requirements**

- 59 1) Install a barrier at the dripline, which delineates the tree protection area.  
60 i. The dripline shall consist of one of the following: brightly colored snow  
61 fencing, wood fence, or metal fence. A silt fence is not permitted.  
62 ii. Brightly colored signage shall be placed on the barrier every 30 ft. stating  
63 “Tree Protection Area” in both English and Spanish.  
64 2) The location of the barrier shall be shown on all construction and record plan sheets.  
65 3) The tree protection area shall be shown on the survey for the construction of a new  
66 residential dwelling.  
67 4) The barrier shall be installed within 48 hours after the issuance of the Notice to  
68 Proceed by the Sussex Conservation District or the issuance of a demolition permit,  
69 whichever is sooner.  
70 5) The barrier shall remain until the acceptance of the roads for a major subdivision,  
71 or the Certificate of Occupancy has been issued for the residential dwelling or  
72 commercial structure.

73 **E. Activities within the tree protection area.**

- 74 1) Permitted Uses within the tree protection area.  
75 i. The general clearing of scrub, invasive species, and unwanted vegetation  
76 without the use of power vehicles. Clearing activities shall not damage the  
77 trunks of the trees to remain.  
78 ii. A maximum depth of 3 inches of mulch may be placed within the tree  
79 protection area. The root flare of the tree(s) shall be exposed.  
80 iii. Minimize the direction of drainage towards the trees.  
81 2) Prohibited Uses within the tree protection area.  
82 i. Driving or parking of vehicles and equipment.  
83 ii. Placement, or storage of dumpsters, storage containers, felled trees,  
84 construction materials, construction equipment, building materials,  
85 debris, or any other material.  
86 iii. Disposal, placement, or application of chemicals Ex. glyphosate,  
87 solvents/residual from construction use, liquid spoil.  
88 iv. Disturbance of, excavation of soil, grading, trenching, or placement of  
89 fill.  
90 v. Disturbance of, or damage to tree roots.  
91 vi. Attachment, or placing items to the trees.

92 **F. Violation and Penalties per 197-105.**

93                   1) The city may require proportionate corrective action for non-compliance and  
94                   verification of the corrective action by a Landscape Architect or Certified  
95                   Arborist at the expense of the owner/developer.  
96

97                   **Section 2.** If any provision of this Ordinance shall be deemed or held to be invalid or  
98                   unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect  
99                   any other provision of this Ordinance which may be given effect without such invalid or  
100                  unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to  
101                  be severable.  
102

103                  **Section 3.** This Ordinance shall take effect immediately upon its adoption by the Mayor  
104                  and City Council of the City of Lewes.  
105

106                  Adopted by the Mayor and City Council  
107                  of the City of Lewes  
108                  \_\_\_\_\_

109  
110                  I, Timothy Ritzert, Secretary of the City Council of the City of Lewes, do hereby certify that the  
111                  foregoing is a true and correct copy of the ordinance passed by the Mayor and City Council at its  
112                  regular meeting on \_\_\_\_\_, at which a quorum was present and voting throughout and  
113                  the same is still in full force and effect.  
114

115  
116                  \_\_\_\_\_  
117                  Secretary  
118

119                  **SYNOPSIS:** This Ordinance amends the regulations regarding protecting trees during  
120                  construction.