CITY OF DOVER PROPOSED ORDINANCE #2023-10

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, DE IN COUNCIL MET:

That Chapter 114- Vegetation be amended by inserting the text indicated in **bold, blue**, and deleting the text indicated in ~~red strikeout~~ as follows:

Sec. 114-1. Public trees generally.

(a) *Intent; title.* The intent of this section is to **regulate** the planting, maintenance and removal of shade and ornamental trees on public areas in the city.

(b) *Purposes.* The purposes of this section are as follows, and they shall be liberally construed to `promote and advance the general welfare of the city:

(1) To guide and regulate the planting, maintenance, and removal of trees on the public streets, parks, and other municipally owned property.

(2) To establish a city tree board charged with the administration of this section by prescribing regulations relating to the planting, maintenance, and removal of trees in public places.

(3) To protect the character and the social and economic value of both private and public property in the city.

(4) To preserve and enhance the visual character and natural beauty of the city.

(c) *Definitions.* The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Board means the city tree board.

Park trees means trees in public parks having individual names, and all areas owned by the city or to which the public has free access as a park.

Property line means any of the lines forming the front, rear and sides of lots as described in the recorded title.

Public trees mean~~s~~ trees located within public rights-of-way, parks or any other city property.

Street and *highway* mean~~s~~ the entire width of every public way or right-of-way when any part thereof is open to the use of the public as a matter of right for purposes of vehicular and pedestrian traffic.

Street trees means trees on land lying between property lines on either side of all streets and avenues within the city, usually located between the curb and sidewalk.

(d) *City tree board.*

(1) *Establishment.* Since the city has an existing governing body with jurisdiction over public trees, there is no reason to create a new board. With the adoption of the ordinance from which this section is derived, the parks, recreation and community enhancement committee has the title and duties as the city tree board.

(2) *Advice to city council.* The council shall consider the advice of the city tree board on all matters concerning the application of this section.

(3) *Duties.* The duties of the city tree board shall be as follows:

a. To study the problems and determine the needs of the city in connection with its tree program.

b. To study and recommend to the council desirable legislation concerning the tree program.

c. To ensure adequate funding for public tree planting and maintenance.

(e) *Control of shade and ornamental trees.* The city assumes complete control over all public tree planting, maintenance, and removal. These functions shall be performed by city crews and personnel or by contracts with qualified, licensed and ensured private tree companies.

(f) *Superintendent of grounds.*

(1) *Duties.* The superintendent of grounds shall have the authority to promulgate the rules and regulations of the arboriculture specifications and standards of practice governing the planting, maintenance, removal, fertilization and pruning of trees on the streets or other public sites in the city and shall direct, regulate and control the planting, maintenance and removal of all trees growing now or hereafter in any public area of the city. He shall cause the provisions of this section to be enforced. (See section 114-2.)

(2) *Relief from personal responsibility.*

a. The superintendent of grounds or any employee charged with the enforcement of this section, while acting for the city, shall not thereby render himself personally liable, and he is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties. Any suit instituted against any city employee because of an act performed by him in the lawful discharge of his duties shall be defended by the city solicitor.

b. In no case shall the superintendent of grounds be liable for costs in any action, suit or proceeding that may be instituted in pursuance of the provisions of this section when he and/or his subordinates perform their duties in good faith and without malice.

(g) *Damage or abuse.* Should any public tree be damaged by any person, the city may charge the person causing such damage for repairs to the tree and/or its devaluation. Should any public tree be destroyed by any person, the city may charge the person causing such destruction for the appraised value of the tree, plus the cost of its removal and replacement.

(h) *Care upon public grounds.* The city shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys and public grounds as may be

necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

(i) *Dead or diseased tree removal on private property.* The city shall have the right to cause the removal of any dead or diseased trees on private property within the city. ~~w~~When such trees constitute a hazard to life and property or harbor insects or disease which constitutes a potential threat to other trees within the city~~.~~, ~~T~~the city will notify, in writing, the owners of such trees. Removal shall be done by said owners at their own expense within 60 days after the date of service of notice; however, a lesser time may be specified for removal when an imminent hazard to life or property has been determined to exist. In the event of failure of the owners to comply with such provisions, the city shall have the authority to remove such trees and charge the cost of removal on the owners' property tax notice, enter the cost as a municipal lien or utilize other methods of collection.

(Code 1981, § 21-1; Ord. of 3-12-1990; Ord. of 8-28-2000)

Charter reference(s)—Tree commission, subpart A, § 51; city solicitor, subpart A, § 54.

Sec. 114-2. Arboriculture specifications and standards of practice.

(a) Authority to promulgate rules and regulations. The superintendent of grounds shall have the authority to promulgate the rules and regulations of the arboriculture specifications and standards of practice governing the planting, maintenance, removal, fertilization and pruning of trees on the streets or other public sites in the city.

(b) *Policy.*

(1) All work on public trees shall comply with this section.

(2) The arboriculture specifications and standards of practice shall be adhered to at all times, but may be amended at any time that experience, new research or laws indicate improved methods or whenever circumstances make it advisable with the approval of the superintendent of grounds.

(3) The policy of the grounds division shall be one of cooperating with the public, property owners and other city departments at all times.

(4) No trees shall be removed from public places unless they constitute a hazard to life or property, a public nuisance or because a revision of planting plans necessitates.

(c) *Street trees species to be planted.* An official street tree species list has been approved by the superintendent of grounds for tree plantings along streets and avenues of the city. (The official list will be kept on file in the office of the city clerk.) No species other than those included in this list may be planted as street trees without the written permission of the superintendent of grounds.

(d) *Planting.*

(1) *Size—Medium to large.* Unless otherwise specified, all medium to large deciduous tree species and their cultivars shall conform to American Association of Nurserymen Standards and be at least 1¼—1½ inches in diameter at six inches above ground level and at least eight—ten feet in height when planted. The crown shall be in good balance with the trunk.

(2) *Same—Small.* All small deciduous tree species and their cultivars shall be at least five — six feet or more in height and have six or more branches.

(e) *Location and spacing.* Spacing of trees shall be determined by the superintendent of grounds, but, generally, all large trees shall be planted no closer than 35 feet, medium trees no closer than 30 feet and small trees no closer than 25 feet, except in special plantings designed or approved by a landscape architect.

(f) *Distance from street corners and fireplugs.* No street tree shall be planted closer than 30 feet to any street corner and no closer than ten feet to any fireplug.

(g) *Utilities.* Only trees listed as small to medium shall be planted under power lines; and no trees shall be planted within five feet of any underground water line, sewer line, transmission line or other utility.

(h) *Pruning and removal.*

(1) It shall be unlawful as a normal practice for any person to top any street or public tree. For the purposes of this subsection, the term "topping" means the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes or certain trees under utility wires may be exempted from this subsection at the determination of the superintendent of grounds.

(2) All large or established trees shall be pruned to the following sufficient heights to allow the free passage of pedestrians and vehicular traffic:

a. Eight feet over sidewalks; and

b. Fourteen feet over streets.

(3) All cuts shall be made with a saw or pruner and only at the nodes or crotches. No stubs shall be left.

(4) All dead, crossed and rubbing branches shall be removed.

(5) All tools being used on a tree suspected to be infected with a contagious disease shall be disinfected before being used on another tree.

(6) Whenever streets are to be blocked off to public service, the police and fire departments shall be notified of the location and length of time the street will be blocked.

(7) The stumps of all removed trees shall be cut to at least three inches below ground level.

(i) *Spraying.*

(1) Suitable precautions shall be taken to protect the public when spraying is being done.

(2) Spraying shall be done only for the control of specific diseases or insects with the proper materials in the necessary strength and applied at the proper time to obtain the desired control. All spraying practices shall conform to federal and state regulations.

(j) *Fertilization.*

(1) Fertilization of public trees shall follow the Tree Care Industry Association standards or other accepted arboriculture standards.

(2) Formulations, rates, and methods of application of fertilizers shall be specified by the superintendent of grounds.

(k) *Cabling and bracing.* All cabling and bracing practices with screw rods shall follow the Tree Care Industry Association standards or other accepted arboriculture standards.

(Code 1981, § 21-2; Ord. of 3-12-1990)

Sec. 114-3. Vegetation on or near streets.

(a) *Prohibited in right-of-way.* It shall be unlawful and a nuisance for any person to plant any vegetation in any public right-of-way. Upon receipt of notice from the city to remove any vegetation located in a public right-of-way, the owner of the abutting property shall remove such vegetation at his own expense within the time limit provided in such notice.

(b) *Prohibited near curb line.* It shall be unlawful and a nuisance for any person to plant any tree, shrub, or bush within 16 feet of the curb line. Upon receipt of notice from the city to remove any tree, shrub or bush which is located within 16 feet of the curb line, the owner of the property upon which such tree, shrub or bush is located shall remove the same at his own expense within the time limit fixed in such notice.

(c) *Exceptions.* Subsections (a) and (b) of this section shall not apply to city officers or employees who are acting within the scope of their employment or official duties.

(d) *Work by city.* If a property owner fails to comply with a notice issued by the city pursuant to this section, the city manager is authorized to proceed with the necessary work by means of city personnel or authorized independent contractors, and the owner shall be billed for the work and labor performed and materials furnished. ~~In the event that~~ **If** the property owner fails to pay said bills or expenses within 30 days from the date the same are mailed to the owner, then such bills shall be entered in the municipal lien docket as a lien owing the city, and the same may be turned over to the city solicitor for collection.

(Code 1981, § 21-3; Ord. of 3-12-1990)

Charter reference(s)—Power of council to define nuisances, subpart A, § 18.

Secs. 114-4—114-30. Reserved.

ARTICLE II. WEEDS

Sec. 114-31. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Weeds means grass, weeds, bushes, and any other vegetation, other than trees, ornamental shrubbery, flowers, and garden vegetables that are properly tended.

(Code 1968, § 30-1; Code 1981, § 21-16)

Sec. 114-32. Maximum height.

It shall be unlawful and a nuisance for the owner, occupant or tenant of any premises, or any agent caring for or in charge of the premises, to permit any weeds, underbrush, deleterious or unhealthful growths, or other noxious matter to grow to a height of eight inches or more.

(Code 1968, § 30-4; Ord. of 9-13-1976; Code 1981, § 21-17; Ord. of 8-28-2000)

Charter reference(s)—Power of council to define nuisances, subpart A, § 18.

Sec. 114-33. Failure to maintain proper height; abatement by city; costs and lien.

~~(a)~~ ***Notice of violation via door hanger*: In the event that any owner, occupant or tenant of any premises within the city, or any agent caring for or in charge of the premises, shall permit any grass, weeds, underbrush, deleterious or unhealthful growths or other noxious matter to grow to a height of eight inches or more as prohibited by this article, then the Code Enforcement Officer, Fire Marshal, or their authorized agents shall issue a notice of violation via door hanger . The door hanger shall state the property is in violation of section 114-32, and said notice is to be served personally or placed in a conspicuous place on the property in violation. Only (1) one door hanger will be issued within a (18) eighteen-month rolling period. The (18) eighteen-month period is reset every time a new violation of 114-32 issued.**

(b) ~~(a)~~ *Summons; action by city*. In the event that any owner, occupant or tenant of any premises within the city, or any agent caring for or in charge of the premises, shall permit any grass, weeds, underbrush, deleterious or unhealthful growths or other noxious matter to grow to a height of eight inches or more as prohibited by this article, then the code enforcement officer or fire marshal or his authorized agents shall issue a summons showing a violation of section 114-32, said summons to be served personally or by mail evidenced by certificate of mailing upon the owner, occupant, or tenant of the premises, or any agent caring for or in charge of the premises. The summons shall cite the violation of this article and shall be accompanied by a letter or a copy of the relevant provisions of this article stating what corrective action must be taken and shall state the consequences for failure to take such corrective action.

(c) ***Action by the City*** If the violation is not corrected within three days from the date of personal service of the summons or within seven days from the date of mailing of the summons evidenced by certificate of mailing, then the city, at the direction of the code enforcement officer or the fire marshal, **or their authorized agents** may remove the weeds, grass, underbrush, deleterious or other unhealthful growths or other noxious matter growing to a height in excess of eight inches or more in violation of section 114-32 and charge the responsible person as provided for in Appendix F—Fees and Fines for such work that must be done to render the property in compliance with this article. When the owner, occupant, or tenant of any premises, or any agent caring for or in charge of the premises, has received summonses, or been issued a summons evidenced by certificate of mailing, and fails to take corrective action, and the city has corrected the violation in accordance with this subsection, then no further notification shall be necessary for the city to take any further corrective action on any subsequent violations within the following 12-month period starting from the date of the first corrective action by the city.

(d) ~~(b)~~ *Failure to pay charges.* In the event that the owner of record is deemed to be in violation of section 114-32, and in the event that the violation is corrected in compliance with subsection ~~(a)~~ **(b)** of this section, and if the charges assessed by the city for correcting said deficiency are not paid, then the city, after having corrected the deficiency and violation, shall place its charges and expenses as specified in the municipal lien docket as a lien against said property, and add the charges and expenses as specified to the tax duplicate for the tax year said services were provided by the city and invoiced as part of the annual property tax bill for said property and collected as part of the city property tax collection process. In addition to the methods directed herein, the city solicitor shall be directed to enforce said lien or to collect the charges imposed by the city by any other means that he may deem desirable and most advantageous to the city. The violator shall be responsible for all collection costs and expenses, including attorneys' fees.

(Ord. of 9-13-1976; Code 1981, § 21-18; Ord. of 7-27-1992; Ord. of 8-28-2000; Ord. No. 2009-09, 6-22-2009; Ord. No. 2012-22, 11-13-2012)

Sec. 114-34. Fines.

(a) *Generally.* Any person convicted of a violation of section 114-32, regardless of corrective actions taken, shall be punished for that violation by a fine as provided for in Appendix F—Fees and Fines. Any such fine shall be in addition to any charges or assessments imposed upon the violator pursuant to section 114-33~~(a)~~ **(c)**. All fines imposed shall be in accordance with the minimum fine schedule set out in subsection (c) herein.

(b) *Each day.* Every day that a violation of section 114-32 continues shall be considered a separate offense, for which the violator may be tried and convicted without necessity of further notice.

(c) *Minimums.*

(1) Any fine assessed pursuant to subsection (a) of this section shall be no less than the minimum amount as provided for in Appendix F—Fees and Fines.

(2) In determining the applicable minimum fine, an offense shall be considered a recurring offense only if the defendant has previously pleaded or been found guilty of causing or permitting the same nuisance at the same location within the past 12 months, or for every day that the violation of section 114-32 continues as per subsection (b) of this section.

(d) *Lien.* Any fines imposed pursuant to subsection (a) of this section which remain unpaid shall:

(1) Be added to the tax duplicate for the tax year said services were provided by the city and invoiced as part of the annual property tax bill for said property and collected as part of the city property tax collection process, and

(2) Be placed by the city as specified in the municipal lien docket as a lien against the property on which the violation occurred, and the procedures for enforcement or collection of said lien shall be as set out in section 114-33~~(b)~~ **(d)**.

(e) *When not paid.* Fines not paid within 14 days of the day the fine was issued, including the day the fine was issued, shall be automatically doubled in amount.

(f) *Fine exemption.* Any fine pursuant to subsection (a) of this section can be exempted if the person convicted of a violation of section 114-32 is hospitalized or otherwise has a serious medical condition during the time of the conviction that would prohibit the grass from being cut.

(1) In order to be considered for the exemption, documentation in the form of a doctors note or documentation from an authorized or certified medical provider, shall be submitted to the Code Enforcement Office within 14 days of the receipt of the citation.

(2) The Code Enforcement Officer, Fire Marshal, or their authorized agents shall review the documentation per subsection (1) above and either grant or deny the fine exemption in writing. A denial letter must include the reasons for denial.

(3) Should the fine exemption be denied, then the person convicted of the violation has 30 days to appeal in writing to the City Council through the City Clerks Office. The City Clerks Office shall put this item on the first available Council agenda.

(Code 1981, § 21-19; Ord. of 3-23-1992; Ord. of 7-27-1992; Ord. of 9-22-2003; Ord. No. 2009-09, 6-22-2009; Ord. No. 2012-22, 11-13-2012; Ord. No. 2022-09 , 10-10-2022)

Sec. 114-35. Exceptions.

The following shall be considered exceptions to the eight-inch height maximum:

(a) *Riparian areas.* Areas within 75 feet of the bank of a perennial stream or lake or within 25 feet from the outer edge of a stormwater management pond shall be permitted to include stream bank vegetation, including grasses, shrubs and/or trees.

(b) *Agricultural areas.* Areas that are actively used for the cultivation of fields, including seasonal cover crops, shall be exempt from this requirement.

(c) *Approved natural and/or meadow areas.* Areas that have been planted as meadow areas or areas that are being allowed to revert to natural vegetation, with approval of the city planner and the city manager, shall be permitted in accordance with the approvals granted by these offices.

(Ord. No. 2009-10, 5-11-2009)

Secs. 114-36—114-55. Reserved.

ARTICLE III. BAMBOO[1]

Sec. 114-56. Unlawful to plant or grow bamboo.

It shall be unlawful to plant or grow bamboo on any lot or parcel of ground within the city unless:

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[1] Editor's note(s)—Ord. No. 2012-16, adopted July 9, 2012, set out provisions intended for use as §§ 114-36—114-39. To preserve the style of this Code, and at the editor's discretion, these provisions have been included as §§ 114-56—114-59.

(1) The root system of such bamboo plant(s) is entirely contained within an above-ground-level planter, barrel, or other vessel of such design, material, and location as to entirely prevent the spread/growth of the bamboo plant'(s) root system beyond the container in which it is planted; or

(2) The root system is contained within a barrier, constructed in accordance with the following specifications, and only after a compliance inspection is performed, and a building permit is issued by the City of Dover:

a. The barrier itself shall be composed of high-density polypropylene or polyethylene, 40 mil or heavier~~;~~.

b. Each portion or sheet of the barrier shall be secured or joined together by the use of stainless-steel clamps or stainless-steel closure strips designed for such barriers~~;~~.

c. The barrier shall be installed not less than 30 inches deep~~;~~.

d. The barrier shall be circular or oblong shaped~~;~~.

e. Not less than three inches of the barrier shall protrude above ground level around the entire perimeter of the barrier~~;~~.

f. When installed, the barrier shall slant outward from the bottom to the top.

(3) Whether planted or growing in a container (under subparagraph a. above) or contained within a barrier (under subparagraph b. above), all bamboo plants shall be located, trimmed, and maintained so that no part of the plant (including stalks, branches, leaves, and/or roots) shall extend nearer than ten feet from any property line.

(Ord. No. 2012-16, § 114-36, 7-9-2012)

~~**Sec. 114-57. Exemptions.**~~

~~Section 114-56 shall not apply to any landowner or possessor who, prior to the effective date of this article, has planted or caused to grow any bamboo on any property within the limits of the city unless a city code enforcement official determines that any portion of such bamboo has been allowed to grow upon, extend roots across, or extend branches, stalks or leaves over any public way or any private property not owned by or in the possession of such landowner or possessor.~~

~~(Ord. No. 2012-16, § 114-37, 7-9-2012)~~

Sec. 114-~~58~~ 57. Complaint/order for removal, repair, and compliance.

When it has been determined by the city that any bamboo plant or root is encroaching on the property of an adjacent or abutting landowner, or public way, the city shall, prior to taking any other action to enforce compliance with this article, give written notice to be delivered by certified mail, to the person(s) or legal entity(s) causing such condition to exist, which notice shall:

(1) Specify the nature and location of the violation~~;~~.

(2) Provide notice of the need to remove and/or correct such condition within 30 days from the effective date of such notice~~;~~.

(3) Require that the removal and/or correction of such condition includes:

a. The removal and eradication of any bamboo plant or root from any adjoining or nearby lot(s) or public way to which it has spread from its original planting site, and the correction and repair of any property damage sustained to said adjoining or nearby lot(s) or public way, in removing such bamboo; and

b. The containment of the bamboo plant causing said encroachment, by mandatory and full compliance with section 114-56(1) or (2);

(4) State that upon failure to comply with the notice and order for removal and/or containment, the city may remove and eradicate the bamboo upon the land of any nearby or abutting property owner, public way and/or upon the property of the person(s) or entity(s) planting or causing such bamboo to grow, as provided in section ~~114-33~~ **114-58**.

(Ord. No. 2012-16, § 114-38, 7-9-2012)

Sec. 114-~~59~~ 58. Abatement of bamboo.

(a) If the violation is not remedied within the time set forth in the notice and order as outlined above, the city is hereby authorized to remove or have removed any ~~encroaching~~ bamboo and to take all reasonable steps to eradicate its re-growth from said ~~adjacent or nearby~~ property or public way, and to restore any such lands to its natural condition prior to such removal and eradication (including fill, grading, and seeding).

(b) The city shall also be authorized to remove and eradicate the plant(s) ~~causing the encroachment,~~ upon the responsible party(s)' failure to properly contain the plant after notice.

(c) The cost of corrective action taken by the city shall be billed to the property owner whose property was the source of the encroachment.

(d) If the charges assessed by the city for removal or eradication of the bamboo are not paid, then the city, after having corrected the deficiency and violation, shall place its charges and expenses as specified in the municipal lien docket as a lien against said property, and the city solicitor shall be directed to enforce said lien or to collect the charges imposed by the city by any other means that he may deem desirable and most advantageous.

(Ord. No. 2012-16, § 114-39, 7-9-2012)

That Appendix F – Fees and Fines, Chapter 114- be amended by inserting the text indicated in **bold, blue**, and deleting the text indicated in ~~red strikeout~~ as follows:

Chapter 114. Vegetation

Chapter 114. Vegetation	**Fees and Fines**
Article II. Weeds	
Every day that a violation of section 114-32 continues shall be considered a separate offense, for which the violator may be tried and convicted without necessity of further notice. Fines not paid within 14 days of the day the fine was issued, including the day the fine was issued, shall be automatically doubled in amount.	

Sec. 114-33. Failure to maintain proper height; abatement by city; costs and lien	
Subsec. ~~(a) Summons;~~ **(c) A** ~~a~~ction by city	~~$50.00~~ ~~**minimum**~~ ~~per hour for such work that must be done to render the property in compliance with this article~~ **City contracted rate.**
Sec. 114-34. Fines	
Subsec. (a) Generally	In addition to charges or assessments imposed, a fine of not less than $50.00, nor more than $250.00 in accordance with minimum fine schedule in Subsec. (c)(1)
In determining the applicable minimum fine, an offense shall be considered a recurring offense only if the defendant has previously pleaded~~,~~ or been found guilty of causing or permitting the same nuisance at the same location within the past 12 months, or for every day that the violation of section 114-32 continues as per subsection (b) of this section.	
Subsec. (c)(1) Minimums—Any fine assessed pursuant to subsection (a) of this section shall be no less than the following minimum:	
First offense	$50.00
Second offense	$100.00
Third and subsequent offenses	$250.00

(Ord. No. 2022-09 , 10-10-2022)

ADOPTED: October 23, 2023