

XXVI. TREES

Section 1. Purpose

Trees contribute to the health and well-being of the Town of Swampscott (the “Town”) and its residents and wildlife. Trees enhance the Town’s beauty and improve air quality and climate by providing shade, producing oxygen, and sequestering carbon. Research has also shown that mature trees increase property values. The purpose of this bylaw is to preserve and protect Town Trees and, in accordance with the provisions of M.G.L. c. 87, Public Shade Trees in the Town

Section 2. Definitions

- a. “DBH (Diameter at Breast Height)” means the diameter of the trunk of a tree 4 1/2 feet above the existing grade at the base of the tree.
- b. “Drip Line” means a vertical line running through the outermost portion of the crown (i.e., the outer branch tips) of a tree and extending to the ground.
- c. “Person” means any individual or group of individuals, or any association, partnership, corporation, company, profit or non-profit business organization, trust or estate, to the extent permitted under the laws of the Commonwealth of Massachusetts.
- d. “Public Right-of-Way” means the strip of land controlled or owned by the Town within which a public street or road lies. Typically, the Public Right-of-Way is wider than the road surface and often includes curbs, sidewalks, utilities, Public Shade Trees and grass strips.
- e. “Public Shade Tree” for purposes of this bylaw, and consistent with M.G.L. c. 87, means all trees within a public way or on the boundaries thereof including trees planted upon adjoining land at a distance not exceeding 20 feet from the layout of such public way for the purpose of improving, protecting, shading or ornamenting the same provided that the written consent of the owner of such adjoining land was first be obtained.
- f. “Town Tree” means any tree in a public park or other place owned, controlled or leased by the Town, or where the Town has an easement, except trees on conservation lands managed by, or resource areas or their buffer zones, under the jurisdiction of, the Swampscott Conservation Commission.
- g. “Tree Removal” means the cutting down of any Public Shade Tree or Town Tree and any other act that the Tree Warden determines will cause such a tree to die within a three-year period, including but not limited to improper or excessive pruning and construction, demolition, and excavation activities. Excessive pruning means the removal of more than one third of the tree canopy or cutting back the tree’s limbs to a point that the Tree Warden determines will prevent the natural growth of the tree.

Section 3. Jurisdiction

- a. This bylaw applies to all Public Shade Trees and Town Trees in the Town.
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b. Tree Warden. The Tree Warden shall have jurisdiction over all trees to which this bylaw applies and as set forth in G.L. c. 87, s. 2. Consistent with M.G.L. c. 41, s.,106, the Tree Warden shall be appointed by the Select Board upon the recommendation of the Director of the Department of Public Works for a three year period, shall be qualified by training and experience in the field of arboriculture, and be licensed with the department of food and agriculture in accordance with the provisions of M.G.L. 132B, s. 10.

c. Coordination with Other Town Regulators. If, based on information provided to the Town's Building Department, Planning Board, Zoning Board of Appeals, or other Town Department or Board, it appears that any Public Shade Tree or Town Tree may be impacted by construction, demolition or excavation activities under that regulatory agency's jurisdiction, such agency shall (1) require the owner of the affected property and any Person engaging in such activities to comply with the provisions of this bylaw and (2) notify the Tree Warden of such activities,

d. Special Permit. For projects that require Planning Board Site Plan Review or Special Permit, the Planning Department shall forward Site Plan Review and Special Permit applications to the Tree Warden for review and comment.

Section 4. Activities Requiring Written Approval by the Town

a. A Public Shade Tree or Town Tree may not be trimmed, pruned, cut or removed by any Person other than by the Tree Warden, acting through the Department of Public Works, unless and until the Tree Warden issues a written approval pursuant to this bylaw.

b. Such written approval shall also be required of any Person for (1) planting a Public Shade Tree or Town Tree, (2) engaging in construction or demolition activities within the Drip Line of a Public Shade Tree or Town Tree, and (3) engaging in excavation activities that may disturb a Public Shade Tree or Town Tree, including but not limited to the installation of utility lines.

Section 5. Tree Planting

The written approval issued under Section 4.b. of this bylaw for planting Public Shade Trees and Town Trees shall include, as determined by the Tree Warden: (1) the species of trees acceptable for planting; (2) the size of the tree (generally anticipated to have a DBH of no less than 2.5 inches); (3) site selection; (4) priorities for tree planting locations; (5) spacing of street trees; (6) any specific planting guidelines; and (7) compliance with any rules or regulations as may be adopted by the Tree Warden. A list of acceptable street tree replacements is available on the Town's Forestry Division web page. The Tree Warden may issue standards for planting Public Shade Trees and Town Trees for which a permit is issued under Section 4.b.

Section 6. Prohibited Activities

a. It shall be unlawful for any Person to engage in any of the following activities relating to Public Shade Trees or Town Trees: (1) topping or stubbing tree branches (i.e., cutting back the vertical stem and the upper primary limbs on mature trees to stubs at uniform height); (2) girdling tree trunks, (3) cutting or poisoning tree roots; (4) causing any other kind of injury; and (5) pollarding the top and branches of a tree if done by any Person other than the Tree Warden, acting through the Department of Public Works.

b. No person shall asphalt or install other impervious surfaces within three feet of the trunk of a Street Tree, provided, however, that if such length is not feasible, in the opinion of the DPW, on

the street-side or sidewalk-side of the tree, then less than three feet is acceptable on that side, but in no case shall asphaltting or installation of impervious surfaces be made up to the trunk of the tree. For purposes of this subsection, the term person shall include any agency, department or commission of a State or a subdivision of a State. Through policy or regulation, the Tree Warden may establish additional requirements for the installation of new or replacement Street Trees, including specifying the appropriate size of tree basins. Where construction or other work occurs in the street or on the sidewalk near an existing Street Tree, and to the extent feasible, the modification of the existing tree basin shall comply with such policy or regulation. As general matter, it is presumed that the tree basin should be at least 15 sq. feet, preferably three-feet wide and five feet long.

Section 7. Application Procedures

A Person who wishes to initiate any activity affecting a tree for which a written approval is required under this bylaw shall submit a written request to the Tree Warden and provide, upon request, such information as the Tree Warden may require. The Tree Warden may specify schedules, terms, and conditions as deemed appropriate by the Tree Warden in the written approval. There shall be no fee for filing a request.

Section 8. Public Hearing

a. Except as provided in M.G.L. c. 87, s. 5, the Tree Warden shall not cut down, remove, or trim a Public Shade Tree, or grant a written approval to any Person for the removal of a Public Shade Tree, without first conducting a public hearing. Where a public hearing is required, the Tree Warden shall, consistent with the provisions of M.G. L. c. 87, s. 3, issue a notice of the time and place of the hearing, which notice shall identify the size, type and location of the tree to be cut down or removed. The Tree Warden shall post the notice on the Town's website, in two or more public places in Swampscott, and in public view on the affected tree at least seven (7) days before such hearing. The Tree Warden shall also publish the notice in a newspaper of general circulation in Swampscott, once in each of two successive weeks, the first publication to be not less than seven (7) days before the day of the hearing. The costs of notice, posting and publication, if any, shall be borne by the applicant.

b. When a public hearing must be held under the provisions of his bylaw and also for either Scenic Roads Designations under M.G.L. c. 40, s. 15C or for projects requiring Planning Board Site Plan Review or Special Permit, such hearings shall be consolidated into a single public hearing before the Tree Warden and the Planning Board.

c. When the Public Shade Tree to be trimmed, pruned, cut, or removed is on conservation lands managed by, or resource areas or their buffer zones under the jurisdiction of, the Swampscott Conservation Commission, the public hearing required under the provisions of this bylaw shall be consolidated into a single public hearing before the Tree Warden and the Conservation Commission.

Section 9. Approval Criteria

a. The Tree Warden shall approve trimming, pruning, cutting, or removal of a Public Shade Tree or Town Tree under this bylaw upon his or her determination that one of the following criteria is satisfied:

- i. The tree interferes with structures, utilities, streets, sidewalks or proposed necessary improvements for which there is no feasible alternative that would save the tree; or
- ii. The tree is dead, diseased, terminally injured, in danger of falling, posing a threat to public safety or personal property, interfering with the use of the public right-of-way or causing drainage problems or
- iii. There is no alternative to removal of the tree as determined by the Tree Warden.

Section 10. Mandatory Applicability of State Standard

In accordance with the provisions of M.G. L. c. 87, s. 4, the Tree Warden shall not cut down or remove or grant a written approval for the cutting down or removal of a Public Shade Tree if, at or before the public hearing required by this bylaw, objection in writing is made by one or more Persons, unless such removal is approved by the Select Board.

Section 11. Tree Replacement

In addition to the remedies provided in this bylaw and M.G.L. c. 87, any Person who removes, injures, defaces or destroys a Public Shade Tree or a Town Tree, including the driver of any vehicle that knocks down or severely injures such a tree, shall be required to replace it, within 6 months of the date of its removal, at such Person's cost, and in accordance with the application procedures and requirements of this bylaw, as follows:

- a. The replacement tree shall be purchased from a certified tree nursery professional approved by the Tree Warden. Such professional shall plant and ensure the health of the tree for one year. If the replacement tree cannot be planted within 6 months, the Person shall, within that 6 month period, provide the Tree Warden with a plan acceptable to the Tree Warden for the tree's replacement and the replacement tree shall be planted within 12 months.
- b. The replacement tree shall be of the same or similar species or such other species as deemed advisable by the Tree Warden and shall have the same or equivalent size as measured in DBH inches as that of the tree that was removed.
- c. If a tree of equivalent size cannot be obtained or is not appropriate, the Tree Warden shall determine a suitable alternative, including planting two or more smaller replacement trees that are the largest available and appropriate for transplanting (provided that DBH is no less than 2.5 inches) or payment to the Town for the value of the tree that was removed as determined by the Tree Warden based on standards in the industry.

Section 13. Emergencies

- a. Trimming, pruning, cutting, or removal shall be allowed without written approval for any Public Shade Tree or Town Tree that is determined by emergency response officials to create a public hazard so as to immediately endanger public safety or cause an immediate and severe disruption of public services. Such officials shall complete a written record of any such determination and submit it to the Tree Warden within 14 calendar days of such determination.
 - b. The Tree Warden may waive the provisions of this bylaw as an emergency response to a
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hurricane, windstorm, flood or other act of nature.

Section 14. Enforcement

a. Any Person who violates any provision of M.G. L. c. 87, s. 3-5, relating to the trimming, cutting, or removal of Public Shades Trees shall be subject to fines of \$300 for each separate offense, as provided by M.G. L. c. 87, s. 6. Where any Person violates any provision of this bylaw but not the provisions of M.G. L. c. 87, the Person shall be subject to fines of \$300 for each separate offense. Each act causing damage to a separate tree shall constitute a separate offense. Each day that a violation continues shall constitute a separate offense; provided, however, that any Person who removes, injures, defaces or destroys a Public Shade Tree or a Town Tree, including the driver of any vehicle that knocks down or severely injures such a tree in violation of this Bylaw, shall be subject to a one-time fine of \$300 and shall, in the event that person fails to comply with the requirements of this Bylaw to replace that tree, be subject additional fines for that new violation. Fines for violations of this bylaw may be assessed and collected under M.G. L. c. 40, s. 21D process.

b. These remedies shall not be in derogation of the Town's right to enforce the provisions of M.G. L. 242, s. 7, against any Person who, without a permit, willfully cuts down, girdles or otherwise destroys a Public Shade Tree or Town Tree, or the Town's right to apply or enforce any other Massachusetts law or Town bylaw.

c. Fines and damages paid to the Town under this bylaw, M.G. L. c. 87, or M.G. L. c. 242, shall be paid into the Town's General Fund.

Section 15. Severability

If any part of this bylaw is for any reason declared invalid or unconstitutional by any court, every other part shall continue in full force and effect.

Section 16 Annual Reporting

In the annual reporting submitted by the Department of Public Works pursuant to Article IV, Section 3, of the General Bylaws of the Town, the Tree Warden shall specify the number and species of trees that were both removed and planted during the year.
