

Shade Tree Regulations for the Town of Amherst

I. Introduction

a. Intent and Purpose

- i. The town of Amherst recognizes mature trees to be an asset to the community, as they beautify and improve the health of the environment. Trees provide oxygen, shade, wind protection, flood control, alleviation from noise pollution, wildlife habitats, and a respite from urban infrastructure. Trees also absorb carbon improving local and global air quality. The town additionally recognizes the economic benefits of properly placed trees, which can increase real property values and desirability.
- ii. Public Shade Trees are protected by Chapter 87 of the Mass General Laws and regulated by the Amherst Tree Warden and the Select Board.
- iii. The purpose of this bylaw is to define the protection afforded town Public Shade Trees and the process by which these trees may be approved for removal. Public Shade Trees are in fact similar in importance to other town assets like; roads, streetlights, and sewer and water infrastructure that provide services to the community and improve the quality of life in Amherst. The town has laws and policies in place that require replacement or reimbursement when said infrastructure is damaged or altered for personal gain. This tree bylaw is intended to set a realistic value on this public asset and a clear process for applicants to follow when requesting the removal of a healthy Public Shade Tree and realistic penalties when a Public Shade Tree is damaged or removed without proper authority.

b. Definitions

- i. A Public Shade Tree is herein defined as any self-supporting woody perennial plant with a diameter at breast height (DBH) of 1.5 inches or greater, and which normally obtains a height of at least 10 feet at maturity; whether planted or naturally sprouting, on land lying within the Public Right of Way in the town. When the ownership or rights of a tree are unknown and the boundaries of the Public Right of Way cannot be made certain by records or monuments, said tree shall be taken to be public property unless otherwise shown.
- ii. The Town is the Town of Amherst, Massachusetts, and its departments and employees.
- iii. The Tree Warden is a Mass. Certified Arborist appointed by the Town Manager, in accordance with M.G.L. Chapter 87 and with this bylaw.
- iv. The Amherst Public Shade Tree Committee (APSTC) is a town committee serving an advisory role to the Tree Warden, in accordance the committee's charge by the town, and this bylaw.

- v. The Gift Tree Fund is a town account receiving money from tree replacement payments and other gifts for tree planting requests, used to pay for new trees and other expenses as determined by the APSTC and the Tree Warden that promote public shade trees.
- vi. The Public Right of Way is all land within the boundaries of the public right-of-way as set forth in an order of the town laying out a public way. The Public Right of Way may include not only the traveled surface of the public way but lands adjacent thereto including sidewalks and treebelt.
- vii. Diameter at Breast Height (DBH) is a standard method of expressing the diameter of the trunk of a standing tree measured at 4.5 feet off the ground.
- viii. The Critical Root Zone (CRZ) is a circle on the ground corresponding to the drip line of the tree. The CRZ is hereby defined as measuring outwards from the trunk a minimum of 1.25 feet for every inch DBH. A minimum of 6 feet must be protected around trees regardless of diameter. Also called the Root Protection Zone (RPZ).

II. Tree Warden Duties

The Tree Warden is in charge of Public Shade Trees on Public Rights of Way, is both a manager and advocate of the town's public shade trees, and has a unique legal responsibility: to guard this public resource against destructive forces that might include persons, insects, diseases, or utility or construction work. His or her duties include:

- a. Planting new trees
- b. Pruning of trees for safety and health
- c. Removal of trees that are dead or dying
- d. Working with the APSTC
- e. Maintaining the Public Shade Tree inventory
- f. Assessment of trees for potential hazards to public safety
- g. Oversight of utility arboricultural operations and of all contracted tree work
- h. Conducting tree hearings
- i. Enforcement of this ordinance

III. APSTC duties

The Amherst Public Shade Tree Committee works to protect and promote Public Shade Trees consistent with the committee charge approved by the Select Board. Its duties include

- a. Advocating for public trees and educating the public on the importance of street trees.
- b. Advising the Tree Warden on tree removal, replanting and other tree related topics.
- c. Conducting public meetings

d. Searching out and designating locations for new plantings, and organizing tree plantings encouraging broad citizen participation.

IV. Planting New Trees within Public Right of Way

Any property owner may petition the Tree Warden to plant a tree within a Public Right of Way. It is understood that some rights-of-way are not suitable for the planting of trees and that some species of trees are not suitable for public rights-of-way. For this reason, it is understood that the permit is discretionary on the part of the Tree Warden and is not to be construed as a right.

The Tree Warden may grant permission for planting on public property subject to the following:

a. All work in a Public Right of Way shall be conducted to the specifications of the Tree Warden.

b. All costs incurred, including related work, regardless of contractor, shall be the responsibility of the petitioner.

c. The petitioner shall work with the Tree Warden to select an appropriate tree and location that will not interfere with buried or above ground utilities and will minimize root damage to streets and sidewalks.

V. Prohibited Acts

a. Damage. Without written permits from the Tree Warden, no person shall do or cause to be done by others any of the following acts:

1. Remove, break, injure, mutilate, deface, prune, top, kill or destroy any Public Shade Tree including the roots;

2. Remove any guard, stake or other device or material intended for the protection of a Public Shade Tree, or close or obstruct any open space above the base of a Public Shade Tree designed to permit access of air, water and fertilizer;

3. Secure, fasten or run any rope, wire, unprotected electrical installation or other device or material to, around or through a Public Shade Tree, or attach any sign, poster, notice or other object to any Public Shade Tree, except that the Town may authorize tying temporary signs to such trees if necessary; or

4. Cause or encourage any fire or burning near or around any Public Shade Tree.

VI. Process to Request a Tree Removal or Pruning

a. Application to the Tree Warden: Anyone wishing to remove or prune a Public Shade Tree of more than 5" DBH, or do any construction or digging that may affect a Public Shade Tree's trunk or Critical Root Zone, must submit a request to the Tree Warden.

b. Tree Hearings: Upon receipt of request, the Tree Warden, in conjunction with the APSTC, shall schedule a hearing to determine if the tree shall be removed and if so, at whose expense, or in the case of construction, whether said work may proceed.

- c. Site Visits: The Tree Warden, the APSTC, and interested parties shall inspect the tree before the hearing.
- d. Public Notice: The Tree Warden shall publicly post site visits at least 48 hours prior, and post tree hearing at least 14 days prior, in any newspaper of general circulation (consistent with MGL chapter 87) and upon the tree itself.
- e. Scenic Roads: Any tree along a designated scenic road shall have additional protection based on the town's Scenic Road bylaw and state law (MGL chapter 40, section 15C).
- f. Decisions: Taking account of the APSTC's advice and citizen input, the Tree Warden shall determine:
 - i. if the tree is unhealthy or a hazard needing to be taken down at the town's expense.
 - ii. if the tree shall remain standing.
 - iii. if the tree may be removed at the owner's expense. Any tree removal contractor is to be paid for by the applicant, and must be approved by the Tree Warden as to equipment, qualifications and experience. The Tree Warden may add other requirements as deemed appropriate to protect other Public Shade Trees or ensure compliance.
- g. Fees: The owner shall be responsible for legal advertising and the cost of removal of tree and stump, including the removal of all debris and proper filling of stump hole under f. iii above. Said owner shall also pay into the Gift Tree Fund an amount equal to \$90 per inch DBH for any public shade tree over 5" DBH removed, or in lieu of this, shall plant new trees in agreement with the Tree Warden with an inch per inch DBH replacement (e.g. One 24" DBH tree can be replaces with 12 2" DBH trees or 16 1.5" trees, etc.) guaranteeing their survival for three years.
- h. Removal, if granted, cannot occur until after all fees have been paid.**
- i. Hardship Waivers/reductions: If requested, the Tree Warden can consider financial hardship as a reason to waive or reduce the removal fee.

VII. Fines:

- a. For damaging or illegally removing a Public Shade Tree (as outlined in section V. 1 above): A fine of no more than \$500 per tree may be added to any other fees if any tree is removed or damaged without prior authorization.
- b. For banging nails or other implements into a Public Shade Tree or for minor damage (as outlined in section V. 2, 3 and 4 above): A fine of not more than \$50 per tree.
- c. All fines from a. and b. shall go into the Town's General Fund.

VIII. Appeals: Any resident or interested party may appeal these decisions. Appeals will be heard by the Select Board.

IX. Enforcement: The Tree Warden shall have the power to enforce this bylaw and collect all fees and fines owed under this bylaw.

X. Severability: If any section, paragraph or part of this by-law is for any reason declared invalid or unconstitutional by any court, every other section, paragraph and part shall continue in full force.