

Purpose:

- 1) The Town finds that the preservation of existing trees, the promotion of new tree planting and the maintenance of the community forest is a public purpose that protects the public health, welfare, environment, aesthetics and quality of life of the Town and its citizens. The purpose of this bylaw is to promote a diverse, healthy and sustainable community forest in order to maintain the historic character of Fairhaven, to provide for the general welfare and enhance the appearance and land values of the Town. The Town has invested substantial resources for many years to plant and maintain trees and these trees belong to the citizens of the Town. The Town also recognizes the need for a highly reliable network of public utilities to supply businesses, homes, hospitals and other services in an area subject to storms and high winds and therefore includes rules for emergency work and tree removal when necessary.

§ 88-2. Definitions:

- 1) Certified Arborist – An arborist certified by the Massachusetts Arborists' Association or the International Society of Arboriculture, or any successor of either organization.
- 2) Diameter at Breast Height (DBH) – The standard measure of tree having at least four (4) inches in diameter at a height of four and one-half (4.5) feet above the existing grade at the base of the tree. If the tree splits into multiple trunks below four and one-half (4.5) feet above the existing grade, the DBH shall be considered to be the measurement taken at the narrowest point beneath the split.
- 3) Drip line – A vertical line running through the outermost portion of the crown (outer branch tips) of a tree and extending to the ground.
- 4) Emergency - When one or more portions of a tree or a whole tree falls, or is likely to fall, onto or dangerously close to property, vehicles or power lines with the likelihood of causing property damage or personal injury.
- 5) Hazard Tree –A tree that has structural defects in the roots, stem, or branches that may cause the tree or parts of the tree to imminently fail, where such failure may cause property damage or personal injury.
- 6) Pruning– The selective removal of plant parts, such as branches, buds, or roots to meet specific goals and objectives such as improving the tree’s structure, removing dead limbs or directing new, healthy growth.
- 7) Public Shade Tree – Trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or ways within the Town other than a State Highway, and all trees, shrubs, bushes, and as further defined in Massachusetts General Laws Chapter 87, §1. Public shade trees are commonly called Street trees. When it appears in any proceeding in which the ownership of or rights in a tree are material to the issue, that, from length of time or otherwise, the boundaries of the highway cannot be made certain by records or monuments, and that for that reason it is doubtful whether the tree is

within the highway or a park or on land surrounding a public building, it shall be taken to be public property until the contrary is shown.

- 8) Remove (including removing and tree removal) – The cutting down of any Public Shade Tree or Town Tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning, or other direct or indirect actions resulting in the death of a public tree, including, but not limited to, excessive or improper pruning.
- 9) Standard, ANSI A300 – The generally accepted industry standards for tree care practices developed by the Tree Care Industry Association (TCIA) and written by the Accredited Standards Committee (ASC) A300.
- 10) Top or Topping – The cutting back of limbs to stubs within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree.
- 11) Town Trees – All trees, other than public shade trees, located on Town lands, including parks, schoolyards, conservation lands, and any other land owned by the Town.
- 12) Tree Warden – The agent of the Town having primary enforcement responsibilities under this chapter and MGL c. 87 and charged with the responsibility for review, notification and record keeping required pursuant to this chapter.

§ 88-3. Protection of Public Shade Trees and Town Trees:

1) Tree Warden:

- A. The Tree Warden shall have the primary care and control of all public shade trees, shrubs and growths in the town. This includes public shade trees in the Right of Way of streets, except those within a state highway. The Tree Warden shall also have the primary care and control of town trees if so requested in writing by the town board or department with authority over that Town land.
- B. The Tree Warden shall enforce all the provisions of law for the care and preservation of such trees, shrubs and growths.
- C. The Tree Warden shall keep detailed records of requests, complaints, public hearings and actions taken such as planting, pruning and removing public shade trees and town trees. Such records shall include the date, location, species and a narrative detailing the action taken and the reason.
- D. These Tree Warden records shall be continually updated, and shall be filed with the Department of Planning annually. These records shall be provided upon request by the public and maintained by the Tree Warden as Keeper of the Record.
- E. The Tree Warden shall adhere to the regulations for the care, preservation, maintenance and removal of public shade trees, or other trees under their control, as established in this bylaw.

- F. The Tree Warden may designate a qualified Deputy Tree Warden with the approval of the Town Administrator who should have the following training as recommended by the Massachusetts Tree Wardens' & Foresters' Association, the Massachusetts Department of Conservation and Recreation (DCR), and the USDA Center for Urban & Community Forestry:
 - 1) Three (3) years supervisory experience in commercial or municipal tree care;
 - 2) Be a Certified Arborist (preferred but not required);
 - 3) Have a Massachusetts Pesticide License within 90 days of employment (preferred but not required);
 - 4) Associate of Science Degree in Arboriculture / Urban Forestry or a related degree (preferred but not required).
- G. All employees of the Town performing tree work shall have specialized training in the care and maintenance of public shade trees. This shall include training in the proper use of the required equipment, planting, pruning and landscaping (including grass cutting) around trees without harming the tree.

2) Permitting:

- A. Public Shade Trees shall not be cut, trimmed or removed, in whole or in part, by any person other than the Tree Warden or their deputy, even if he be the owner of the fee in the land on which such tree is situated, except upon a permit in writing from said Tree Warden after a public hearing, in which no objection was submitted in writing within 14 days of the public hearing. Public Shade Tree public hearings shall be conducted during meetings of another Town Board, such as the Planning Board, Park Commission or Select Board as determined by the Town Administrator. The Tree Warden or their deputy shall cause a notice, stamped by the Town Clerk, of the time and place of such hearing thereof, which shall identify the size, type and location of the shade tree or trees to be cut down or removed and why, to be posted in two or more public places in the town and upon the tree at least seven days before such hearing and published in a newspaper of general circulation in the town once in each of two successive weeks. The first publication to be not less than seven days before the day of the hearing. The posting on the tree shall be done in a manner that will not cause harm to the tree.
- B. Tree wardens shall not cut down or remove or grant a permit for the cutting down or removal of a Public Shade Tree if before, at, or within 14 days of the public hearing as provided in the preceding section, objection in writing is made by one or more persons. If no such objection is made the tree warden shall report to the Town Administrator, and may proceed with the proposed work upon receipt of written approval from the Town Administrator. If such an objection in writing is made and the Tree Warden believes the tree(s) should be cut, trimmed or removed, then the Tree

Warden may advertise a second duly noticed public hearing at a Select Board Meeting. The Tree Warden may proceed with the proposed work upon receipt of written approval from the Select Board filed with the Town Clerk.

- C. The Massachusetts Department of Transportation has the care and control of all trees, shrubs and growths within state highways.
- D. In addition to the procedural requirements set forth above, no public shade tree or town tree shall be removed for the purpose of, or during the construction of, streetscape improvements unless approved in writing by the Planning Board. Except as otherwise required by state or federal law for roadway design, the Planning Board subdivision regulation regarding trees shall apply to all streetscape improvements.
- E. The Planning Director, Conservation Agent, Superintendent of Public Works and Town Administrator shall be notified at the time of advertisement when any tree removal public hearings are scheduled.
- F. A valid tree work permit from the Tree Warden shall be obtained, prior to doing any of the following work:
 - 1) Pruning of a Public Shade Tree or Town Tree.
 - 2) Removal of a Public Shade Tree or Town Tree.
 - 3) Excavation within or adjacent to the public right-of-way or Town property which may disturb roots of any Public Shade Tree or Town Tree, including, but not limited to, the installation of utilities, curb cut permits, or work on the sidewalks.
 - 4) Application for a tree work permit shall be made to the Tree Warden a minimum of 30 business days prior to commencement of the planned work, except in an unforeseen emergency. Application for work on Town lands shall also be submitted to the town board or department with authority over that Town land.
 - 5) It is the obligation of the contractor to positively verify that trees to be trimmed or removed are growing within the public right-of-way, or on other town land, and require a work permit.
 - 6) All work by a Utility Company on Public Shade Trees shall be supervised in the field by an attending Massachusetts certified arborist, who shall be responsible for the work performed, and shall maintain regular contact with the Town's Tree Warden. All work shall be done according to the approved Utility Annual Vegetation Management Plan and/or the Utility Annual Hazard Tree Removal for that year and in accordance with the accepted standards.

- 7) Both the contractor and the utility shall be responsible for ensuring that the bucket operators are trained and knowledgeable of the standards of this chapter, including the latest American National Standards Institute (ANSI) Standard and National Arborist Association (NAA) Pruning Standards.
 - G. Violations of any provision of this bylaw maybe punished by forfeiture of up to five hundred dollars per tree to the use of the Town.
- 3) **Utility Vegetation Management Plan:** Publication, Notification and Review of a Utility Annual Vegetation Management Plan
 - A. Any Annual Vegetation Management Plan shall include, but not be limited to, a map (hardcopy and digital) of the circuits where the maintenance work will be performed, a detailed narrative describing the work to be performed, the tree maintenance standards that will be followed and any foreseeable variance from those standards.
 - B. Any Annual Vegetation Management Plan shall conform to the most current and relevant standards of the American National Standard Institute (ANSI); National Electric Safety Code 218 Tree Trimming; and OSHA 29 CFR Part 1910 Line Clearance Tree Trimming Operations.
 - C. Upon receipt of an Annual Vegetation Management Plan the Tree Warden shall send the plan and notice of the public hearing to the Planning Director, Conservation Agent, Superintendent of Public Works and Town Administrator to be distributed to their Board or Commission. Notice of the public hearing shall be published in a newspaper of general circulation in the Town once in each of two successive weeks. The first publication may not be less than 14 days before the day of the hearing and posted in a conspicuous place in the Town Hall for a period of not less than 14 days before the day of the hearing. The public hearing shall be held with the Planning Board within 45 days of receipt of the Annual Vegetation Management Plan.
 - D. The Tree Warden may approve the Annual Vegetation Management Plan only with the consent of the Planning Board which may instruct the Tree Warden to approve the plan, approve the plan with conditions, or deny the plan.
- 4) **Utility Annual Hazard Tree Removal Plan:** Publication, Notification and Review of Utility Annual Hazard Tree Removal Plan
 - A. Any Annual Hazard Tree Removal Plan shall include, but not be limited to, the specific trees that the utility has identified as a hazard and proposes to remove.
 - B. Any Annual Hazard Tree Removal Plan shall comply with local ordinances and regulations.
 - C. Any Annual Hazard Tree Removal Plan shall be submitted not less than 90 days prior to the date a utility proposes to begin tree removal.

- D. Upon receipt of an Annual Hazard Tree Removal Plan the Tree Warden shall send the plan and notice of the public hearing to the Planning Director, Conservation Agent, Superintendent of Public Works and Town Administrator to be distributed to their Board or Commission. Notice of the public hearing shall be published in a newspaper of general circulation in the Town once in each of two successive weeks. The first publication may not be less than 14 days before the day of the hearing and posted in a conspicuous place in the Town Hall for a period of not less than 14 days before the day of the hearing. The public hearing shall be held with the Planning Board within 45 days of receipt of the Annual Hazard Tree Removal Plan.
- E. The Tree Warden may approve the Annual Hazard Tree Plan only with the consent of the Planning Board which may instruct the Tree Warden to approve the plan, approve the plan with conditions, or deny the plan.
- F. Upon receipt of the Annual Hazard Tree Removal Plan, the Tree Warden, or a designee thereof, shall notify the utility in writing within 60 days whether or not the plan has been approved, approved with modifications and/or conditions or denied.

§ 88-4. Planting:

- A. No public shade tree or town tree shall be planted for the purpose of, or during the construction of, streetscape improvements unless approved in writing by the planning board. Except as otherwise required by state or federal law for roadway design, the planning board subdivision regulation regarding trees shall apply to all streetscape improvements.
- B. The Tree Warden with the Planning Board or Board, Committee or Commission so authorized, shall develop and maintain an up-to-date listing of trees considered most desirable for new plantings along streets with locations.

§ 88-5. Maintenance:

- 1) **Pruning Standards:** In order to minimize adverse impacts of pruning on the Town's public trees, all work performed shall comply with the following requirements and standards.
 - A. Pruning shall be done in such a manner as to protect current tree health with all possible regard for future growth and development
 - B. All work will be performed in compliance with the current ANSI standard and National Arborist Association (NAA) pruning standards.
 - C. No major limb or a limb with a diameter greater than 15% of the tree diameter at breast height (dbh) shall be removed unless approved by the Tree Warden, prior to the commencement of pruning.
 - D. Climbing irons shall not be used by employees on any tree, except when in the process of complete tree removal
 - E. Unless otherwise authorized by the Tree Warden in writing, it shall be unlawful as a normal practice for any person or firm to top any Town tree. Trees severely damaged by storms or other causes, or certain trees

under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this chapter at the determination of the Tree Warden.

- F. A reasonable attempt shall be made to trim dead wood from the area being worked.