

Montague Public Tree Protection Bylaw

1. Preamble:

The Town of Montague recognizes that trees are an asset to the community and provide a healthier and more beautiful environment in which to live. Trees improve air quality and provide shade, wildlife habitat, and beauty. Trees **store carbon**, give protection from wind, glare and noise, and act as barriers and water quality protection. Public trees and landscaping are economically beneficial in attracting new residents, shoppers, visitors and industry. When properly chosen varieties are planted in appropriate settings, trees enhance property values, promote the economic viability of commercial districts, and enhance the desirability and sustainability of residential neighborhoods.

2. Intent and Purpose:

This by-law is enacted for the purpose of preserving and protecting public ~~shade~~ trees pursuant to Massachusetts General Law Chapter 87. It is also enacted to encourage the planting of more public ~~shade~~ trees than are removed to compensate for tree losses and the time it takes for trees to mature.

3. Definitions:

Critical Root Zone (CRZ): Defined by measuring outwards from the trunk a minimum of 1.25 feet for every inch diameter of tree trunk four feet above the ground. For any tree, a minimum of six feet must be protected around trees regardless of the trunk diameter.

Public Tree: Any ~~public shade tree, tree~~ ~~tree within public right-of-way~~, in a municipal park, or ~~tree on Town-owned land~~ adjacent to ~~or within 200 feet of any public buildings, but not including trees within State highways.~~

Public Shade Tree: All trees within a public way or on the boundaries thereof including trees planted in accordance with the provisions of section 7 of Chapter 87 of the Massachusetts General Laws and this Bylaw, shall be public shade trees; and 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, it shall be taken to be within the highway and to be public property until the contrary is shown.

Right-of-Way: All land within the boundaries of the public right-of-way as set forth by 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 the tree belt.

Drip Line: Drip line of a tree is the area defined by the outermost circumference of a tree's canopy, where water drips from and onto the ground.

Hazardous Tree: Any public shade tree which endangers persons travelling on a highway and any other public tree which presents a threat of injury or damage to persons or property.

4. Tree Warden:

The Tree Warden is an elected position pursuant to Massachusetts General Law, Chapter 41, Section 106. The duties and responsibilities of the Tree Warden shall conform to the Massachusetts General Law Chapter 87 and shall include, but not be limited to the following:

- Care, control, and management of all public trees, shrubs and growths within the Town; ~~trees within public rights-of-way, adjacent to public buildings on — public land, and on public commons;~~ and the care, control, and management of trees in public parks or open places under the jurisdiction of the park commissioners, if so requested in writing by the park commissioners; ~~within parks if so requested by the Director of Parks and Recreation;~~
- Expenditure of funds for public tree planting and maintenance consistent with this bylaw , ~~and~~ Massachusetts General Law Chapter 87; ~~and appropriations by Town Meeting.~~
- Enforcement of the provisions of this bylaw and Massachusetts General Law Chapter 87;
- Preparation and maintenance of a current Public Tree Management Plan;
- Coordination with the Highway Department, Planning Department, Parks and Recreation, Planning Board, and the Montague Tree Advisory Committee on matters related to urban forestry and public tree management , ~~and;~~
- Develop regulations for the care and preservation of public trees ~~and establish fines and forfeitures for violation thereof; and~~
- Other responsibilities consistent with this bylaw and Massachusetts General Laws.

5. Cutting of Public Trees:

Consistent with Massachusetts General Law Chapter 87, no person except the Tree Warden, may cut, trim, prune, damage, or remove any part of a public tree, including the roots within the drip line of the tree, without written permission as described in Section 7. No person other than the Tree Warden or the Tree Warden's deputy shall plant, prune, trim, cut above the ground, remove, or conduct any excavation within the drip line of a public tree without first procuring written permission from the Tree Warden, in accordance with the procedures set forth in Sections 5 and 7 of this Bylaw.

The Tree Warden may not remove, permit the removal of, or cause to be destroyed any public tree ~~greater than~~ measuring 1.5 inches in ~~equal~~ diameter, measured one foot from the ground, or more without a duly advertised public hearing as specified in Massachusetts General Law Chapter 87, or if objection is given at or prior to the hearing in writing, without the additional approval of the Selectboard, unless that tree is determined to be an hazardous tree as defined herein. ~~imminent hazard tree, as described in Section 8.~~

The Tree Warden and ~~their~~ deputies, but no other person, may, without a hearing, trim, cut down or remove public trees, less than one and one half inches in diameter one foot from the ground, and bushes, standing in public ways; and, if ordered by the Selectboard or Highway Superintendent, shall trim or cut down trees and bushes, if the same shall be deemed to obstruct, endanger, hinder or incommode persons traveling thereon or to obstruct buildings being moved pursuant to the provisions of section eighteen of chapter eighty-five of the Massachusetts General Laws.

Utilities, as defined in section 14 of Chapter 87 of the Massachusetts General Laws, shall be exempt from the requirements of this section with respect to any work done in accordance with an Annual Vegetation Management Plan or an Annual Hazardous Tree Removal Plan, provided that the work complies with said plan and the procedural requirements of said section 14 of Chapter 87. ~~may, or at the request of the Tree Warden must, file an annual vegetation management plan and/or a hazard tree removal plan.~~

In all cases, pruning and removal of public trees shall be done in accordance with the ~~current~~ ANSI pruning standards, as may be amended from time-to-time.

An applicant who wishes to remove a non-hazardous public shade tree shall be is responsible for the following expenses:

- Cost of advertising a hearing as specified in Massachusetts General Law Chapter 87;
- Cost of removal of tree and stump, including hauling away of all debris, and proper filling of stump hole;
- Planting of sufficient replacement trees as described below;
- Cost of police traffic details, repair of street surface and road shoulder, protection and restoration of utility structures as may be required; and
- All other costs related to the removal and replanting.

All trees or tree parts (i.e. wood) removed from public trees are owned by the Town of Montague, with the exception of fallen leaves.

6. Planting of Public Trees:

No person except the Tree Warden may plant a public tree ~~tree on public property~~ without written permission as described in Section 7.

No public trees, except those smaller species appropriate for planting under utilities, shall be planted within 10 lateral feet of an overhead electric utility wire.

Consistent with Massachusetts General Law Chapter 87, the Tree Warden may plant trees within 20 feet of the public right-of-way with the written consent of the adjoining land owner. Such trees shall not be considered public trees and tThe Property owner will own the tree immediately after planting and is responsible for the maintenance for the lifetime of the tree. The Tree Warden may require a one-time cost share for the expense of the tree.

Any public tree planted on property owned by the Town of Montague shall become the property of the Town.

7. Permission for ~~Planting, Cutting, Pruning or Trimming~~ ~~Removal of Non-Hazardous~~ Public Trees:

The Tree Warden may, without a hearing, grant written permission to trim or prune portions of public trees.

~~Upon written application and after any public hearing and Selectboard approval that is required, the Tree Warden may grant permission, may deny permission or may issue permission with conditions.~~

~~Permission must be granted by the Tree Warden not less than three business days in advance of the time the work is to commence with the exception that, if the work consists of cutting down or removal of a public tree, the application shall be made no less than thirty days in advance. At the time that the application is submitted, applicants shall pay a non-refundable fee of five dollars per tree to the Montague Tree Fund.~~

~~In cases of emergency, the Tree Warden may, without a hearing, grant written permission to trim or excavate within the drip line of a public tree.~~

An emergency is defined as an unforeseen occurrence, which requires immediate action to avoid or reduce significant injury or damage to persons or property. ~~Within three business days after oral permission is granted, the applicant must submit a written request to the Tree Warden who shall grant pre-approval due to emergency.~~

If the applicant proposes to trim or prune ~~or excavate within the dripline of~~ a public tree, and if, in the opinion of the Tree Warden, the proposed work will drastically affect the health, beauty, structural stability, or safety of the tree, the Tree Warden may consider the proposed work to have the same effect as the removal of the tree. In these cases, the Tree Warden may either order the removal of the tree, or allow the tree to remain, provided that it does not present an imminent hazard. In either case, appropriate replacement plantings must be provided by the applicant.

Nothing contained in this bylaw shall prohibit the Tree Warden from refusing to permit the cutting, trimming or removal of non-hazardous trees.

8. Replacement of Public Trees

Public trees shall not be removed for a private purpose without suitable compensation to the Town for replacements. The value of existing ~~publicshade~~ trees is to be calculated on an inch-by-inch replacement basis. Replacements shall be at least two-inch trunk diameter, nursery grown stock. The Tree Warden may, at their discretion, require larger replacements. For example, if an 18-inch diameter tree, measured four feet above grade is to be removed, the applicant must sufficiently reimburse the Town to provide for the purchase and planting of nine, two-inch diameter replacements. At the discretion of the Tree Warden, the applicant shall either:

- A. Arrange to plant suitable replacements using his/her own contractor, working to the Town's specifications, or
- B. Make a cash contribution to the ~~MonTowntague Tree Fund~~ to be used exclusively for the purchase and planting of replacements, and related expenses.

~~98.~~ Removal of Hazardous Trees:

The Tree Warden may remove, without a public hearing, a tree that is determined by the Tree Warden, to be a Hazardous Tree. ~~The Tree Warden shall maintain a photographic record of all hazardous tree removals. an imminent hazard to persons or property.~~

The hazard determination shall be made based on an objective risk tree rating system such as the USDA Forest Service 12-point Risk Tree Rating system or the International Society of Arboriculture Hazard Tree Evaluation system. Hazardous trees shall be prioritized for pruning, removal, or otherwise minimizing the risk based on hazardous trees objectively presenting the most risk.

109. Penalties and Enforcement Fines:

Any person who removes, or causes to be destroyed, a non-hazardous public shade tree without a duly advertised hearing, permission from the Tree Warden, and the approval of the Selectboard if an objection is made to the removal, shall pay a fine of up to \$500, ~~or the appraised value of the tree, whichever is greater, to the Montague Tree Fund.~~

~~Any person who cuts, trims, prunes, damages or removes any part of a public tree, including the roots within the drip line of the tree, without written permission, or who fails to comply with the conditions of their permission, shall pay a fine of up to \$100 per tree to the Montague Tree Fund.~~

~~This provision is inclusive, but not limited to. The following acts are prohibited with respect to Public Treesets:~~

- ~~● Cutting, trimming, pruning, or damaging, or removing any part of a public tree, including roots within the drip line of the tree without or otherwise not in compliance with permission from the Tree Warden;~~
- Mutilating (e.g. driving in nails or screws), girdling, carving into, or topping a tree;
- Damage to the root system by trenching, digging, or other excavation;
- Tapping a publicly owned sugar maple;
- Removing any tree guard, tree stake, watering bag, or other device or material intended for the protection or to support the health of a public tree;
- Covering or obstructing any open land at the base of a public tree designed to permit access of air, water and fertilizer to the root system;
- Applying or sweeping road salt onto the CRZ of a public tree;
- Securing, fastening or running any rope, wire, holiday lighting, unprotected electrical installation, or other device or material to, around or through a public tree, or attaching any sign, poster, notice or other object to any public tree, except that the Tree Warden may authorize tying temporary signs to such trees as necessary;
- Causing or encouraging any fire or burning within the drip line of any public tree. This includes the grilling of food below a public tree, within the drip line, unless the grill is provided in a public park and is permanently installed under the tree;
- Paving over the tree belt and/or over the CRZ on public land;
- Parking a vehicle on the CRZ of a public tree;
- The application of chemicals including, but not limited to, pesticides and herbicides on public land.

This Bylaw may be enforced by the Tree Warden. Whoever violates any provision of this Bylaw may be penalized by a noncriminal disposition process as provided in G.L. c.40, §21D and the Town's non-criminal disposition by-law. If noncriminal disposition is elected, then the non-criminal fine for each such violation, if not otherwise specified, shall be:

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| <u>First Offense:</u> | <u>\$100</u> |
| <u>Second Offense:</u> | <u>\$200</u> |
| <u>Third and</u> <u>Subsequent Offenses:</u> | <u>\$300</u> |

Each tree damaged shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

Whoever violates any provision of this Bylaw may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be three hundred dollars (\$300). Each tree damages shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

110. Public Hazard and Abatement:

Upon a determination by the Tree Warden that a private tree constitutes a public hazard, they shall give written ~~notice~~order to the owner of the property upon which said hazard exists to remove, or otherwise mitigate the hazard posed by such tree. Any person aggrieved by an order of the Tree Warden made pursuant to this section may make a written request for a hearing. Said written request shall be received by the Tree Warden within five business days of receipt of the Tree Warden's order. After such hearing, the Tree Warden may affirm, rescind or modify the order. Failure to request a hearing or comply with such written order within fifteen days thereafter is a violation of this section, and the Tree Warden may assess monetary penalties as set forth above and/or seek enforcement through a court of competent jurisdiction.

12. Interaction with Other Laws

This Bylaw is intended to further the objectives of and to act in concert with any existing federal, state, or local laws concerning public trees, including but not limited to the provisions of Chapter 87 of the Massachusetts General Laws, and nothing herein shall be deemed to limit or restrict Town officials whatsoever from acting in accordance with such laws.

131. Severability:

Should any part or provision of this bylaw be declared ~~by a court of competent jurisdiction to be~~ invalid, the same shall not affect the validity of the bylaw as a whole or any part thereof other than the part held to be invalid.

