

MANCHESTER-BY-THE-SEA PUBLIC SHADE AND TOWN TREE POLICY

Date May 31, 2021

1. Purpose

Trees contribute to the health and well-being of the Town of Manchester-by-the-Sea (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 policy is to preserve and protect Public Shade Trees, Heritage Trees and Town Trees in the Town in accordance with the provisions of Massachusetts General Law (“M.G.L.”) Chapter 87 (“Chapter 87”), and to provide standards for the proper care of Public Shade, Heritage, and Town Trees.

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. Heritage Tree is a tree that measures more than 32 inches in diameter at breast height (DBH) or 100.45 inches in circumference or has a documented cultural and/or historical significance.
- 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” means any tree within or on the boundaries of a Public Right-of-Way except for a state highway and within 5 feet of the Right-of-Way if the tree is planted as a Public Shade Tree with the consent of the owner. Except as otherwise documented per the provisions of Chapter 87, it is presumed the Town Right-of-Way extends 11 feet from the edge of pavement for any Town road. However, hard boundary markers such as stone walls or permitted fences closer than 11 feet from the edge of pavement are presumed to be the edge of the Right-of-Way.
- 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 Conservation Commission.
- g. “Tree Removal” means the cutting down of any Public Shade Tree or Town Tree or Heritage 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.

3. Jurisdiction

a. This Policy applies to all Public Shade Trees, Heritage Trees, and Town Trees in the Town of Manchester-by-the-Sea.

b. Tree Warden. The Tree Warden shall have jurisdiction over all trees to which this policy applies. The Tree Warden shall be appointed by the Board of Selectmen, upon the recommendation of the Director of the Department of Public Works (“DPW”) and shall be qualified by training and experience in the field of arboriculture, certified by the Mass Arborist Association or the International Association of Arboriculture.

Duties of the Tree Warden include:

- 1) the care and control of Public Shade Trees, shrubs and growths within the town Right-of-Way and Town Trees (includes training DPW staff who work on and around such vegetation)
- 2) approving the planting of trees within the Town Right-of-Way and on Town land
- 3) proposing and enforcing regulations for the care and preservation of Public Shade Trees, Heritage Trees and Town Trees
- 4) participating in the bid process regarding the selection of vendors who maintain these trees and provide criteria, recommendations, and other relevant support for the Town’s assessment of vendor candidates
- 5) participating in and recommending action by the Selectmen in tree hearings contemplating the removal of any Public Shade Tree, Heritage or Town Tree
- 6) monitoring and approving plans for utility vegetation management within town (National Grid and the MBTA).

c. Coordination with Other Town Regulators. If any Public Shade Tree, Heritage Tree or Town Tree may be impacted by construction, demolition or excavation activities under the jurisdiction of the Town’s Building Department, Planning Board, Zoning Board of Appeals, or other Town Department or Board, such regulatory agency shall (1) require the owner of the affected property to comply with the provisions of this Policy and (2) notify the Tree Warden of such activities.

4. Activities Requiring Written Approval by the Town

a. A Public Shade Tree, Heritage Tree or Town Tree may not be trimmed, pruned or removed by anyone 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 policy and, in the case of removal, after conducting a public hearing in conjunction with the Board of Selectmen.

b. Such written recommendation shall also be required 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, Heritage Tree or Town Tree, and (3) engaging in excavation activities that may disturb a Public Shade Tree, Heritage Tree or Town Tree, including but not limited to the installation of utility lines.

5. Prohibited Activities

It shall be unlawful to engage in any of the following activities relating to Public Shade Trees, Heritage 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 anyone other than the Tree Warden, acting through the Department of Public Works.

6. Emergencies

Pruning or removal shall be allowed without prior written approval for any Public Shade Tree, Heritage Tree or Town Tree that is determined by emergency response officials to create a public hazard that endangers public safety or causes 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.

7. Application Procedures

Anyone who wishes to initiate any activity affecting a tree for which a written approval is required shall submit a written request to the Tree Warden on the form provided. The Tree Warden may specify schedules, terms, and conditions as deemed appropriate by the Tree Warden in any written approval. There shall be no fee for filing a request. As part of the application procedure all applicants and their vendors* will be provided a copy of this Policy and required by signature to commit to observing its provisions prior to commencing any work in the Town.

8. Public Hearing

Except as provided in M.G.L. c. 87, s. 5, the Tree Warden shall not remove a Public Shade Tree, Heritage Tree or Town 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, in conjunction with the Board of Selectmen, 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, 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 Town, 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.

Board of Selectmen rulings are to be communicated directly to the Tree Warden and the DPW.

9. Approval Criteria

With guidance from the Tree Warden, The Selectmen may approve the removal of a Public Shade Tree, Heritage Tree or Town Tree under this Policy upon determination that one of the following criteria is satisfied:

- a.** 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
- b.** 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
- c.** There is no alternative to removal of the tree

10. Tree Replacement

Anyone who removes, injures, defaces or destroys a Public Shade Tree or Town Tree, including the driver of any vehicle that knocks down or severely injures such a tree, shall be required to replace it, within 12 months of the date of its removal, at such person's cost, and in accordance with the following:

- a.** The replacement tree shall be of the same or similar species or such other species as recommended 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.
- b.** 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.

11. Annual Reporting

In the annual reporting submitted by the Department of Public Works, the Tree Warden shall specify the number and species of trees that were both removed and planted during the year.

* developers, all building trades / their "subs", contractors, architects, landscape / excavating services, nurseries / garden centers, and related services that can affect Public Shade Trees, Town Trees and Heritage Trees.

Chapter 87: Shade Trees

Chapter 87: Section 1. Public shade trees; definition.

All trees within a public way or on the boundaries thereof including trees planted in accordance with the provisions of section 7 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.

Chapter 87 : Section 2. Powers of tree wardens.

The tree warden of a town may appoint and remove deputy tree wardens. He and they shall receive such compensation as the town determines or, in default thereof, as the selectmen allow. He shall have the care and control of all public shade trees, shrubs and growths in the town, except those within a state highway, and those in public parks or open places under the jurisdiction of the park commissioners, and shall have care and control of the latter, if so requested in writing by the park commissioners, and shall enforce all the provisions of law for the preservation of such trees, shrubs and growths. He shall expend all money appropriated for the setting out and maintenance of such trees, shrubs and growths, and no tree shall be planted within a public way without the approval of the tree warden, and in towns until a location therefor has been obtained from the selectmen or road commissioners. He may make regulations for the care and preservation of public shade trees and establish fines and forfeitures of not more than twenty dollars in any one case for violation thereof; which, when posted in one or more public places, and, in towns, when approved by the selectmen, shall have the effect of town by-laws.

Chapter 87: Section 3. Cutting of public shade trees; public hearing; damages to fee owner.

Except as provided by section five, public shade trees shall not be cut, trimmed or removed, in whole or in part, by any person other than the tree warden or his 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, nor shall they be cut down or removed by the tree warden or his deputy or other person without a public hearing and said tree warden or his deputy shall cause a notice 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, 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 city or town once in each of two successive weeks, the first publication to be not less than seven days before the day of the hearing or if no such local newspaper exists then in accordance with the provisions of section six of chapter four; provided, however, that when a public hearing must be held under the provisions of this section and under section fifteen C of chapter forty prior to the cutting or removal of a tree, such hearings shall be consolidated into a single public hearing before the tree warden and the planning board, or if there is no planning board, the selectmen of a town or the city council of a city, and notice of such consolidated public hearing shall be given by the tree warden or his deputy as provided herein.

Any person injured in his property by the action of the officers in charge of the public shade trees as to the trimming, cutting, removal or retention of any such tree, or as to the amount awarded to him for the same, may recover the damages, if any, which he has sustained, from the town under chapter seventy-nine.

Chapter 87: Section 4. Cutting down or removal of public shade trees, approval of selectmen or mayor.

Tree wardens shall not cut down or remove or grant a permit for the cutting down or removal of a public shade tree if, at or before a public hearing as provided in the preceding section, objection in writing is made by one or more persons, unless such cutting or removal or permit to cut or remove is approved by the selectmen or by the mayor.

Chapter 87: Section 5. Cutting down, trimming or removing bushes and small trees.

Tree wardens and their deputies, but no other person, may, without a hearing, trim, cut down or remove 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 mayor, selectmen, road commissioners or highway surveyor, 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. Nothing contained in this chapter shall prevent the trimming, cutting or removal of any tree which endangers persons traveling on a highway, or the removal of any tree, if so ordered by the proper officers for the purpose of widening the highway and nothing herein contained shall interfere with the suppression of pests declared to be public nuisances by section eleven of chapter one hundred and thirty-two, including the Dutch elm disease.

Chapter 87: Section 6. Penalty for violation of secs. 3, 4 and 5.

Violations of any provision of the three preceding sections shall be punished by forfeiture of not more than five hundred dollars to the use of the city or town.

Chapter 87: Section 7. Planting of shade trees.

Cities and towns may appropriate money for the purpose of acquiring and planting shade trees in public ways. The tree warden, or a private organization acting with the written consent of the tree warden, may plant shade trees acquired with public or private funds in a public way, or if he deems it expedient, 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, however, that the written consent of the owner of such adjoining land shall first be obtained.

Chapter 87: Section 8. Trees on state highways.

The department of highways, in this chapter called the department, shall have the care and control of all trees, shrubs and growths within state highways, and may trim, cut or remove such

trees, shrubs and growths, or license the trimming, cutting or removal thereof. No such tree, shrub or other growth shall be trimmed, cut or removed by any person other than an agent or employee of the department, even if he be the owner of the fee in the land on which such tree, shrub or growth is situated, except upon a permit in writing from the department. Any person injured in his property by the action of the department as to the trimming, cutting, removal or retention of any such tree, shrub or other growth, may recover the damages, if any, which he has sustained, from the commonwealth under chapter seventy-nine.

Chapter 87: Section 9. Signs or marks on shade trees.

Whoever affixes to a tree in a public way or place a notice, sign, advertisement or other thing, whether in writing or otherwise, or cuts, paints or marks such tree, except for the purpose of protecting it or the public and under a written permit from the officer having the charge of such trees in a city or from the tree warden in a town, or from the department in the case of a state highway, shall be punished by a fine of not more than fifty dollars. Tree wardens shall enforce the provisions of this section; but if a tree warden fails to act in the case of a state highway within thirty days after the receipt by him of a complaint in writing from the department, the department may proceed to enforce this section.

Chapter 87: Section 10. Injury to trees on state highways.

Whoever without authority trims, cuts down or removes a tree, shrub or growth, within a state highway or maliciously injures, defaces or destroys any such tree, shrub or growth shall be punished by imprisonment for not more than six months, or by a fine of not more than five hundred dollars to the use of the commonwealth.

Chapter 87: Section 11. Injury to trees of another person.

Whoever wilfully, maliciously or wantonly cuts, destroys or injures a tree, shrub or growth which is not his own, standing for any useful purpose, shall be punished by imprisonment for not more than six months or by a fine of not more than five hundred dollars.

Chapter 87: Section 12. Injury to shrubs, trees or fixtures.

Whoever wantonly injures, defaces or destroys a shrub, plant or tree, or fixture of ornament or utility, in a public way or place or in any public enclosure, or negligently or wilfully suffers an animal driven by or for him or belonging to him to injure, deface or destroy such shrub, plant, tree or fixture, shall be punished by a fine of not more than five hundred dollars, and shall in addition thereto be liable to the town or any person for all damages to its or his interest in said shrub, plant, tree or fixture caused by such act. Whoever by any other means negligently or wilfully injures, defaces or destroys such a shrub, plant, tree or fixture shall likewise be liable to the town or any person for all damages to its or his interest in said shrub, plant, tree or fixture caused by such act.

Chapter 87: Section 13. Powers and duties of tree wardens in cities.

The powers and duties conferred and imposed upon tree wardens in towns by this chapter shall be exercised and performed in cities by the officers charged with the care of shade trees within the limits of the highway.

Chapter 87: Section 14. Performance of maintenance and tree removal work by utility; submission and approval of vegetation management and hazard tree removal plans; submission of utility tree maintenance standards and specifications.

Section 14. (a) For the purposes of this section, “utility” shall mean a company engaging in the distribution of electricity or owning, operating or controlling distribution facilities; provided, however, that a distribution company shall not include any entity which owns or operates plant or equipment used to produce electricity, steam and chilled water, or an affiliate engaged solely in the provision of such electricity, steam and chilled water, where the electricity produced by such entity or its affiliate is primarily for the benefit of hospitals and nonprofit educational institutions, and where such plant or equipment was in operation before January 1, 1986.

(b) A utility may, or at the request of the tree warden shall, submit an annual vegetation management plan describing the maintenance work to be performed in a municipality. The plan shall include, but not be limited to, a map of the circuits where the maintenance work will be performed, the tree maintenance standards that will be followed and any foreseeable variance from those standards. The plan shall comply with local ordinances and regulations. The plan shall be submitted not less than 90 days prior to the date the utility proposes to begin its maintenance work. Upon receipt of the plan, the tree warden, or a designee thereof, shall notify the utility within 60 days, in writing, whether or not the plan has been approved. Upon receipt of written notification that the plan has been approved, or approved with modifications agreed to by both parties, a utility shall be exempt from the requirements of sections 3 and 5 for the work described in the approved plan.

(c) A utility may, or at the request of the tree warden shall, submit an annual hazard tree removal plan describing hazard tree removal work to be performed in a municipality. The plan shall include, but not be limited to, the specific trees that the utility has identified as a hazard and proposes to remove. The plan shall comply with local ordinances and regulations. The plan shall be submitted not less than 90 days prior to the date a utility proposes to begin tree removal. Upon receipt of the plan, the tree warden, or a designee thereof, shall notify the utility within 60 days, in writing, whether or not the plan has been approved. Upon receipt of written notification that the plan has been approved, or approved with modifications agreed to by both parties, the utility shall be exempt from the requirements of sections 3 and 5 for the work described in the approved plan.

(d) If a tree warden fails to notify a utility whether a vegetation management plan or hazard tree removal plan has been approved within 60 days of the warden’s receipt of the plan, the utility may request a decision by the selectmen, mayor or chief administrative officer of the municipality.

(e) Notwithstanding approval of a vegetation management plan or hazard tree removal plan, a utility shall notify a tree warden, in writing, not less than 14 days prior to beginning maintenance

work or tree removal work in a municipality. If a local ordinance or regulation requires more than 14 days notice, the utility shall comply with such ordinance or regulation. The notice provided shall include the date on which the utility will begin work and the phone number of the person or persons supervising the work in the field.

(f) The utility shall provide to the state forester, or such other person or agency as designated by the secretary of energy and environmental affairs, a copy of any annual vegetation management plan or hazard tree removal plan and a copy of the approval or denial letter from the applicable tree warden. The state forester, or such other person or agency as designated by the secretary of energy and environmental affairs, shall provide the utility an acknowledgment of receipt of such plans and determinations in any manner approved by said secretary.

(g) The utility shall annually submit to the state forester's office a set of utility tree maintenance standards and specifications and evidence that these standards have been adopted by the utility company. These standards and specifications shall conform with: American National Standard Institute A-300; American National Standard Institute Z-133; and National Electric Safety Code 218 Tree Trimming and OSHA 29 CFR Part 1910 Line Clearance Tree Trimming Operations. The state forester, or such other person or agency as designated by the secretary of energy and environmental affairs, shall make these standards and specifications available to the public on their websites or other accessible locations and shall accept and maintain a publicly accessible record of comments received relative to the standards and specifications and shall transmit the comments to the utilities.