

I move to add the following chapter to the Town of Winthrop ordinances Titled "Title 12 - STREETS SIDEWALKS AND PUBLIC PLACES, Chapter 12.48 - TREES" after "Title 12 - STREETS SIDEWALKS AND PUBLIC PLACES, Chapter 12.44 - STREET SWEEPING PROGRAM":

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CODE OF ORDINANCE TOWN OF WINTHROP

TITLE 18 TREES

INTENT

It is the intent of this ordinance to provide standards for the planting, preservation and protection of Public Trees within the Town of Winthrop (hereafter called the "Town") in order to enhance the quality of life and environment of the Town; to protect habitat for wildlife; to provide a healthy living environment; to protect and increase property values; to combat climate change through carbon sequestration; to reduce the harmful impacts of flooding, noise, pollution, excessive heat, and soil erosion; and to acknowledge the intrinsic value of the mature trees within our community.

The Town Council hereby finds that the preservation of existing trees and the promotion of new tree planting is a public purpose that protects the public health, welfare, environment, and aesthetics for the Town of Winthrop, creates civic identity, and contributes to the distinct visual character of neighborhoods.

Whereas trees provide valuable habitat for wildlife,

Whereas Public Trees are beneficial in attracting new residents,

Whereas, when grown in the right place and of appropriate varieties, trees enhance the value of property, enhance the desirability and stability of residential neighborhoods, and promote the economic viability of commercial areas and,

Whereas trees positively impact mental health and cognitive outcomes,

Therefore, the Town adopts this Ordinance because protection of trees throughout the Town serves a vital public purpose. Every effort shall be made to maintain existing, healthy trees.

APPLICABILITY

Unless otherwise set forth herein, this Ordinance shall apply to all Public Trees in the Town; provided however, that nothing set forth herein shall be applied in a manner that is inconsistent with G.L. c. 87, the Town Charter or any other applicable law, regulation, or Ordinance.

DEFINITIONS

Aggregate diameter: means the combined diameter of a multiple trunk tree measured at breast height.

Caliper: a uniform measure used for new trees, typically used when purchasing a tree. Caliper is the diameter measured at 12" above the ground. This diameter is called caliper to distinguish it from "Diameter at Breast Height" which is a measurement for more mature trees

Care/Maintenance: the protection of newly planted and existing trees by ensuring they are watered and pruned to encourage growth and health, provide items to meet these goals such as water bags, stakes, etc. to work towards replacing hard surfaces that interfere with tree growth with permeable, tree-friendly surfaces (e.g., Terrewalk, grates, bricks, etc.)

Certified arborist: An arborist with current certification, by the Massachusetts Arborists Association, or any successor organization, or the International Society of Arboriculture (ISA).

Construction: activities under the drip line of a Public Tree including but not limited to, trenching or grading, storage of materials or equipment, and spillage of chemicals or other materials, which are damaging to trees.

Critical Root Zone (CRZ): Area around a tree where the majority of a tree's roots lay. CRZ often corresponds to the dripline and is typically measured as 12 inches for every inch of DBH

Diameter at breast height (DBH): The diameter of the trunk of a tree, 4½ feet above the existing grade at the base of the tree. For multiple trunk trees, DBH is the aggregate diameter of the trunks. DBH is measured as the circumference of the tree at 4 ½ feet divided by Pi (3.14)

Drip line: A vertical line running through the outermost portion of the crown of a tree and extending to the ground.

Landmark Tree: Public Trees that have been designated as such by the Tree Warden, after consultation with the Tree Committee, due to their importance, be it cultural or historical, rareness of the species, size, age, extraordinary structure or ecological contribution.

Petitioner: means any person, firm, partnership, association, corporation, government entity, company or organization of any kind including, but not limited to, the person removing a Public Tree or who requests a permit for tree removal.

Public Tree: Any Public Shade Tree; a on Town-owned or controlled land or a tree within a public park or cemetery, in a public space under the jurisdiction of the Town Council or on property of the Commonwealth which the Town has authority to plant or maintain, but not including trees within State highways.

Public Shade Tree: Per MGL 87, Section 1: Any "tree 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 Ordinance, 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.” For clarity, a tree straddling both private and public land is deemed to be a Public Shade Tree.

Remove (including removing and removal): means the cutting, trimming, or cutting down of any Public 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.

Tree Topping: the severe cutting back of limbs to stubs larger than three inches in diameter within the tree’s crown to such a degree to remove the normal canopy and disfigure the tree.

Tree Warden: The agent of the Town having primary administrative and enforcement responsibilities under this Ordinance and G.L c. 87.

Unhealthy Tree: Any Public Tree, deemed unhealthy by the Tree Warden, because of its physical condition.

ADMINISTRATION

The administration of this Ordinance is the responsibility of Tree Warden with input and support from the Winthrop Tree Committee. For details on the Winthrop Tree Committee, See Appendix F - RULES AND PROCEDURES OF THE TOWN COUNCIL, RULE 9 - SPECIAL COMMITTEES, Section J - TREE COMMITTEE.

In no event shall this ordinance be interpreted such that the Tree Committee has any authority inconsistent with the Tree Warden’s authority under G.L. c. 87.

TREE WARDEN: QUALIFICATIONS, DUTIES, RESPONSIBILITIES AND POWERS

The Tree Warden is appointed by the Town Manager for a term of three years.

The Tree Warden acts pursuant to G.L. c. 87 relative to Public Shade Trees and, pursuant hereto, has responsibility for and discretion in the management and maintenance of all Public Trees. Furthermore, the Tree Warden has the authority and discretion to implement none, some, or all the Annual Plan as endorsed by the Tree Committee.

The Tree Warden shall be qualified by training and experience in the field of arboriculture and licensed with the department of food and agriculture in accordance with the provisions of G.L. c. 132B, §10 and preferably shall hold a current arborist certification from either the Massachusetts Tree Warden and Foresters Association and preferably shall have at least three years of supervisory experience in urban forestry or tree care. The Tree Warden should preferably be a member of the Massachusetts Tree Warden and Foresters Association or similar professional association.

The duties and responsibilities of the Tree Warden shall conform to M.G.L. c. 87 and may include but not be limited to, the following:

- Development of an Annual Plan which may include such things as the following: systematic care, preservation, pruning, planting, replanting, removal, or disposition of new or existing Public Trees, locations of work, designated work to be accomplished, and resources including funds required for the coming year. The Annual Plan should be completed and presented to the Tree Committee by January of each year. After receiving feedback from the Tree Committee, the Annual Plan should be shared with the Town Council by March 1 of each year.
- Approval, denial, or approval with conditions, an annual vegetation management plan and hazardous tree removal plan from a utility company. Tree topping shall be discouraged.
- Granting or denial of permits relative to the Removal of any Public Tree and attach thereto reasonable conditions required under or consistent with this ordinance.
- Working in conjunction with the Tree Committee and other city departments, to seek grants or other assistance for the preservation, maintenance, planting of trees.
- In cooperation with DPW, will supervise the root cuts and excavation under the roots, when possible, by contractors digging trenches for utility lines (water, sewer, etc.).
- Development of rules, regulations, tree inventory, manuals, and other data, in conjunction with the Tree Committee and other Town departments, to carry out the purposes and intent of this Ordinance.
- Maintain and regularly update the Town tree inventory* to track removal and replacement of trees in order to replace lost trees in a transparent manner.
 - *This inventory shall include Landmark Trees
- With recommendations from Tree Committee, development, and maintenance of a list of acceptable and prohibited tree species for planting and specification for where said acceptable species are appropriate (e.g., species allowed to be planted under overhead utility wires).
- Enforcement of this Ordinance and any condition of any permit issued hereunder.

PERMITTING

ACTIVITIES REQUIRING A PERMIT

A Tree Work/Removal permit, issued by the Tree Warden, is required prior to any of the following activities:

- Planting of a Public Shade Tree pursuant to G.L. c. 87, §7 by anyone other than the Tree Warden.
- Planting of a Public Tree, other than a Public Shade Tree, on Town property by anyone other than the Tree Warden.
- Removal of a Public Tree, in whole or in part, by anyone other than the Tree Warden or his deputy.
- Construction within the dripline of a Public Tree.
- Pruning of any Public Tree, by anyone other than the Tree Warden or his designee as provided in G.L. Ch. 87:-
- Subject to G.L. c. 87, §14 as to Public Shade Trees, pruning or removal of a Public Tree for the purposes of overhead utility line clearance.
- Affixing or hanging anything from a Public Tree.

Nothing set forth herein shall limit the work authorized by G.L. c. 87, §5.

The aforesaid shall apply to individuals and entities including Town employees, volunteers, and departments.

No tree work/removal permit shall be issued unless one of the following conditions exists:

- The tree is dead, diseased, injured, in imminent danger of falling, is causing disruption of public utility service, or poses an imminent threat to pedestrian or vehicular safety.
- The cutting, trimming or removal of the Public Tree is necessary to enhance or benefit the health or condition of other nearby trees.
- There is no alternative to the cutting, trimming or removal of the Public Tree as determined by the Tree Warden.
- Should the aforementioned conditions of health or safety be in question, the matter may be referred to the Tree Committee. Furthermore, should the Tree Warden not be a certified arborist, a certified arborist may be retained to assess said tree condition and provide a written report on the same to the Tree Warden and Tree Committee.

TREE WORK/REMOVAL PERMITS – APPLICATION REQUIREMENTS

An application for a tree work/removal permit shall be made to the Tree Warden, except in an unforeseen emergency which is subsequently confirmed in writing by the Tree Warden. The Tree Warden may issue a permit, deny a permit, or issue a permit with conditions (e.g., with a mitigation plan). The application for a tree work/removal permit shall be accompanied by a fee in the amount of fifty dollars (\$50.00) and, at the discretion of the Tree Warden, may include, but not be limited to, the following, as applicable:

- A scale drawing showing the location of all existing and proposed Public Trees in the vicinity of the proposed work, including existing or pre-construction leafed out canopy coverage compared to post-construction spread/density of the overhead tree canopy.
- The DBH, height, conformation, and estimated area of leaf canopy in square feet as if viewed from above.
- Identification of species and DBH, showing the locations of current and intended plantings.
- A tree plan showing the location, type, and size of each Public Tree indicating which tree(s) are to be planted, worked on/removed, and the location, type, and size of replacement trees, if any.
- The proposed relocation of any existing Public Tree with an evaluation prepared by a certified arborist explaining how each such tree is to be relocated and maintained, if applicable.
- The location of existing and proposed underground or overhead utility services, existing roadways, walkways, and parking areas, if applicable.
- The proposed method of protecting the remaining Public Trees during the tree removal, if applicable.
- A full description of the work sought to be performed pursuant to the permit.

REMOVAL OF PUBLIC TREES

The priority of the Town is to preserve and protect all Public Trees when possible. Any decision allowing the removal of a healthy Public Tree will provide for equitable replacement to ensure the residents of Winthrop the continuing aesthetic, environmental, and economic benefit of that tree.

The Tree Warden shall notify the Tree Committee upon receipt of an application for a permit to Remove a Public Tree. All Public Tree hearings shall comply with the applicable requirements set forth in M.G.L.A. c. 87, § 3 and this Ordinance. In addition to notice requirements under G.L. c. 87 s. 3 for Removal of a Public Shade Tree, notice shall be given by the Town by electronic notification when feasible and first-class mail to all property owners located within 150 feet of the Public Tree proposed to be removed at least 14 days before the public hearing.

Nothing in this Ordinance shall be construed to prevent the cutting, trimming, or removal of trees in accordance with G.L. c. 87, §5.

Nothing in this Ordinance shall be construed or applied in conflict with G.L. c. 87, §14.

Consistent with G.L. c. 87, §4, the Tree Warden shall not cut down or remove or grant a permit for the cutting down or removal of a Public Tree if, at or before the public hearing pursuant to G.L. 87, §3 and this Ordinance, 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 Town Council.

Any Petitioner who has been granted a permit to remove a Public Tree is responsible for all costs and expenses associated therewith including, without limitation, the following expenses:

- Cost of notice requirements and advertising the public hearing consistent with M.G.L. c. 87, §3.
- Cost of removal of the tree and stump grinding.
- Hauling away all debris, and proper filling of any ground out stump hole.
- Planting of sufficient replacement trees as determined by the Tree Warden.
- Cost of police traffic details, repair of street surface and road shoulder, protection, and restoration of utility structures; and
- All other costs related to the removal and replanting.

TREE REPLACEMENT

Public Shade Trees shall not be removed for a non-Town purpose without suitable replacements as determined by the Tree Warden. At a minimum, replacement tree(s) shall be at least 1.5-inch caliper, nursery grown stock. Planting of replacement shall be with the permission and supervision of the Tree Warden or his/her designee to determine recommended species, location(s), and number of smaller trees appropriate to replace a mature tree. Such replacement tree(s) should be planted within one year from date of removal.

TREE MEMORIAL PROGRAM

The Tree Memorial Program shall be administered and managed by Winthrop's Memorial Committee.

Tree Memorial plaques are to be approved by Memorial Committee (size, material, message, placement) and may be placed next to a memorial tree by the purchaser of the memorial. Plaques may not be affixed to said tree.

TREE DONATION FUND

Collection of voluntary contributions under this ordinance shall be deposited into the existing Tree Donation Fund, a separate, identifiable account, administered by the Town, dedicated solely for the planting and maintenance of new trees. The Tree Warden, with input from the Tree Committee and commensurate with the reasonably practicable suggestions of any donor, may request use of these funds for tree planting, and other tree-related needs.

TREE VANDALISM

Consistent with G.L. c. 87, § 9, no person shall affix to a Public Tree 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 Tree Warden or from the department in the case of a state highway

Vandalism would also comprise the following intentional actions: breaking, injuring, mutilating, defacing, poisoning, killing, or destroying any tree.

TREE MANAGEMENT IN CONSERVATION AREAS

Management of trees in conservation areas shall be at the discretion of the Conservation Commission and such trees shall not be subject to this Ordinance.

LANDMARK TREES

Landmark trees are trees that have been designated by the Tree Warden, after consultation with the Tree Committee, for special protection*. It may be due to the rareness of the species, their size or age, extraordinary structure, or ecological contribution. In addition, historical or cultural importance can qualify a tree for Landmark Status. Citizens of Winthrop may nominate Public Trees to protect and preserve their value and presence in the community by submitting a petition signed by at least 25 Winthrop residents to the Tree Warden.

*The Tree Warden, with the help of the Tree Committee will assess the health of these trees annually.

FINES AND ENFORCEMENT

The Tree Warden is the enforcing authority under this Ordinance, including as to any violation of the Ordinance and as to any condition of any permit issued hereunder.

The Tree Warden may seek guidance and support in enforcement from agencies including but not limited to the Winthrop Police Department, Town counsel, and independent arboricultural consultants in order to determine proper enforcement of this ordinance and/or MGL.

Whoever violates any provision of this Ordinance, or a regulation promulgated hereunder may be penalized by indictment or on complaint brought in the district court. The Town, acting through the Tree Warden, may seek to enjoin violations thereof through any lawful process, and the election of one remedy by the Town shall not preclude enforcement through any other lawful means.

In addition to the fines and enforcement provisions contained in G.L. c. 87 as to Public Shade Trees, whoever violates any provision of this Ordinance (or any condition of any permit issued hereunder) but not the provisions of G. L. c. 87, shall be subject to a fine of \$300 for each separate offense. Each separate violation of this Ordinance (or any condition of any permit issued hereunder) shall constitute a separate offense. Each day that a violation continues shall constitute a separate offense. The Town may elect to impose that \$300 fine as a penalty using the noncriminal disposition process as provided in G.L. c. 40, §21D and the Town's non-criminal disposition Ordinance included in Chapter 1.12 of the Town Code.

SEVERABILITY

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