

# **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.

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\* 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.