

SHADE TREE REGULATIONS

FOR THE CITY OF PEABODY

Section I: Purpose

1. The city recognizes that trees are an asset to the community, as they provide a more healthful and beautiful environment. Trees and other vegetation provide oxygen; shade; protection from wind, glare, and noise; view barriers; wildlife habitats; aesthetics; and a priceless psychological counterpoint to the man-made urban setting.
2. The city further recognizes that landscaping is economically beneficial in attracting new residents, visitors, and industry. When grown in the proper place and of proper varieties, landscaping enhances the value and marketability of property and promotes the stability of desirable neighborhoods and commercial areas.
3. It is the city's intent that the Shade Tree Regulations shall govern the alteration, removal, and replanting of any non-hazardous public shade trees by an individual, utility organization, corporation or agency other than the city. Removals and replanting's shall only be performed by the city or qualified tree removal contractor, insured, and approved by the city.

Section II: Definitions

As used herein, the following words and phrases shall be construed as follows:

- *Public Property* includes public parks, and other lands owned, controlled or leased by the city, except conservation lands.
- A *public shade tree* is any tree existing, whether volunteer or planted, within a public way or on the boundaries thereof. Public shade trees shall include those planted with public funds in public ways or, if deemed appropriate by the Tree Warden, upon adjoining land at a distance of not more than 20 feet as per MGL Ch. 87 § 7
- A *shrub* is any woody plant, normally having multiple stems and bearing foliage from the ground up.
- The *City* is the City of Peabody and its departments and/or employees.
- A *tree* is any woody plant greater than or equal to 1 ½" diameter, measured 4 ½' from the ground.

- A *tree removal contractor* is any individual, firm, association or other organization qualified in the removal of trees and approved by the Tree Warden as to qualifications, experience and equipment. Said contractors shall provide certificates of insurance in the following amounts: \$100,000 workmen's compensation, as required by law; between \$1,000,000 and \$3,000,000 bodily injury; and between \$1,000,000 and \$3,000,000 property damage.
- The *Tree Warden* is the individual appointed by the Mayor as such, qualified in accordance with MGL Ch. 87. To the extent appropriated and where delegated, the responsibilities and powers of the Tree Warden shall extend to the Deputy Tree Warden.

Section III: Qualifications, Responsibilities and Authority of the Tree Warden

1. **Qualifications:** As per MGL Ch. 41 and 87, the City of Peabody is required to appoint a Tree Warden. The position of Tree Warden, per Peabody Code §2-77, is held by the Superintendent of Parks and Forestry. The Tree Warden shall carry out the provisions hereof.
2. **Responsibilities:** The Tree Warden shall be responsible for the periodic inspection of public shade trees to ensure that (a) they are free from disease and/or other conditions that may endanger tree health and (b) they do not present a clear and immediate safety hazard to the public. The Tree Warden shall make every effort to repair and maintain shade trees prior to their removal.

The Tree Warden shall further be responsible for the marking of all public shade trees on scenic roads prior to the issuance of any driveway and/or building permit to prevent the inadvertent removal of damage to public shade trees on said roads. He/she shall mark any public shade tree if requested by any citizen.

The Tree Warden shall keep accurate records on the conditions of public shade trees and work completed on them, including attempts at restoration or treatment of same prior to their removal.

3. **Authority:** Pursuant to MGL Ch. 87, the Tree Warden is hereby given authority, control and supervision of all trees which now or which may hereafter exist upon any public property (except conservation land), street or highway belonging to the City if in such a hazardous condition as to immediately endanger the public health, safety and welfare. Said power included, but is not limited to, the power to supervise, condition, and/or prohibit the alteration, removal, and planting of trees and shrubs up the right of way of

any street, alley, sidewalk, park or other public place in accordance herewith and with MGL Ch. 87.

The Tree Warden has the authority to supervise all work done by permit as described herein, and to affix reasonable conditions to the granting of any such permit.

Section IV: Permits for Maintenance, Removal, and Planting

1. **Application:** Except on order of the Tree Warden, or a municipal department or utility acting in response to an emergency situation, or pursuant to maintenance of an existing transmission line and/or pole no person shall alter, remove, or plant a tree or shrub in the public right of way, park areas or other public property, or cause such an act to be done by others, without a permit for said work from the Tree Warden. Said requirement applies to all persons, including those engaged in the business of cutting, removing, or planting trees or shrubs. A land owner whose property is within 100 feet of the public shade tree, or a municipal department or utility as not otherwise exempted by the language supra., may apply for and obtain a permit, but all work must be accomplished or supervised by a tree removal contractor or the Shade Tree Department.

An application for a permit shall consist of a letter to the Tree Warden, and specifying the size, species, and variety of tree or shrub to be altered, removed, or planted. Following a request for a permit, the Tree Warden shall decide if the proposed work is necessary and in accord with the purposes hereof. The Tree Warden shall take into account the public safety, health, and welfare and location of utilities, public sidewalks, driveways, and street lights. With respect to planting of trees or shrubs, the Tree Warden shall determine proper location(s) and distance(s) based on the mature size of the tree(s) or shrub(s) and other landscape variables; and to evaluate the equity of requiring the applicant to provide a replacement tree to be planted elsewhere within the city.

2. **Public hearing:**

- a. *For All Public Shade Trees Located on Land Under the Control of Recreation, Parks and Forestry Dept.*

The Tree Warden is responsible for conducting public shade tree hearing located upon the land under the control of the City in accordance with MGL Ch. 45 § 5. Upon the receipt of a request, the Tree Warden shall schedule and post notice of said hearing. Said notice shall be posted in two (2) or more public places in the City and on the tree itself, if applicable, within seven (7) days of the hearing, and published in a newspaper of general circulation for two (2) successive weeks, the

first publication to occur no fewer than seven (7) days prior to the hearing. Said notice shall identify the location of the tree and hearing date.

3. **Expenses:** Where applicable, an applicant is responsible for the following expenses: (a) legal advertising; (b) the cost of cutting down the tree and grinding the stump 6" below grade, including the hauling away of debris and the filling of the hole with 6" of the screened loam or seeding; (c) the cost of police traffic details, if requires (d) compensation for the purchase of replacement trees as described in section VI hereof.
4. **Issuance:** Following a determination by the Tree Warden a permit should be issued to applicant for removal. The Warden shall request (a) proof of insurance as required by Section II hereof and (b) any necessary bond for the work to be performed. The Peabody Police Department shall be provided with a copy of the permit.
5. **Emergency alteration or removal:** In the event of an emergency, including but not limited to a hurricane, snow/ice storm or other act of God, where immediate removal of downed trees or limbs is required, work necessary to restore safe conditions is allowed without a permit.
6. **Dangerous, obstruction, and/or infected trees:** Any public tree or part thereof that the Tree Warden shall find to be infected, immediately hazardous so as to endanger the public or other trees or shrubs or significantly injurious to sewers, sidewalks, or other public improvements, may be removed by the City in accordance with the procedures set forth in the MGL Ch. 87. Any public shade tree that has been removed, except those removed as visibility hazards, shall be replaced with one or more trees at a location and of a size and species to be determined by the Tree Warden.
7. **Records, expiration and fees:** All work orders shall be logged by the Tree Warden on a standard form and includes the location and description of the work to be done.

Section V: Prohibited Acts

1. **Damage:** No person shall, without the consent of the owners, in the case of a private tree or shrub, or without written permits from the Tree Warden, in case of a tree or shrub on public property, do or cause to be done by others any of the following acts:
 - a. Secure, fasten, or run rope, wire, sign, unprotected electrical installation or other device or material to, around, or through a tree or shrub, except to secure leaning or newly planted trees;

- b. Break, injure, mutilate, deface, kill, or destroy any tree or shrub;
 - c. Remove any guard, stake or other device or material intended for the protection of a public tree or shrub, or close or obstruct any open space above the base of a public tree or shrub designed to permit access of air, water, and fertilizer;
 - d. Attach any sign, poster, notice or other object on any tree, or fasten any guy wire, cable, rope, nails, screws or other device to any tree, except that the City may authorize tying temporary signs to trees if necessary; or
 - e. Cause or encourage any fire or burning near or around any public tree.
2. **Excavation:** All trees on any public property near the excavation or construction of any building, structure or street, or in the vicinity of utility work, shall be sufficiently guarded and protected by those responsible for such work so as to prevent injury to said trees. No person shall excavate any ditches, tunnels or trenches, or install pavement within a radius of ten (10) feet from any public tree without a permit from the Tree Warden.

Section VI: Penalties

1. **Fines:** Any person found in violation of any provision hereof, or who fails to comply with notices issued pursuant to provisions hereof, shall be subject to fines of up to \$300 for each separate offense. Any builder, contractor, or agent who intentionally assists in the commission of any such violation shall also be liable for each separate violation in addition to the liability hereunder of any other individual or entity. All violations which are of a continuing nature shall constitute a separate offense for each day of such continuance, and each tree removed shall constitute a separate offense. Determinations as to the length of continuing violations and the number of trees affected thereby shall be made by the Tree Warden. No violation shall be deemed to have ceased unless and until there is a public hearing in the same manner as set forth in Section IV (2) hereof and a determination or resolution of the offense is issued thereafter.
2. **Replacement:** Any tree removed for a private purpose, without compensation to the City and/or in violation hereof, shall be replaced by the violator on an inch-by-inch basis. All replacement trees shall be at least 2" in diameter and of nursery-grown stock. Replacement trees shall be of a size and species specified by the Tree Warden, and shall be planted on public property along rights of way or within easements as permitted by MGL Ch. 87 § 7, and determined by the Tree Warden.

Alternatively, the violator may pay a replacement fee equal to \$500 per 2" in diameter of the removed or to-be removed tree.

3. **Legal advertising:** In addition to fines and/or replacement costs or fees, any person found in violation hereof shall be responsible for the cost of advertising any public hearing required by Section IV hereof.
4. **Appeal:** Any person who receives an order from the Tree Warden hereunder and objects to all or any part thereof shall have the right to appeal such order. For Public Shade Trees located on Land under the Control of the Recreation, Parks, and Forestry Department then to the Recreation, Parks and Forestry Department for all other Public Shade Trees to the City Council or the Recreation, Parks and Forestry Department as the case may be, shall hear such appeal within 30 days of receipt of written notice thereof. The City Council or Recreation, Parks and Forestry Dept., as the case may be, shall notify the party appealing the order of its decision by mail within ten (10) days after the hearing closes. A copy of said decision shall be filed with the City Clerk.

Section VII: Severability

Should any part hereof or provision herein be determined by a court of law to be invalid, the same shall not affect the validity hereof as a whole or any part other than that found invalid.