

MEMORANDUM

To: Arlington Board of Selectmen

From: Susan Stamps, Arlington Tree committee

Date: August 17, 2015

Re: Tree Committee appearance at 8/17/15 Board of Selectmen meeting to discuss the urgent need for a bylaw regulating removal of trees on private property

It has come to the Tree committee's attention that residents throughout the town of Arlington are concerned about removal of trees on private property in their neighborhoods. Increasing unchecked elimination of trees during development has dramatically changed neighborhoods to their detriment and left residents wondering how the town could allow this to happen. Other towns, nearby and across the country, have restrictions and oversight of tree removals on private property during development, but Arlington has none.¹ The Tree Committee feels regulation is urgently needed as soon as possible and asks that the Board of Selectmen work with the Tree Committee to prepare a bylaw to be presented to the 2015 fall special Town Meeting (if there is one) or 2016 annual Town Meeting. If there are interim rules that the Town can adopt, we urge that the Board do that, too.

We have done some research as to area towns and find that Lexington, Cambridge, Brookline, Newton, Wellesley and other towns regulate the removal of trees on private property. These towns' regulations do not apply to a homeowner's removal of a tree or two, but, rather to major construction projects, such as a new house or a large addition, and only to trees of a certain size within a defined setback. I attach the tree bylaws of several towns with this memorandum as examples of what we feel is critically needed in Arlington.

The newly adopted Arlington Master Plan recognizes the importance of trees to the quality of life in Arlington and thus the need to protect them - whether on public or private property.

¹ Removal of trees on public property (owned by the town) is governed by the Public Shade Tree law, MGL c. 87

Arlington Master Plan, page iii, Town Goals, Article 4 “The Environment” : “...

Recognizing the fragility of our natural resources, we must ensure that Arlington’s residential areas, commercial centers, and infrastructure are developed in harmony with environmental concerns.....” [emphasis added].

Arlington Master Plan, page 29, Section 3, Land Use - sidebar Master Plan goals for land use: “Encourage development that enhances the quality of Arlington’s natural resources and built environment.”

Arlington Master Plan, page 131, Section 8, Natural Resources and Open Space - sidebar Master Plan goals for natural resources & open space: “Ensure that Arlington’s neighborhoods, commercial areas, and infrastructure are developed in harmony with natural resource concerns.” [emphasis added] and “Value, protect, and enhance the physical beauty and natural resources of Arlington.”

Arlington Master Plan, page 188, Implementation Program: Summary, #42: “Study methods of regulating the removal of mature trees on private property; research and consider methods used in other communities.

Arlington Master Plan, page 188, Implementation Program: Summary, #43: “Consider establishing Neighborhood Conservation Districts with design review standards for architecture, mature trees and landscaping, open space, walkways, and other features.”

In closing, the Tree Committee appreciates that the Master Plan supports regulating removal of trees on private property, but the urgency of the need for regulation is not highlighted (it states a “mid-term” goal, and is about “studying” and “considering” regulations). On the contrary, the Tree committee, echoing the concerns of residents, feels the need for regulation is immediate and urgent and should be a top priority for the town. We hope the Board of Selectmen will agree and work with us to protect our beautiful, leafy Arlington neighborhoods by having an appropriate tree bylaw passed at the fall 2015 special Town Meeting or, at the latest, the 2016 annual town meeting.

See next page for reasons why trees are critical to the quality of life in Arlington.

Why should the Town protect Arlington's trees?

Mature trees are key to the livability of the Town of Arlington. They:

Have aesthetic appeal

Contribute to the distinct character of neighborhoods

Improve air quality

Provide glare and heat protection

Reduce noise

Aid in the stabilization of soil

Provide natural flood and climate control

Create habitats for wildlife

Enhance property values

Provide natural privacy to neighbors.

COMPARISON OF TREE BY LAWS BY TOWN

Prepared by Larry Engleher for Arlington Tree Committee
rev. June 9, 2015. Edited 8/11/2015 MEA

TOPIC	ARLINGTON	LEXINGTON	WINCHESTER	SOMERVILLE	CAMBRIDGE	BELMONT	BROOKLINE	NEWTON	WESTON	WELLESLEY	NORTH ANDOVER
TREE BYLAW OR REGULATION	NO	YES	YES, (Article 4)	YES, (Article VI Sect. 12)	YES (Chapter 8.66 Tree Protection of the Cambridge Municipal Code)	YES	YES For Large Special Projects on Private Land (through Design Review).	YES	YES	YES	Part of Wetland Protection Bylaw
DATE ADOPTED		2001	2013	2009	2004 (amended)	~ 2005	Ordinance for private land was considered in 2005 or 2006. Decided not to have a separate bylaw but some protection was incorporated in Zoning Bylaw for Special Projects Only.	Updated 2014	Voted in May 2015	2011	
PROTECTS PRIVATE LOT TREES	NO	YES (only within setbacks) Applies to trees removed 12 months prior.	NO (was discussed but too much opposition)	NO. Draft Sample Ordinance for Tree Preservation Recommended was in Urban Forest Management Plan, But Mayor was not supportive, and never pursued. NEVERTHELESS: 1) Site Design Review Chs	YES (requires tree study, including tree survey, tree protection plan, mitigation plan including replacement trees or funding) BUT It may be limited to projects requiring special permits	NO. 2011 Proposal by SUSTAINABLE BELMONT was dropped.	YES. (Have tree protection in Zoning Bylaws in Section 5.09 Special Projects. Zoning Bylaw states "Preservation of Trees and Landscapes shall be preserved in a natural state, insofar as practicable"	YES (Removal requires tree permit and tree plan)	YES Article limits clear cutting of lots. ALSO has a demolition delay by law. AND Existing Design/Planning Guidelines for Homes Built Under RGFA (Large Houses) and Scenic Road Provisions of the Zoning By-Law required increases existing structure footprint by 50%+.	YES, in setback tree yards, if construction on either vacant lot, requires demolition of a 250+ sq. ft. structure, involves constructing a retaining wall of 4+ feet height or increases existing structure footprint by 50%+.	NO except in wetland/stream areas
GENERAL OR ZONING	N/A	General			General		Zoning	General	General	Zoning	
HAS PENALTIES FOR VIOLATION	NO	Requires replacement trees at half caliper or funds into Selectmen's Tree Gift Account.	YES up to \$500	Recommended in Draft Ordinances	YES (Replacement or at least \$5000 into fund)	YES But only \$20. (may be related to state statutes; mass tree wardens asstn trying to update state statutes)	Tree Warden (Mattison noted that enforcement of tree regulation on private property is difficult)	YES (Replacement in kind or funds into Tree Fund)	YES	YES (case reported in 2014 fines of over \$5000)	
ENFORCEMENT BODY		Tree Warden (in DPW)	Tree Warden (DPW Director)	Tree Warden (City Arborist)	Tree Warden (City Arborist and DPW Commissioner)	Tree Warden (DPW Dept) and dept of community development	Tree Warden (Mattison noted that enforcement of tree regulation on private property is difficult)	Tree Warden (Urban Forestry Division)		Building Dept.	Conservation Commission
CONTACT INFO		Christopher Fladaro, Public Grounds Supt., DPW 781-274-8300 cfladaro@lexingtonma.gov	Brian Szekely (called), Town Planner, 781-721-7162, James Gill, Tree Warden and DPW Director 781-721-7100; both on Tree Committee	Rachel Kelly, Green Infrastructure Planner, 617-625-6600 x2516 (called); Brad Andri (former) Urban Forest Initiative (617) 455-1127 bandri@somervillema.gov (called); George Proskis, Director of Planning.	David Lefcourt City Arborist dlefcourt@cambridgema.gov 617-349-6433 (called); Owen O'Riordan, COMMISSIONER, 617-349-4800	Tom Walsh Tree Warden DPW Highway Dept 617-434-4114 (called)	Tom Brady Tree Warden, (sent email, called) 617-879-5550 DPW 617-201-5514 call; Hugh Mattison Tree Planting Committee htmattison@aol.com 617-232-6083 (called);	Director of Urban Forestry Marc R. Welch, (617) 779-1330; urbanforestry@lextownma.gov	Thomas Cullen, Jr. Tree Warden, DPW, 781-786-5105 No call made, cullen.thomas@westonmass.org	Michael T. Quinn Assistant Superintendent Parks and Highways/ Deputy Tree Warden 781-235-7600 x3320; Michael Zehner AICP, Planning Director, 781-431-1019 x2234	Jennifer Hughes, Conservation Administrator, North Andover 978-688-9530
HAVE COPY OF BYLAW	NA	YES (and Tree Manual)	YES	YES (Current Bylaw, Draft Plan and Draft Ordinances)	YES	YES	YES (Zoning Bylaws Sec. 5.09)	YES (and Tree Manual)	YES	YES (Zoning Bylaw Sec. XVII)	Have Tree Removal Procedure

Comparison Pictures

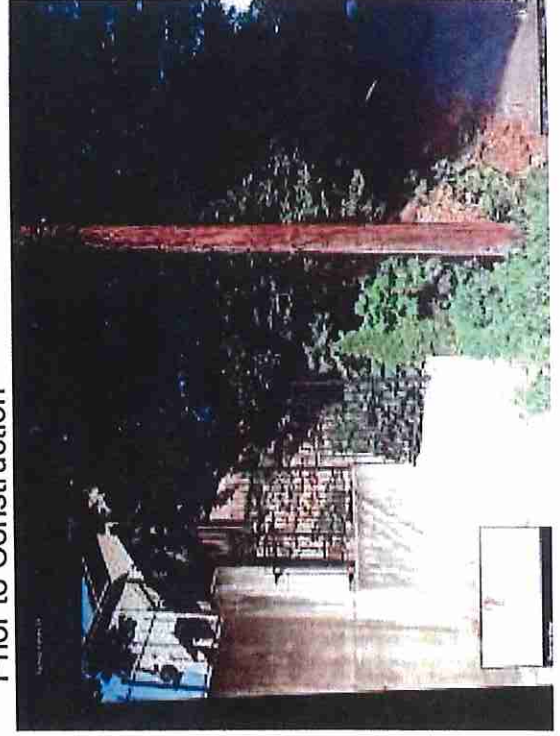
- 27 Oldham Road – 2007



- 27 Oldham Road – 2015



- 15 Lakeview Street/Spring Valley Street – View of Hill: Prior to Construction



- 15 Lakeview Street/Spring Valley Street – View of Hillside During Construction - approx.. 40 stumps



- 8 Oldham Road – 2007



- 8 Oldham Road – 2015



Effective July 1, 2011

SECTION XVII TREE PROTECTION & PRESERVATION

A. TITLE.

Section XVII may be cited as the "Town of Wellesley Tree Bylaw" and/or "Tree Bylaw".

B. INTENT AND PURPOSE.

The intent of Section XVII is to encourage the preservation and protection of sizeable trees on portions of private property during significant demolition and/or development activity.

Trees are recognized for their abilities to improve air quality, protect from glare and heat, reduce noise, aid in the stabilization of soil, provide natural flood and drainage control, create habitats for wildlife, enhance aesthetics and property values, contribute to the distinct character of certain neighborhoods, and provide natural privacy to neighbors. Therefore, the Town deems that the preservation and protection of certain trees on private property, the requirement to replant trees to replace those removed, and the collection of financial contributions to support the Town's tree planting and maintenance efforts are public purposes that protect the public health, welfare, environment and aesthetics.

C. DEFINITIONS.

For the purposes of Section XVII, the following definitions shall apply.

Caliper - Diameter of a tree trunk (in inches). For trees up to and including four (4) inches in diameter, the caliper is measured six (6) inches above the existing grade at the base of the tree. For trees larger than four (4) inches in diameter, the caliper is measured twelve (12) inches above the existing grade at the base of the tree.

Certified Arborist – A professional arborist possessing current certification issued by the International Society of Arboriculture (I.S.A.) and/or the Massachusetts Arborist Association (M.A.A.).

Critical Root Zone (CRZ) - The minimum area beneath the canopy of a tree which must be left undisturbed in order to preserve a sufficient root mass to give a tree a reasonable chance of survival. The CRZ is represented by a concentric circle centering on the tree's trunk and extending outward towards the tree's drip-line. The minimum area of the CRZ shall be dependent on the required minimum radius of the CRZ; the required minimum radius of the CRZ shall be determined by multiplying a tree's DBH (in inches) by eighteen (18) inches, with the resulting product constituting the minimum radius of the CRZ. EXAMPLE: A tree with a

DBH of twenty (20) inches shall have a CRZ with a minimum radius of 360 inches or 30 feet ($20'' \times 18'' = 360''$ or 30').

Diameter at Breast Height (DBH) - The standard measure of tree size for those trees existing on a site that are at least four (4) inches in diameter at a height of four and one-half (4.5) feet above the existing grade at the base of the tree. If a tree splits into multiple trunks below four and one-half (4.5) feet above the existing grade, the DBH shall be considered to be the measurement taken at the narrowest point beneath the split.

Drip-Line - The area surrounding the tree from the trunk to the outermost branches. This area is distinguished from, and not to be confused with Critical Root Zone.

Overstory Tree - A tree that will generally reach a mature height of greater than forty (40) feet.

Protected Tree - Any existing tree or tree that was removed within twelve (12) months prior to application for an applicable demolition or building permit, with a DBH of ten (10) inches or greater, located in a Tree Yard of a property zoned Single Residence District or General Residence District, or located anywhere on property zoned other than Single Residence District or General Residence District. Any tree with a DBH of ten (10) inches or greater with portions of the stem of the tree actively growing into a Tree Yard between a height of six (6) inches and four and one-half (4.5) feet above grade shall be considered a Protected Tree.

Tree - Any self-supporting, woody perennial plant usually having a single trunk with a diameter of three (3) inches or more which normally attains a mature height of six (6) feet or greater.

Tree Bank - An account established for the deposit of contributions in lieu of tree replanting as required by Section XVII. Funds deposited in this account shall be used solely for the purpose of buying, planting and maintaining trees in the Town.

Tree Protection & Mitigation Plan - A plan submitted to the Building Department for review prior to the commencement of demolition and/or construction on a property on which a Protected Tree is located. This plan may be either part of a landscape plan and/or a separate plan.

Tree Removal - Any act that causes a tree to die or will cause a tree to die within a three (3) year period as determined by the Department of Public Works - Park & Tree Division based on arboricultural practices recommended by the International Society of Arboriculture (I.S.A.).

Tree Save Area - The area surrounding a tree which includes at a minimum the Critical Root Zone ("CRZ") and Drip-Line of all Protected Trees, unless otherwise authorized herein. The Tree Save Area must be enclosed within a fence and remain undisturbed so as to prevent damage to the tree.

Tree Yard - The area of a parcel zoned Single Residence District or General Residence District located adjacent to all front, side, and rear lines of a lot; Tree Yards shall have a minimum depth as specified in the table entitled "Location of Protected Trees on Property Zoned Single Residence District or General Residence District", contained in subsection F.1. of Section XVIIE. Trees having a DBH of ten (10) inches or greater and located within a Tree Yard shall be considered to be Protected Trees.

D. APPLICABILITY.

1. Applicability: The requirements of Section XVIIE shall apply under any of the following circumstances:
 - a. Proposed demolition of an existing structure with a footprint of 250 square feet or greater;
 - b. Construction of retaining walls subject to the requirements of Section XXIID., Retaining Walls;
 - c. Construction of any building or structure on a vacant lot; or
 - d. Construction of one or more structures or additions to structures on a lot, where the total area of the footprint of the new structures will result in an increase of 50% or more of the total footprint of the pre-existing structure(s).
2. Non-applicability: The requirements of Section XVIIE shall not apply to:
 - a. The subdivision of land under the Subdivision Control Law and the Rules and Regulations Governing the Subdivision of Land In Wellesley Massachusetts, wherein the Planning Board regulates the planting, retention and/or replacement of trees, by means of the Board's authority over the subdivision of land;
 - b. Construction subject to Large House Review, wherein the Planning Board regulates the planting, retention and/or replacement of trees located on private residential land;
 - c. Those areas of property under the jurisdiction of the Wetlands Protection Act (Chapter 131 and 310 CMR), wherein the Wetlands Protection Committee regulates the retention and/or replacement of trees located on

private land. Protected trees located outside areas under the jurisdiction of the Wetlands Protection Committee shall be subject to Section XVIIE;

- d. Town-owned public trees, including trees that are considered to be Public Shade Trees pursuant to M.G.L. Chapter 87, which are protected by the Natural Resources Commission acting as the Town's Tree Warden.
 - e. Emergency projects necessary for public safety, health and welfare as determined by the Inspector of Buildings;
 - f. Trees that are hazardous as determined and confirmed in writing by a Certified Arborist; and
 - g. Trees subject to an immediate and/or probable risk of disease or insect infestation, as determined and confirmed in writing by a Certified Arborist.
3. Existing Encroachments: For the purposes of interpreting, administering, and enforcing Section XVIIE and Section XVII, Pre-Existing Non-Conforming Uses, Structures and Lots, an existing structure shall not be considered to be a nonconforming structure solely because the structure, or a portion of the structure, is located within the CRZ and/or Drip-Line of an existing Protected Tree. The reconstruction of demolished structures or portions of structures within the previously encroached area of the CRZ and/or Drip-Line shall be prohibited, except when consistent with the requirements of Section XVIIE.

E. TOWN OF WELLESLEY TREE BANK.

There is hereby established a Town of Wellesley Tree Bank ("Tree Bank") which shall be held by the Town Treasurer in an account administered by the Department of Public Works - Park & Tree Division in accordance with applicable provisions of the General Laws. Any contributions collected per subsection F.2.b.ii. of Section XVIIE shall be deposited in said Tree Bank, and shall be used solely for the purpose of buying, planting and maintaining trees in the Town.

F. PROTECTED TREES.

1. Scope: Existing trees or trees that were removed within twelve (12) months prior to application for an applicable demolition or building permit with a DBH of 10" or greater and located within the minimum Tree Yard of a property zoned Single Residence District or General Residence District as identified in the following table, shall be considered to be Protected Trees.

Existing trees or trees that were removed within twelve (12) months prior to application for an applicable demolition or building permit with a DBH of 10" or greater and located anywhere on property zoned other than Single Residence

District or General Residence District, shall be considered to be Protected Trees.

Demolition and/or construction activity (as identified under subsection D.1. of Section XVIIE) on a property on which a Protected Tree is located is prohibited unless authorized by the Inspector of Buildings as set forth in this subsection.

Location of Protected Trees on Property Zoned Single Residence District or General Residence District			
Zoning District	Minimum Tree Yard (feet)		
	Front	Side	Rear
SRD 10	20	10	10
SRD 15	20	20	20
SRD 20	20	20	20
SRD 30	40	30	30
SRD 40	40	40	40
General Residence District	20	10	10

2. Tree Protection & Mitigation:

- a. Protection: Each Protected Tree to be retained on property planned for demolition and/or construction activity shall be protected by the establishment of a Tree Save Area. The Tree Save Area shall be delineated within the submitted Tree Protection & Mitigation Plan, shall be installed prior to the issuance of applicable permits, and shall remain in place until work is completed on the property. The applicant shall submit written documentation, prepared, stamped, dated and signed by a Certified Arborist, to the Building Department confirming that the required Tree Save Area identified in the Tree Protection & Mitigation Plan has been installed.

An applicant may choose to encroach within the CRZ and/or Drip-Line of a Protected Tree; however, such proposed action shall require the applicant to submit a maintenance plan for the tree, to be prepared, stamped, dated and signed by a Certified Arborist as part of the Tree Protection & Mitigation Plan. Under these instances, the Tree Save Area may be reduced to protect only those areas of the CRZ and/or Drip-Line not proposed for encroachment.

- b. Mitigation: The removal of a Protected Tree from a property in connection with one or more of the circumstances set forth in subsection D.1. shall require mitigation by satisfying one of the following provisions (i. *Replanting of Trees* or ii. *Contribution to the Town of Wellesley Tree Bank*). Mitigation measures shall be identified in the submitted Tree Protection and Mitigation Plan. The removal or proposed removal of a Protected Tree(s) that has been mitigated for, in conjunction with a previous applicable permit, shall not require additional mitigation under subsequent permits, unless such mitigation has not been completed or otherwise assured.
 - i. *Replanting of Trees*: For each inch of DBH of the tree(s) removed no less than one-half (0.5) inch of caliper of new tree(s) shall be replanted in accordance with the following:
 - 1. Each new tree must have a minimum caliper of two (2) inches;
 - 2. Such replanting, either on the applicant's land or on land abutting the applicant's land with the express written approval of the owner of such abutting land, shall occur prior to Final Inspection, or be otherwise assured at such time to the satisfaction of the Town in a manner consistent with the Rules and Regulations;
 - 3. If the Protected Tree to be removed is an Overstory Tree species, the replacement tree(s) to mitigate the removal shall be an Overstory Tree species; and
 - 4. Invasive tree species, as determined by the Department of Public Works - Park & Tree Division, shall not be replanted to mitigate the removal of a Protected Tree.
 - ii. *Contribution to the Town of Wellesley Tree Bank*: The Board of Selectmen shall establish a Tree Bank contribution schedule, such schedule to be based on the DBH of Protected Tree(s) to be removed. The schedule may take into account the aggregate DBH of Protected Trees to be removed. The applicant shall make such contribution to the Tree Bank for the removal of a Protected Tree not already mitigated for per subsection F.2.b.i.; contributions shall be received by the Building Department prior to the issuance of all applicable permits.

3. Plan Review and Permit Issuance:

- a. Tree Protection & Mitigation Plan Submittal: Prior to the issuance of a permit in connection with one or more of the circumstances set forth in subsection D.1. on property on which a Protected Tree is located or was located within twelve (12) months prior to application, the owner of the

property shall submit a Tree Protection & Mitigation Plan to the Building Department along with the applicable application.

If a permit requiring the submittal of a Tree Protection & Mitigation Plan was issued for a property within twelve (12) months prior to application for one or more of the circumstances set forth in subsection D.1., the submittal of a Tree Protection & Mitigation Plan shall not be required for subsequent permits unless any information required under subsection F.3.b. is changed or altered.

- b. Tree Protection & Mitigation Plan Requirements: The submitted Tree Protection & Mitigation Plan shall be a to-scale survey or site plan, along with any accompanying documentation, containing information prepared, stamped, dated and signed by an individual(s) appropriately licensed and authorized by the State of Massachusetts to attest to and certify such information, unless a specific certification is referenced herein. The plan shall include, but not be limited to, the following information:
 - i. Boundaries of the subject property, including all property lines, easements, and right-of-ways of public and private ways;
 - ii. The location of all existing buildings, driveways, retaining walls and other improvements, with an indication of those features to be retained or removed/demolished;
 - iii. The location of all planned buildings, driveways, retaining walls and other improvements;
 - iv. The location, height, DBH, and species of all existing Protected Trees and all Protected Trees that were removed within twelve (12) months prior to application for an applicable demolition or building permit, with an indication of those Protected Trees to be removed and those to be retained, if applicable;
 - v. The CRZ, drip-line and location of the Tree Save Area shall be shown for all Protected Trees to be retained;
 - vi. The location, caliper, species, and planting schedule of trees to be replanted to mitigate the removal of a Protected Tree(s), if applicable;
 - vii. A maintenance plan prepared, stamped, dated and signed by a Certified Arborist for all Protected Trees which are proposed to have encroachment within the CRZ and/or drip-line, if applicable;
 - viii. The amount to be contributed to the Tree Bank to mitigate the removal of a Protected Tree(s), if applicable; and

- ix. Such other information as is required by the Inspector of Buildings pursuant to applicable regulations.
 - c. Tree Bank Contribution: In lieu of replanting, if applicable, the owner of the property shall submit any required contribution to the Tree Bank as mitigation for the removal of a protected tree.
 - d. Building Department Action: If the Tree Protection & Mitigation Plan is consistent with the protection and mitigation requirements contained herein and any established rules, regulations or manuals, and any applicable Tree Bank contribution has been submitted, the Building Department may issue any applicable permit. If the proposal does not meet or satisfy these requirements, the Building Department shall deny all applicable permit applications and so notify the applicant.
4. Maintenance of Protected and Replanted Trees:
- a. Protected Trees: Each Protected Tree retained shall be maintained in good health for a period of no less than twenty-four (24) months from the date of Final Inspection, or issuance of a Certificate of Occupancy if applicable. Should such tree die within this twenty-four (24) month period, the owner of the property shall be required to provide mitigation consistent with the requirements for the removal of a Protected Tree as contained herein within nine (9) months from the death of the original tree.
 - b. Replanted Trees: All new trees replanted to mitigate the removal of Protected Tree(s) shall be maintained in good health for a period of no less than twenty-four (24) months from the date of planting. Should such tree die within this twenty-four (24) month period, the owner of the property shall be responsible for replacing the tree with a tree equal to or greater than the size of the original replacement tree at the time of planting; such tree shall be planted within nine (9) months of the death of the original replacement tree.

G. RULES AND REGULATIONS.

The Planning Board may promulgate or amend Rules and Regulations which pertain to the administration of Section XVIE, and shall file a copy of said rules in the office of the Town Clerk. Such rules may prescribe the size, form, contents, style, and number of copies of plans and specifications, the procedure for the submission and approval of such plans, the procedure for determining final compliance with these regulations, and the criteria and procedure regarding the Planning Board's acceptance of sureties (i.e., bonds, letters of credit, etc.) intended to satisfy the requirements of subsection F., 2., b., i. of Section XVIE, so long as the Rules and Regulations conform to Section XVIE of the Zoning Bylaw.

The adoption or amendment of Rules and Regulations shall be after a public hearing to receive comments on the proposed or amended Rules and Regulations. The public hearing shall be advertised once in a newspaper of general local circulation, at least 14 days prior to the date of the public hearing.

Approved:

Date

Moderator's Signature

Sponsor's Signature

Weston MA tree bylaw

Passed with 2/3 vote at May, 2015 Town Meeting

ZONING BY-LAW ARTICLES

ARTICLE 22: AMEND ZONING BY-LAW – SECTION VI.A. – CLARIFY/LIMIT LOT CLEARING

To amend Section VI. DIMENSIONAL AND OTHER REQUIREMENTS, A. GENERAL, of the Zoning By-law of the Town of Weston by adding the following proposed subsection:

"5. No site alteration work which requires or will require a storm water permit or any zoning or other land development permit or approval shall be performed on any property until such permit or approval is obtained, including any one of the following:

a. Approval by the Planning Board of a site plan where such approval is or will be required under the provisions of this Zoning By-law

b. Issuance of a permit by the Storm Water Permitting Authority where such permit is required by the Storm Water By-law, Article XXVII of the By-laws of the Town of Weston.

c. Issuance of a permit for building, demolition, or any other permit required by the Massachusetts Building Code or this Zoning By-law.

Site alteration work can be performed and is permitted once any of the above permits or approvals has been obtained by the property owner or if any of the following exceptions apply:

Exceptions:

1. Site alteration work or clearing which does not require a storm water permit, or site plan approval by the Planning Board, or any building permits.

2. Soil testing.

3. Routine landscape maintenance including thinning of forest, trees and vegetation.

4. Removal of nuisance or invasive species vegetation such as bittersweet, poison ivy, etc.

5. Removal of any 'prohibited plantings' as identified by the Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs, Department of Agricultural Resources.

6. Removal of trees or limbs which pose a threat of property damage or threat to public safety.

7. Removal of any dead or dying trees or vegetation.

8. Any utility work both underground and overhead, including work done in maintaining, testing, inspecting or repairing existing underground services, utilities, septic systems and other structures.

9. Any work to provide access onto a property for any existing by-right use of the property.

10. Any work done on recorded easements, the purpose of which is limited to vehicular access, pedestrian access, utility service, or viewscape maintenance, provided that previous vegetation clearing in such easements has occurred within the preceding five years, and that the proposed work shall be limited to that essential for the purpose intended.

11. Properties in Chapter 61 status such as agricultural or forestry.

12. Work done in conjunction with construction, alteration or repair of a septic system pursuant to a septic permit from the Board of Health.

13. Removal of or planting of trees or vegetation which dangerously obstructs the view of traffic by operators of vehicles at street or driveway curves or intersections or otherwise constitutes a hazard to public safety.

If any provision of this section is violated by a property owner, then no building permit may be issued for any new or replacement dwelling for up to 9 months following the violation. All other fines or remedies to which the Town is entitled may also be imposed at the Town's discretion."

Or take any other action relative thereto.

Article 22 Explanation: The purpose of this article is to advise permit applicants of the town's preference for preserving mature trees when possible as a reflection of the town's rural character, and of the potential regulatory consequences of indiscriminate clear cutting. A two-thirds vote of Town Meeting is required for approval of this article.

LEXINGTON MA TREE BYLAW

CODE OF THE TOWN OF LEXINGTON, MASSACHUSETTS, v5 Updated 10-5-2004

PART I GENERAL BYLAWS

Chapter 120, TREES

**[HISTORY: Adopted by the Annual Town Meeting of the Town of Lexington 4-11-2001
by Art. 34. Amendments noted where applicable.]**

120-1. Findings.

The Town of Lexington finds that mature trees have aesthetic appeal, contribute to the distinct character of certain neighborhoods, improve air quality, provide glare and heat protection, reduce noise, aid in the stabilization of soil, provide natural flood- and climate-control, create habitats for wildlife, enhance property values and provide natural privacy to neighbors.

120-2. Intent and purpose.

This by-law is enacted for the purpose of preserving and protecting both public shade trees pursuant to General Law Chapter 87 and certain trees on portions of private property. To achieve these purposes, this by-law establishes a Tree Committee and empowers the Committee, in conjunction with the Tree Warden, to regulate the removal and replacement of trees in certain circumstances, and to promote the planting and protection of trees throughout the Town. It is desirable that the Town plant more trees than are removed to compensate for tree losses and the length of time to maturity. The provisions of this by-law, when pertaining to private property, apply only when there is major construction or demolition as defined below and only within setback areas.

120-3. Definitions.

A. When used in this by-law, the following definitions shall apply:

CALIPER -- Diameter of a tree trunk (in inches) measured six inches above the ground for trees up to and including four-inch diameter, and 12 inches above the ground for larger trees.

DBH ("Diameter at Breast Height") -- The diameter (in inches) of the trunk of a tree (or, for multiple trunk trees, the aggregate diameters of the multiple trunks) measured 4 1/2 feet from the existing grade at the base of the tree.

DEMOLITION -- Any act of pulling down, destroying, removing or razing a building or commencing the work of total or substantial destruction with the intent of completing the same.

MAJOR CONSTRUCTION -- Any construction of a structure on a vacant lot, or any construction of one or multiple structures or additions to structures on an existing lot, wherein there would result an increase of 50% or more in the total footprint of the new structure(s), when compared to the total footprint of the pre-existing structure(s).

PERSON -- Any person, firm, partnership, association, corporation, company or organization of any kind including public or private utility and municipal department.

PROTECTED TREE -- Any tree on private land, with a DBH of eight inches or greater (or any multiple trunk tree with a DBH of 15 inches or greater), located in the setback area (or which, as determined by the Tree Warden, has any portion of the stem between six inches and 4 1/2 feet above grade actively growing into the setback area), provided that tree is not hazardous or undesirable as defined in the Tree Manual.

PUBLIC SHADE TREE -- Any tree within the public right-of-way except for state highways that, as determined by the Tree Warden, has any portion of the stem between six inches and 4 1/2 feet above grade actively growing into the public right-of-way.

SETBACK AREA -- The portion of the lot which constitutes the minimum side, rear and front yard as per Table 2 ("Schedule of Dimensional Controls") or 135-38A of the Zoning By-Law of the Town of Lexington. For purposes of establishing the setback area in which the provisions of this by-law shall apply, the measurement shall be from any point on any property line of the lot, to points along an imaginary line drawn representing the minimum setback requirement.

TOWN TREE -- Any tree within a public park or open space under the jurisdiction of the Selectmen acting as park commissioners, on public school grounds, or on any other Town-owned land.

TREE REMOVAL -- Any act that will cause a tree to die within a three-year period.

B. The Tree Committee may provide other such definitions or terms in rules and

regulations, approved by the Selectmen, deemed useful to implement this by-law.

120-4. Applicability.

A.Applicability. The circumstances under which the tree protection, removal and replacement regulatory process delineated in this by-law shall apply are as follows:

(1)Proposed cutting (trunk, limbs or roots) of existing public shade trees on public and private ways (accepted or unaccepted streets) or of Town trees on Town-owned (or leased land being used as a public facility) by any person.

(2)Proposed demolition of an existing residential or nonresidential structure.

(3)Proposed major construction on an existing residential or nonresidential lot.

B.Non-applicability. This by-law shall not apply in any instance where the Planning Board, the Zoning Board of Appeals or the Conservation Commission has established jurisdiction, including but not limited to the following:

(1)The Planning Board regulates the planting, retention and/or replacement of public shade trees, by means of the Board's authority over subdivision of land and/or the administration of unaccepted streets under Chapter 175, Parts 1 - 3 (formerly Chapter 5), of the Planning Board's Development Regulations;

(2)The Planning Board regulates planting, retention and/or replacement of on-lot trees on private residential land, where said property is subject to a special permit under the Zoning By-Law, or issues recommendations emanating from a preliminary site development and use plan review;

(3)The Zoning Board of Appeals regulates planting, retention and/or replacement of onlot trees on private nonresidential land, where said property is subject to a special permit under the Zoning By-Law;

(4)The Conservation Commission regulates the retention and/or replacement of on-lot trees, by means of administering the Wetlands Protection Act (Chapter 131 and 310 CMR) within jurisdictional areas of the property.

120-5. Tree Warden.

The Public Grounds Superintendent within the Department of Public Works shall serve as the Tree Warden unless another designee is appointed by the Selectmen.

A.The duties or responsibilities of the Tree Warden shall conform to General Law Chapter 87 and shall include, but not be limited to, the following as may be further

specified in this by-law:

- (1) Management of all trees within public rights-of-way and adjacent to public buildings and commons; care and control of trees on Town property if so requested by the Selectmen, and on Town land owned by other departments such as Schools, Recreation and Conservation, if so requested by the respective department and approved by the Selectmen;
- (2) Expending funds, in coordination with the Tree Committee, appropriated for planting trees on Town land under the jurisdiction of the Tree Warden;
- (3) With recommendations from the Tree Committee, granting or denying and attaching reasonable conditions to all permits required under this by-law;
- (4) Work in conjunction with the Tree Committee to seek grants or other assistance concerning the preservation and maintenance of trees in Town;
- (5) Development of rules, regulations, tree inventory, manuals and other data, in conjunction with the Tree Committee, to carry out the purposes and intent of this by-law for approval and promulgation by the Selectmen;
- (6) Enforcement of this by-law;
- (7) Appointment or removal of Deputy Tree Wardens.

B. Moreover, the Selectmen may authorize the Tree Warden to undertake other responsibilities consistent with the purposes and intent of this by-law.

120-6. Tree Committee.

A. The Town shall have a Tree Committee that consists of seven members as appointed by the Selectmen. For the first appointments, three members will serve one-year terms; two members will serve two-year terms; and two members shall serve three-year terms. All members up for renewal will then serve three-year terms.

B. The Tree Committee shall have the following duties and responsibilities as may be further specified in this by-law:

- (1) Development of rules, regulations, tree inventory, manuals and other data, in conjunction with the Tree Warden, to carry out the purposes and intent of this by-law, for approval and promulgation by the Selectmen;
- (2) Permit the removal of certain trees on private property upon appeal, by an applicant;
- (3) Public education and coordination with other Town Committees and civic groups to

promote the purposes and intent of this by-law;

(4) Work in conjunction with the Tree Warden to seek grants or other assistance concerning the preservation and maintenance of trees in Town.

120-7. Public shade trees and town trees.

A.Scope. A public shade tree or Town tree may not be cut, pruned, removed or damaged by any person or the Town until and unless the Tree Warden issues a written permit pursuant to this section.

B.Procedures. Any person seeking to prune or remove a public shade tree or Town tree shall submit an application to the Tree Warden in accordance with any application requirements issued by the Tree Warden. The Tree Warden shall hold a public hearing on applications for removal, at the expense of the applicant, in accordance with the provisions outlined within General Law Chapter 87. The permit issued by the Tree Warden may specify schedules, terms, and conditions, including requiring the planting of replacement trees.

C.Planting of trees on Public Land. Any person seeking to plant a tree on public land under the jurisdiction of the Tree Warden must obtain written permission from the Tree Warden. Such permission may specify schedules, terms, and conditions as deemed appropriate by the Tree Warden.

120-8. Protected trees.

A.Scope. The removal of protected trees in conjunction with demolition or major construction is prohibited unless authorized by the Tree Warden, or Tree Committee as set forth below.

B.Procedures. When major construction or demolition is planned, the owner of the property shall submit to the Building Commissioner as part of the application for a building or demolition permit a site plan drawn and stamped by a registered land surveyor showing all existing trees on the property of eight-inch DBH or greater.

(1) If any protected trees will be removed or damaged in connection with major construction or demolition, the owner of the property shall submit a proposal for tree removal and mitigation to the Building Commissioner with the application for a building or demolition permit. Additionally, if any protected trees were removed during the 12 months preceding the application for the building or demolition permit, a tree removal

and mitigation proposal regarding the protected trees already removed shall be submitted to the Building Commissioner. The proposal shall satisfy the mitigation requirements set forth below and any rules, regulations or manuals promulgated by the Selectmen. The Selectmen shall set an application fee.

(2)The Building Commissioner shall refer the tree proposal to the Tree Warden. The Tree Warden shall conduct a site visit. If the applicant's proposal is consistent with the mitigation requirements herein and the rules, regulations or manuals issued by the Selectmen, the Tree Warden will issue a permit within 10 business days of receipt by the Tree Warden of the proposal to authorize the tree work. If the proposal does not meet or satisfy these requirements, the Tree Warden shall so notify the applicant and deny the permit.

(3)An applicant may appeal the denial or grant of a tree permit to the Tree Committee. The Tree Committee shall conduct a public hearing on the appeal and shall give the public notice thereof, at the expense of the applicant. Public notice shall include all persons owning land within 300 feet of any part of applicant's land at least 14 days before said hearing. The Tree Committee shall rule within 20 days of the public hearing.

(4)Appeals of final decisions of the Tree Committee shall be to Superior Court and shall be limited to whether the decision was arbitrary or capricious.

C.Mitigation. A protected tree shall not be removed unless at least one of the following provisions is satisfied:

(1)Replanting of trees: such replanting shall be on the basis of 1/2 inch of caliper of new tree(s) for each inch of DBH of tree(s) removed, and each replanted tree must have a minimum caliper of three inches. The replanting shall occur no later than 12 months after completion of the construction work, either on applicant's land or on land abutting applicant's land with express approval of the owner of such abutting land;

2)Contribution into the Selectmen's Tree Gift Account: such contribution shall be \$50 per DBH inch of protected tree or Town tree removed not already mitigated as per Subsection C(1); or [Amended 3-31-2004 ATM by Art. 34]

(3)The applicant demonstrates that the removal of a protected tree is desirable to enhance the landscaping on the lot, and that such removal does not negatively impact in an excessive manner on the character of the neighborhood or on the privacy enjoyed by

abutters.

120-9. Emergencies and exemptions.

Provisions of this by-law shall not apply to:

- A. Emergency projects necessary for public safety, health and welfare as determined by the Director of Public Works or the Town Manager;
- B. Trees that are hazardous as determined in writing by the Tree Warden;
- C. Invasive tree species as identified in the Tree Manual;
- D. Trees identified by the Commonwealth that pose a risk of disease or insect infestation.

120-10. Enforcement.

A. Any person violating this by-law is subject to the penalties under Chapter 1, 1-6 of the General By-Laws, General Law Chapter 87 (for violations concerning public shade trees) and other legal enforcement action by the Town. The Tree Warden is authorized to enforce the provisions of Chapter 1 of the General By-Laws and of General Law Chapter 87. Any other legal enforcement action shall be determined by the Selectmen in consultation with the Tree Committee, the Tree Warden and Town Counsel.

B. Each instance in which a Town tree or a protected tree is removed without a tree permit shall constitute an offense under this by-law. When Town trees or protected trees have been removed without a permit, mitigation (as outlined in 120-8C of this by-law) and the payment of fines (as outlined in the Fine Schedule at the end of this by-law EN) shall be required. [Amended 3-31-2004 ATM by Art. 34]

C. If mitigation and the payment of fines are completed in due time as determined by the Tree Warden, the project will be approved. If not completed, then each day beyond the determined and agreed upon completion date shall constitute a new and separate offense. [Amended 3-31-2004 ATM by Art. 34]

120-11. Rules and regulations.

The Selectmen may promulgate, after public notice and hearing, rules and regulations to effectuate the purposes and intent of this by-law. Failure by the Selectmen to promulgate such rules and regulations shall not act to suspend or invalidate the effect of this by-law.

120-12. Severability.

If any section, paragraph or part of this by-law is for any reason declared invalid or

unconstitutional by any court, every other section, paragraph and part shall continue in full force.

120-13. Relationship to other laws.

Nothing in this by-law shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing Town of Lexington by-laws or Commonwealth of Massachusetts laws.

120-14. Funds. [Added 3-31-2004 ATM by Art. 34]

Collection of voluntary contributions under this by-law shall be deposited into the Selectmen's Tree Gift Account. The Tree Warden, with input from the Tree Committee, will request use of these funds for tree planting, transplanting, and other tree-related needs. The request to expend these funds will be approved by the Board of Selectmen.

SUSAN\DOCUMENTS\ARL TREE BYLAW\Tree bylaw LEXINGTON

CAMBRIDGE MA TREE BYLAW

Chapter 8.66 - TREE PROTECTION

Sections:

8.66.010 - Short Title

This Chapter may be cited as the Tree Protection Ordinance of the City of Cambridge.

(1277, Added, 08/02/2004)

8.66.020 - Statement of Purpose

The City 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 of the City of Cambridge and its citizens.

The urban forest serves a wide variety of functions, which promote the health, safety and welfare of residents. These functions include:

- (a) conserving energy, by providing shade and evaporative cooling through transpiration;
- (b) improving local and global air quality by absorbing carbon dioxide and ozone, absorbing particulate matter, and producing oxygen;
- (c) reducing wind speed and directing air flow;
- (d) reducing noise pollution;
- (e) providing habitat for birds, small mammals, and other wildlife;
- (f) reducing storm runoff and the potential for soil erosion;
- (g) increasing real property values; and
- (h) enhancing visual and aesthetic qualities that attract visitors and businesses.

(1277, Added, 08/02/2004)

8.66.030 - Definitions

Building. A structure enclosed within exterior walls or firewalls, built, erected and framed of a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter or persons,

animals or property.

Certified arborist. An arborist certified by the Massachusetts Arborists' Association or the International Society of Arboriculture, or any successor of either organization.

City Arborist. The City Arborist appointed by the City Manager, or any other Certified Arborist designated by the Commissioner of Public Works and approved by the City Manager to exercise any of the authority granted to the City Arborist pursuant to this Chapter.

DBH (Diameter at Breast Height). The diameter of a tree trunk measured in inches at a height of four (4) feet above the ground.

Lot. A parcel of land in identical ownership throughout, bounded by other lots or streets, which is designated by its owner to be used, developed or built upon as a unit.

Mitigation Plan. A document to be included within any Tree Study submitted for a project where any Significant Trees are proposed to be removed from a lot, stating (i) why any Significant Trees are proposed to be removed from a lot, (ii) a description of the Replacement Trees proposed to replace the Significant Trees to be removed or the value of which is proposed to be paid to the City to be deposited into the Tree Replacement Fund, (iii) an estimate from a local nursery for the cost of purchasing, planting, watering and maintaining said Replacement Trees for a period of not less than five years or the value of which is proposed to be paid to the City to be deposited into the Tree Replacement Fund, and (iv) certification from a Certified Arborist that the proposed Replacement Trees and cost estimates for purchasing, planting, watering and maintaining said Trees are appropriate and reasonable.

Owner. For purposes of this Chapter, an owner shall be defined as set forth in the Zoning Ordinance, Title 17 of the Cambridge Municipal Code.

Replacement Trees. A tree or trees to be planted on a lot to replace any Significant Trees to be removed from the lot, or whose equivalent value is proposed to be paid to the City to be deposited into the Tree Replacement Fund instead of planting Replacement Trees on the lot. The total DBH of Replacement Trees, or equivalent value, as applicable, shall be equal to or exceed the total DBH of the Significant Trees to be removed from the lot.

Significant Trees. Any tree or trees larger than 8" DBH which is on a lot or which has been removed from the lot within one year prior to the submission of a Tree Study to the City Arborist.

Tree Protection Plan. This plan may be either a separate drawing or part of a landscape plan, and shall include the following information:

- a) Drawings of tree protection measures and (i) their location on the lot, including Tree Save Areas, and the location, height and DBH of Significant Trees and an indication of which Significant Trees would remain on the site, or (ii) in the event that any Significant Trees are proposed to be removed, the location of those Significant Trees, and the location, height and DBH of Replacement Trees which are proposed to be planted on the lot if feasible, or (iii) in the event that Replacement Trees are not proposed to be planted on the lot, the total sum, as identified in the Mitigation Plan, to be paid to the City to be deposited into the Tree Replacement

Fund, shall be required to be submitted together with the Tree Protection Plan;

- b) A schedule for planting the proposed Replacement Trees and a representation that such trees will be inspected and, if necessary, treated by a Certified Arborist once a year for five years; and
- c) Such other information as is required by the City Arborist pursuant to applicable regulations.

Tree Save Area. The area surrounding a tree which must remain undisturbed so as to prevent damage to the tree.

Tree Study. The information submitted to the City Arborist, which shall include a Tree Survey, a Tree Protection Plan, and, if applicable, a Mitigation Plan.

Tree Survey. A plan showing the location, type, height and DBH of all trees on a lot.

(1277, Added, 08/02/2004)

8.66.040 - Applicability

This Chapter shall apply to all trees located on lots specified in the following section §8.66.050. This Chapter shall not apply to any project of the Affordable Housing Trust or otherwise for the construction of low and moderate-income housing meeting the standards established pursuant to any City, State or Federal housing program designed to assist low and moderate-income households.

(1277, Added, 08/02/2004)

8.66.050 - Procedure for Large Projects

- a. In any project which requires a special permit under §§ 4.26.1 - 4.26.3, §19.20, §11.12.1, §11.12.2, or §11.12.3 of the Zoning Ordinance, the application for the special permit shall include a Tree Study, which shall first have been submitted to the City Arborist not less than twenty-one (21) days prior to the submission of the application for a special permit. The Tree Study shall be reviewed by the City Arborist, who shall certify that he has reviewed it, indicating whether it is complete and complies with the applicable provisions of this Chapter and regulations promulgated thereunder. The City Arborist shall refer the Tree Study with his certification and recommendations to the Planning Board, to assist the Planning Board in establishing any conditions that may be required as a result of the findings of the Tree Study in connection with the issuance of a special permit.
- b. Regarding any project which includes a building of 25,000 square feet or more and which is subject to the provisions of § 19.50 of the Zoning Ordinance, the materials submitted to the Inspectional Services Department with the application for a building permit shall include a Tree Study, together with a certification from the City Arborist that the applicant has submitted the Tree Study for review to the City Arborist not less than twenty-one (21) days prior to the submission of the application for a building permit, and that the Tree Study is complete and complies with the applicable provisions of this Chapter and regulations promulgated thereunder. The owner of the lot shall be required to commit to comply with all provisions of the Tree Study and the applicable provisions of this Chapter and regulations promulgated hereunder in the application for a building permit.

(1277, Added, 08/02/2004)

8.66.060 - Tree Replacement

If Significant Trees are to be removed from a lot in connection with the development of a project subject to the provisions of this Chapter, upon approval of any project subject to the provisions of §8.66.050(a) of this Chapter by grant of a special permit from the Planning Board, or submission to the Inspectional Services Department of certification from the City Arborist under the provisions of §8.66.050(b) of this Chapter, the owner of the lot shall either plan Replacement Trees on the same lot in accordance with the schedule set forth in the Tree Study, or he shall pay the estimated cost of Replacement Trees and associated costs for the maintenance of said trees pursuant to the Mitigation Plan, if applicable, to the City to be deposited into the Tree Replacement Fund. In addition, the owner of the lot shall, prior to the issuance of a building permit, post and file a bond with the City Clerk in the amount of the total costs set forth in the Mitigation Plan, but in no event less than five thousand dollars (\$5,000.00), with one or more sureties conditioned to the faithful observance of the conditions and specifications of the Tree Protection Plan and, if applicable, the Mitigation Plan.

(1277, Added, 08/02/2004)

8.66.070 - Tree Replacement Fund

There is hereby established a Tree Replacement Fund which shall be held by the City Treasurer in an account and administered in accordance with applicable provisions of the General Laws. Any payments into the Tree Replacement Fund required by §8.66.060 shall be deposited in said Fund, and shall be used solely for the purpose of buying, planting and maintaining trees in the City.

(1277, Added, 08/02/2004)

8.66.080 - Regulations

The Commissioner of Public Works shall have the authority to promulgate regulations to accomplish any of the provisions of this Chapter.

(1277, Added, 08/02/2004)

8.66.090 - Enforcement

- (a) Notice of Violations. Any person who violates any of the provisions of this Chapter shall be notified by the City Arborist of the specific violation by certified or registered mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation and a reasonable time period within which compliance must be had.
- (b) Stop Work Order
 - (1) Upon notice from the City Arborist that work on any lot on which a Significant Tree is located is being performed contrary to any applicable Mitigation Plan or Tree Protection Plan or any provision of this Chapter, such work shall be immediately stopped by the Commissioner of Inspectional Services or his designee. The stop work order shall be in writing, and shall be given to the owner of the lot involved, or to the owner's agent, or to the person doing the work,

and shall state the conditions under which work will be permitted to resume.

- (2) Any person who shall continue any work in or about said lot after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not more than \$300.00. Each day during which a violation exists shall constitute a separate offense.
- (c) Injunctive Relief. Whenever there exists reasonable cause to believe that a person is violating any applicable Mitigation Plan or Tree Protection Plan or any provision of this Chapter, the City may institute a civil action for a mandatory or prohibiting injunction in a court of competent jurisdiction ordering the defendant to correct the unlawful condition upon or cease the unlawful use of the property.
- (d) Failure to Replace Trees or Make Payment. Each failure to replace a Significant Tree or make a payment into the Tree Replacement Fund or to post and maintain a bond in accordance with §8.66.060 shall constitute a separate violation of this Chapter for which there shall be a fine in the amount of \$300.00. Each day such violation continues shall constitute a separate offense.
- (e) Alternative Penalty. As an alternative to any fine stated in this §8.66.090, citations may be issued pursuant to G.L. c. 40, §21D, assessing a fine of \$300.00 for each day the violation is committed or permitted to continue. The Commissioner of Public Works or his designee, the City Arborist, employees of the Department of Public Works and Police Officers shall be the authorized enforcement personnel.

(1277, Added, 08/02/2004)

8.66.100 - Severability

The provisions of this Chapter are severable. If any section, provision or portion of this Chapter is determined to be invalid by a court of competent jurisdiction, the remaining provisions of this Chapter shall continue to be valid

(1277, Added, 08/02/2004)

8.66.110 - Effective Date

This ordinance shall take effect only upon ordination of the companion zoning amendment and any other zoning amendments necessary to effectuate the provisions of this Tree Ordinance.

(1277, Added, 08/02/2004)

SUSAN\DOCUMENTS\ARL TREE BYLAW\Tree bylaw CAMBRIDGE

Newton MA tree bylaw

Chapter 21

PARKS AND RECREATION, PUBLIC GROUNDS AND TREES*

Art. I. In General, §§ 21-1—21-45

Art. II. Parks and Recreation Commission, §§ 21-46—21-59

Art. III. Trees, §§ 21-60—21-89

Div. 1 Urban Tree Commission, §§ 21-60—21-71

Div. 2 Regulation of Public Trees, §§ 21-72—21-80

Div. 3 Tree Preservation, §§ 21-81—21-89

ARTICLE III. TREES

DIVISION 3. TREE PRESERVATION

Sec. 21-80 Findings, intent, and purpose.

The board of aldermen has determined that many trees are being lost without replacement incident to demolition of existing buildings in order to construct new buildings and lot clearing in connection with the construction of new buildings on previously undeveloped land. The Board has further determined that trees have been lost, severely damaged or disfigured through excessive or improper pruning or other than natural causes. The result is a net loss of the tree population in the city. The board has further determined that the city has insufficient legal vehicles to assure that such development adequately preserves, protects and provides for replacement of trees.

The preservation of the private tree canopy and the planting of replacement trees is intended to enhance the quality of life and the environment of the city; to preserve the character of the wooded and natural areas; to reduce energy consumption; to protect air quality; to baffle noise; to preserve and enhance habitat for wildlife; to reduce topsoil erosion and storm water runoff; to protect and increase property values; and to enhance the overall appearance of the city. (Ord. No. A-38, 05-05-14)

Sec. 21-81. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

Building: The term "building" shall be as defined in section 30-1.

Certified arborist: An arborist certified by the Massachusetts Arborists Association or International Society of Arboriculture, or any successor organization.

Diameter breast height (DBH): The diameter of the trunk of a tree 4½ feet above the existing grade at the base of the tree.

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

Exempt lot: A lot which meets all of the following criteria:

(1) The lot is occupied and used primarily as a dwelling for up to four families at the time any protected tree(s) are removed.

(2) The lot owner at the time of protected tree removal has owned the lot continuously for a minimum of ninety (90) days prior to the removal of any protected tree(s).

(3) The existing structure on the lot remains occupied as a dwelling with a person or persons living in it for eighteen consecutive months from the date any protected tree(s) are removed.

(4) The lot remains owned by the same person for eighteen consecutive months from the date any protected tree(s) are removed.

Exterior work permit: A permit or approval which is required in order to perform work on a vacant lot or to the exterior of a building on a lot, including, but not limited to the following: a building permit; a review of an alteration of contour of land if required pursuant to section 30-5(c)(1); curb cut and street opening permits; an order of conditions; certificates of appropriateness, nonapplicability, or hardship; a demolition permit pursuant to section 22-44; site plan approval pursuant to section 30-23; subdivision approval; a special permit pursuant to section 30-24; a comprehensive permit.

Occupied Lot: A lot containing a legally constructed, permanent structure, used primarily as a dwelling that is currently being legally occupied and lived in and used as a residence by a person or persons. The dwelling must have a functioning, legally permitted, permanent water service, permanent sanitary service, and permanent electrical service.

Person: Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to, the person removing a protected tree as well as the owner of the real property from which the tree is removed. The definition of "person" shall not include the City of Newton.

Protected tree: Any tree having a diameter of eight inches (8") DBH or larger or having an aggregate diameter of fifteen inches (15") DBH or larger and which is located on land subject to the provisions of section 20-32.

Pruning standards: Standards for pruning as defined in the City of Newton Tree Management Manual, 1995 and any future amendments or revisions to the same.

Remove (including removing and removal): The cutting down of any protected 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 protected tree, including, but not limited to, excessive or improper pruning.

Tree Manual: The City of Newton Tree Management Manual, 1995, and any future amendments and revisions to the same. (Ord. No. V-275, 12-6-99)

Tree Warden: The commissioner of parks and recreation or his designee. (Rev. Ord. 2007, § 20-31; Ord. No. A-38, 05-05-14)

Sec. 21-82. Applicability, permit or certificate of exemption required.

(a) *Applicability:* The terms and provisions of this article shall apply to any protected tree located on land within the city not owned by the city, the commonwealth, or any independent authority of the commonwealth, or by the federal government except protected tree(s) located on an exempt lot pursuant to paragraphs (c) and (d) below.

(b) *Permit, certificate of exemption:* No person shall remove a protected tree on a non-exempt lot located on land subject to the provisions of this article, or commence legally permitted exterior work on any lot without first obtaining a tree permit or a certificate of exemption from the tree warden. Applications shall be made in writing on forms specified by the tree warden.

(c) *Exempt lot, certificate of exemption:* The owner of an exempt lot shall not be required to apply for a tree permit, provided however, that an owner of an exempt lot who seeks an exterior work permit must certify to the tree warden on form(s) provided by the tree warden, that as of the date on the form(s) the lot qualifies as an exempt lot and will remain an exempt lot for eighteen months following tree removal. There shall be no fee for filing a certificate of exemption.

(1) The tree warden shall determine whether a property is an occupied lot for the purposes of establishing exempt lot status. The property owner shall, if requested by the tree warden provide proof of ownership as well as a written statement confirming ownership and that a person or persons are living in the property.

(2) If lot ownership changes during the eighteen consecutive months following the removal of any protected tree(s) on an exempt lot, the new owner must apply for a tree permit and shall be required to replace any protected tree(s) that were removed. If, However, a change of ownership occurs on a lot for which an extension of exempt lot status for non-occupancy during construction has been issued within the eighteen months prior to the change in ownership, the person issued such extension shall apply for a tree permit and shall be required to replace any protected tree(s) that were removed.

(d) *Extension of exempted lot status:* If at any point during the eighteen consecutive months following the removal of any protected tree(s) the property is no longer an occupied lot, the current owner of the lot must apply for a tree permit. If the non-occupancy is due to legally permitted construction, the tree warden may grant an extension of exempt lot status for the duration of the construction, provided:

(1) The owner intends to own the lot for eighteen consecutive months from the date a certificate of occupancy is issued for the construction for which the extension was issued; and

(2) The property remains an occupied lot for eighteen consecutive months from the date a certificate of occupancy is issued for the construction for which the extension was issued.

(3) Upon request of an applicant for exempt lot status extension, the tree warden may also waive the requirement that the lot be continuously owned by the same owner for ninety (90) days prior to protected tree removal provided the owner intends to own the lot for twenty-one months from the date a certificate of occupancy is issued for the construction for which the extension is granted..

(4) If at any time during the applicable eighteen or twenty-one month period the lot ownership changes or the lot is not occupied, the tree warden shall revoke the tree permit and exempt lot status extension. The person issued the extension shall file a new tree permit application and shall replace any protected trees that were removed.

(5) Any person issued an extension of exempt lot status must report to the tree warden any change of ownership and any change of occupancy status within fifteen (15) days of the change if that change takes place during the applicable eighteen (18) month or twenty-one (21) month period following the date the certificate of occupancy issued. (Ord. No. A-38, 05-05-14)

Sec. 21-83. Permit application.

(a) *Contents, fee:* An application for a tree permit shall be submitted to the tree warden. The application for a tree permit shall be accompanied by a fee in the amount of one hundred fifty dollars (\$150.00) and shall include, but not be limited to, the following:

(1) The shape and dimensions of the parcel of real property to be developed, together with the existing and proposed locations of structures and improvements, if any;

- (2) A tree plan showing the location, type and size of each protected tree indicating which protected tree(s) are to be removed, and the location, type and size of replacement trees;
- (3) The proposed relocation of any existing protected tree with a statement prepared by a certified arborist explaining how each such protected tree is to be relocated and maintained;
- (4) The location of existing and proposed underground or overhead utility services, existing and proposed roadways, bikeways, walkways and parking areas;
- (5) Any proposed grade changes which might adversely affect or endanger any protected tree with a statement prepared by a certified arborist explaining how each such protected tree shall be protected and maintained;
- (6) The proposed method of protecting the remaining protected trees during the course of the construction.

(b) *Review of permit applications:* The tree warden shall review applications for tree permits in accordance with the provisions of this article. The tree warden shall date stamp or otherwise record the date of filing of each application for a tree permit. The tree warden shall complete the review of each tree permit application no later than ten (10) business days after the submission of a completed application to the tree warden and shall report to the commissioner of inspectional services within ten (10) business days of a request with respect to any tree permit application submitted in connection with a building permit as to whether said tree permit has been granted or denied. If no such report is received by the commissioner within the above-stated time period, he shall accept an application for a building permit without receipt of such report.

(c) *Standards for grant or denial:* No tree permit shall be issued unless one of the following conditions exists:

- (1) The protected tree will be relocated or replaced on site.
- (2) The protected tree will be replaced by payment in lieu of planting replacement trees as outlined in section 21-86.
- (3) The protected tree is interfering with existing structures, utilities, streets, sidewalks or other existing improvements
- (4) The protected tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of public utility service, is causing drainage or passage problems upon rights-of-way, or poses a threat to pedestrian or vehicular safety.
- (5) The removal of the protected tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as certified to the tree warden by a certified arborist.
- (6) No protected tree(s) are to be removed from the site and appropriate tree protection measures will be in place where necessary as determined by the tree warden.

(d) *Conditions:* Upon the issuance of a tree permit, the tree warden may prescribe in writing such protective measures for existing protected trees as he deems necessary. Before site disturbance may begin, the tree warden may make a determination that the prescribed protective measures have been adequately provided.

(e) *Construction:* Except as provided in a tree permit, construction activities under the drip line of a protected tree are prohibited. Activities include, but are not limited to, trenching or grading,

storage of materials or equipment, passage of heavy equipment within the drip line and spillage of chemicals or other materials, which are damaging to trees.

(f) *Suspension or revocation*: A tree permit may be suspended or revoked at any time by the tree warden upon written notice to the permit holder that the permit holder has failed to comply with either this article or the conditions of the permit. The written notice shall be sent by certified or registered mail, return receipt requested, or by hand delivery and shall provide an opportunity for the permit holder to correct the noncompliance and apply for a renewal of the tree permit upon compliance, where practicable. The suspension or revocation of a tree permit in accordance with this subsection shall not affect the validity of a building permit issued in reliance upon the issuance (granting) of such tree permit nor shall such suspension or revocation be cause for withholding the issuance of a certificate of occupancy.

(g) *Appeal*: Any person aggrieved by a decision of the tree warden may file an appeal with the mayor or his designee. Said appeal must be in writing and must be received by the mayor or his designee within five (5) business days of issuance of the tree warden's decision. Upon receipt of such appeal, the mayor or his designee shall provide a copy to the clerk of the board of aldermen and to each alderman for the ward in which the trees are located. The mayor or his designee shall make a final decision on the matter within thirty (30) days from the date of receipt of the appeal. The mayor or his designee shall include in the decision the rationale therefor. Upon issuance of the final decision, the mayor or his designee shall provide a copy to the clerk of the board of aldermen and to each ward alderman for the ward in which the trees are located. There shall be no further appeal of the matter decided by the mayor or his designee. No protected trees shall be removed while an appeal is pending.

(Ord. No. V-275, 12-6-99; Ord. No. X-202, 04-03-06; Rev. Ord. 2007, § 20-33; Ord. No. A-38, 05-05-14)

Sec. 21-84. Activities not requiring a permit.

(a) *Pruning*: A permit is not required for the pruning of protected trees. However, in order to prevent excessive pruning and topping of trees and to prevent pruning that will be hazardous to the health and natural appearance of the tree, compliance with approved pruning standards is required, and failure to meet these standards is a violation of this article. The tree warden shall maintain on file at all times a copy of the current edition the Tree Manual and shall make copies of the Tree Manual available for the cost of reproduction upon request.

(b) *Emergencies*: If any protected tree shall be determined to be in a hazardous condition so as to immediately endanger the public health, safety or welfare or cause an immediate disruption of public services and require immediate removal without delay, oral authorization may be given by the tree warden to remove such tree, utilizing such professional criteria and technical assistance as he deems necessary, and the protected tree may be removed without obtaining a written permit as otherwise required by this article. The tree warden shall memorialize in writing each such oral authorization to remove a tree and keep a record of the same.

(c) *Waiver*: The requirements of this article may be waived by the tree warden during the period of an emergency such as a tornado, windstorm, flood or other act of God. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-34; Ord. No. A-38, 05-05-14)

Sec. 21-85. Tree replacement.

(a) *Required:* A protected tree shall be replaced in the manner provided in subsection (b) hereof in each instance in which a protected tree was removed from land subject to the provisions of section 21-82 without a tree permit.

(b) *Standards:* A person who has removed a protected tree and is required to replace such tree pursuant to subsection (a) hereof or as a condition of granting a tree permit in accordance with section 21-83, shall replace such tree within eighteen (18) months, or prior to transfer of property ownership whichever comes first from the date the tree permit is issued and in accordance with the following standards:

(1) A replacement tree shall be of the same or similar species or such other species as deemed advisable by the tree warden in accordance with the Tree Manual and shall have the same or equivalent size as measured in DBH inches as that of the protected tree that has been removed.

(2) In the event that a tree of the same or equivalent size as measured in DBH inches cannot be planted, then multiple smaller replacement trees may be planted provided that, wherever practicable, as determined by the tree warden, the total DBH of the replacement trees shall, when added together, equal the total DBH of the protected tree that has been removed. The tree warden may specify that replacement trees be of a minimum caliper when consistent with current accepted practice as stated in the Tree Manual.

(3) A replacement tree shall be required to survive for a minimum of one eighteen (18) months from the date it is planted. The person planting the tree shall provide documentation as to the date of planting and file the same with the tree warden within fifteen (15) days of the planting of said replacement tree.

(4) A replacement tree shall be planted on the same lot from which the tree was removed.. (Ord. No. V-275,

12-6-99; Rev. Ord. 2007, § 20-35, Ord. No. A-38, 05-05-14)

Sec. 21-86. Tree replacement fund.

(a) *Established:* There is hereby established a tree replacement fund which shall be held in a separate identifiable account and administered in accordance with applicable provisions of the General Laws. Any payments into the tree replacement fund required by this article shall be deposited in the tree replacement fund and shall be used in accordance with subsection (c) hereof.

(b) *Payment in lieu of planting replacement tree(s):* In lieu of planting a replacement tree as provided in section 21-85, a person who has been granted a tree permit may make a contribution to a tree replacement fund in an amount equal to the cost to replace the tree in accordance with the provisions of section 21-85, which cost shall be determined by the tree warden based on the City's current cost to purchase and install trees.

(c) *Maintenance of tree replacement fund:* The tree replacement fund shall be maintained in a separate account in accordance with state law. All sums deposited into such fund shall be used solely for the purpose of buying, planting and maintaining trees in the city. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-36; Ord. No. A-38, 05-

05-14)

Sec. 21-87. Rule and regulations.

The tree warden is authorized to promulgate reasonable rules and regulations to implement administration of sections 21-80 through 21-90. (Ord. No. A-38, 05-05-14)

Sec. 21-88. Enforcement.

(a) *Notice of violation:* Any person who violates any of the provisions of this article shall be notified by the tree warden of the specific violation by certified mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation and a reasonable time period within which compliance must be had. The tree warden shall send notice of violation of section 21-86), which notice shall include the date by which trees were to be replaced or payment was to be made for purposes of computing the "per day" violation fine, as provided in section 21-89.

(b) *Stop work order:*

(1) Upon notice from the tree warden that work on any protected tree, or lot on which a protected tree is located, is being performed contrary to the provisions of this article, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work; and shall state the conditions under which work will be permitted to resume.

(2) The tree warden is also authorized to request the agency which has granted an exterior work permit to order, to the extent permissible by law, that the owner cease any activity pursuant to the exterior work permit that might affect such protected tree while a stop work order is pending.

(3) Any person who shall continue any work in or about the protected tree or lot on which a protected tree is located after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not more than three hundred dollars (\$300.00) for each such violation. Each day during which a violation exists shall constitute a separate offense.

(c) *Injunctive relief:*

(1) Whenever there exists reasonable cause to believe that a person is violating this article or any standards adopted pursuant to this article or any term, condition or provision of an approved tree permit, the city may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action in the name of the city for a mandatory or prohibitory injunction and an order of abatement demanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property.

(2) Upon determination of a court that an alleged violation is occurring, it shall enter such order or judgment as is necessary to abate the violation. The institution of an action for injunctive relief under this subsection shall not relieve any party to such proceedings from any civil penalty prescribed for violation of this article. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-37; Ord. No. A-38, 05-05-14)

Sec. 21-89. Penalties.

(a) *Removal without a permit:* Each instance in which a protected tree is removed without a permit shall constitute a violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00).

(b) *Failure to replace trees or make payment:* Each failure to replace a tree or make a payment into the tree replacement fund shall constitute a separate violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00). Each day such violation continues shall constitute a separate offense.

(c) *Failure to comply with a condition contained in a tree permit or stop work order:* Each instance where there is a failure to comply with a condition contained in a tree permit or stop work order shall constitute a violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00). Each day such violation continues shall constitute a separate offense.

(d) *City trees:* Nothing herein shall be construed to require the city to make a payment into the tree replacement fund for any tree(s) which it removes. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-38; Ord. No. A-38, 05-05-14)