

TOWN OF CONCORD MASSACHUSETTS

TREE PRESERVATION BYLAW

1. PURPOSE

The intent of the Tree Preservation Bylaw (Tree Bylaw) is to encourage the preservation and protection of trees on residential lots during significant demolition and/or construction activity by (a) designating areas of a lot where trees must be protected, and (b) requiring mitigation for trees removed via replanting or collection of fees to support the Town's tree planting and maintenance efforts.

2. DEFINITIONS

For the purposes of this Tree Bylaw, the following definitions shall apply:

- 2.1 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.
- 2.2 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.).
- 2.3 Diameter at Breast Height (DBH): The diameter of a tree trunk 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.
- 2.4 Invasive Species: Any plant listed on the most recent version of the Massachusetts Prohibited Plant List as published by the Massachusetts Department of Agriculture.
- 2.5 Protected Tree: Any existing tree with a DBH of six (6) inches or greater that has any portion of its trunk within a Tree Yard at grade level. Invasive Species (as defined herein) shall not be considered Protected Trees.
- 2.6 Reviewing Agent: Any agent delegated in writing by the Town Manager to administer and implement the Tree Bylaw.
- 2.7 Tree Preservation Fund: An account established pursuant to (M.G.L. 44 § 53E½) for the deposit of contributions in lieu of tree replanting as required by this Tree Bylaw.
- 2.8 Tree Protection & Mitigation Plan: A plan submitted to the Reviewing Agent for approval prior to the commencement of demolition and/or construction on a property on which a Protected Tree is located.
- 2.9 Protected Tree Impact and Removal Permit: A permit issued by the Reviewing Agent prior to the commencement of demolition or construction on a property on which a Protected Tree is located.
- 2.10 Tree Removal: Mechanical demolition of a living tree, or any act (a) that has caused a tree to die within the previous 12 months or (b) is likely to cause significant decline or death as determined by the Reviewing Agent.

- 2.11 Tree Save Area: The area surrounding all Protected Trees, sufficiently large to ensure the health of the Protected Tree(s), including their trunks, crowns, and root systems.
- 2.12 Tree Yard: The minimum front, side and rear yard setback area of a parcel in a residential zoning district as specified in Zoning Bylaw Table III.

3. TOWN OF CONCORD TREE FUND

There is hereby established a Town of Concord Tree Preservation Fund ("Tree Fund") pursuant to M.G.L. 44 § 53E½. Any contributions collected per Section 5.2(b) of this Tree Bylaw shall be deposited in the Tree Fund, and shall be used solely for the purpose of buying, planting and maintaining trees within residential neighborhoods in the Town.

4. SCOPE AND APPLICABILITY

4.1 Within the residential districts, it is prohibited to remove a protected tree during construction or within 12 months prior to application for a demolition or building permit for:

- (a) Demolition of an existing structure of 250 gross square feet or greater;
- (b) Construction of any building or structure on a vacant lot; or
- (c) Construction of one or more structures or additions to structures on a lot that increases the Gross Floor Area by 50% or greater, excluding basements, open or screened porches and decks.

4.2 The requirements of this Tree Bylaw shall not apply to:

- (a) The subdivision of land under Town of Concord Subdivision Rules and Regulations;
- (b) Those areas of property under the jurisdiction of the Wetlands Protection Act (Chapter 131 and 310 CMR);
- (c) Public Shade Trees pursuant to M.G.L. Chapter 87;
- (d) Emergency projects necessary for public safety, health and welfare, as determined by the Reviewing Agent or the Town Tree Warden;
- (e) Trees severely damaged as the direct result of a natural disaster;
- (f) Trees that are hazardous as determined and confirmed in writing by a Certified Arborist, and;
- (g) Trees currently infected by a disease or insect infestation of a permanent nature, as determined and confirmed in writing by a Certified Arborist.

5. TREE PROTECTION & MITIGATION

5.1 Protection: Each Protected Tree without a Protected Tree Impact and Removal Permit to be retained on property planned for demolition and/or construction activity shall be protected by the establishment of a fenced-off Tree Save Area. The Tree Save Area shall be delineated within the submitted Tree Protection & Mitigation Plan, shall be installed prior to any demolition or site work, and shall remain in place until work is completed on the property, excluding final landscaping. The applicant shall submit written documentation, prepared, dated and signed by a Certified Arborist, to the Reviewing Agent confirming that the required Tree Save Area has been installed as identified in the Tree Protection & Mitigation Plan before work on the property commences.

5.2 Mitigation: The removal of a Protected Tree(s) from a property in connection with one or more of the circumstances set forth in Section 4.1 shall require mitigation based upon

aggregate DBH of Protected Tree(s) removed. Mitigation shall be achieved by satisfying one or a combination of the following provisions:

- (a) Replanting of Trees: For each inch of DBH of the Protected Tree(s) removed, no less than one-half 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 the issuance of a Final Certificate of Occupancy, or be otherwise assured at such time to the satisfaction of the Reviewing Agent in a manner consistent with the Rules and Regulations;
- (b) Contribution to the Town of Concord Tree Preservation Fund: The Planning Board shall establish a Tree Fund contribution schedule with approval by the Select Board assigning a value per inch of DBH of Protected Tree(s) to be removed and not otherwise mitigated. Tree Fund contributions shall be received by the Town prior to the issuance of all applicable permits.

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.

5.3 Unauthorized Removals: The removal of any Protected Tree without a Protected Tree Impact and Removal Permit not identified on the Tree Protection & Mitigation Plan shall require mitigation at the rate specified in Section 5.2. In addition, any person removing any Protected Tree (a) without a Protected Tree Impact and Removal Permit or (b) not identified on the Tree Protection & Mitigation Plan, in violation of this bylaw shall be subject to a non-criminal disposition fine as specified in Appendix A of the Regulations for Enforcement of Town Bylaws under Massachusetts General Laws c. 40, §21D and the Bylaw for Non-Criminal Disposition of Violations adopted under Article 47 of the 1984 Town Meeting, as amended. Any such fines shall be paid to the Town of Concord.

5.4 Plan Review and Permit Issuance:

- (a) Tree Protection & Mitigation Plan Submittal: Prior to the issuance of a Protected Tree Impact and Removal Permit in connection with one or more of the circumstances set forth in Section 4.1 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 Reviewing Agent along with the applicable application and fee.
- (b) Tree Protection & Mitigation Plan Requirements: The submitted Tree Protection & Mitigation Plan shall be a to-scale survey or site plan that indicates the applicable Tree Yard, existing improvements, proposed construction, Protected Trees, Tree Save Area and preservation and maintenance procedures in accordance with the Rules and Regulations in effect at the time. It must also specify any tree removals and proposed mitigation measures per Section 5.2.
- (c) Re-Submittal: If demolition or construction has not commenced within twelve (12) months of the date that a Tree Protection & Mitigation Plan was submitted for a property, or if removal of a previously unidentified Protected Tree is necessary during the course of construction, an amended Tree Protection & Mitigation Plan shall be submitted identifying any changes from the previous plan and associated

mitigation measures. If demolition and/or construction is not completed within 12 months from the Reviewing Agent's initial inspection date, an application for a permit extension and re-inspection fee shall be submitted. Additional permit extension applications and re-inspection fees shall be submitted every 12 months thereafter until demolition and construction is completed.

- (d) Reviewing Agent Action: If the Tree Protection & Mitigation Plan is consistent with the protection and mitigation requirements contained herein and any established Rules and Regulations, and applicable Tree Fund contributions have been submitted, the Reviewing Agent shall issue a Protected Tree Impact and Removal Permit and notify the appropriate Town Department(s) of such issuance. If the proposal does not meet or satisfy these requirements, the Reviewing Agent shall notify the applicant and withhold the Protected Tree Impact and Removal Permit until the requirements are met. If the Reviewing Agent fails to act on an application within thirty (30) days after the application has been made, it shall be deemed to be approved.

5.5 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 or significantly decline in the opinion of the Reviewing Agent 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 said determination. If an invasive tree is to remain on the property within setback areas, it must be protected to the same degree as a Protected Tree to avoid damage to the tree so that it does not become a hazard to persons or property.
- (b) Replanted Trees: All new trees planted 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 Replanted Tree at installation; such replacement tree shall be planted within nine (9) months of the death or serious decline of the original Replanted Tree. Tree planting and transplanting shall adhere to the most current American National Standards Institute (ANSI) A300 (Part 6) Tree, Shrub, and Other Woody Plant Management - Standard Practices (Planting and Transplanting).

6. ADMINISTRATION

6.1 Enforcement: The Building Commissioner is hereby authorized to enforce all of the provisions of the Tree Bylaw.

6.2 Appeals: Any person who has been aggrieved by refusal, order, or decision of the Reviewing Agent or Building Commissioner, may appeal to the Zoning Board of Appeals within 20 days from the date of such refusal, order, or decision.

7. RULES AND REGULATIONS

The Planning Board may promulgate or amend Rules and Regulations which pertain to the administration of this Tree Bylaw, 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, and the procedure for determining final compliance with these regulations. 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.

Article 40, Town Meeting, April 2017
Article 41, Town Meeting, April 2018
Article 35, Town Meeting, June 2021