

Offered by Councilors Ricardo Arroyo and Liz Breadon, Lara, Bok, Coletta, Fernandes Anderson, Flaherty, Louijeune, Mejia, Murphy, Worrell and Flynn



CITY OF BOSTON IN CITY COUNCIL

ORDINANCE ESTABLISHING PROTECTIONS FOR THE CITY OF BOSTON TREE CANOPY

WHEREAS: In September 2020, the City of Boston released a Tree Canopy Assessment, which analyzed tree cover changes in the City from 2014-2019 and evaluated which neighborhoods have ample tree cover and which areas have the most potential for increased tree cover; *and*

WHEREAS: Twenty-seven percent of Boston's land is covered by tree canopy, with higher concentrations in the neighborhoods of Hyde Park, Jamaica Plain, and West Roxbury; *and*

WHEREAS: While the report found that Boston's tree canopy remained relatively stable overall from 2014-2019, it also found that the southern and eastern neighborhoods have suffered the highest relative tree canopy losses especially in Hyde Park, Roslindale, Mattapan, and West Roxbury; *and*

WHEREAS: The 2020 Tree Canopy Assessment found that more tree canopy was lost on residential land than any other land use type; *and*

WHEREAS: Protecting urban tree canopy is an important way to mitigate detrimental environmental effects such as heat island effect, flooding, air pollution, and more; *and*

WHEREAS: The City of Boston experienced two heat waves in 2021, including a record high temperature of 100 degrees on June 30th, making it the hottest June in Boston's history; *and*

WHEREAS: In the City of Boston, neighborhoods that have high concentrations of Black Latinx, Asian, Indigenous, immigrant, and low-income communities are disproportionately impacted by negative environmental effects that affect their health and quality of life; *and*

WHEREAS: Residents in the City of Boston deserve to have a public, accessible, and transparent way to learn about changes to tree canopy in their neighborhoods; *and*

WHEREAS: Preserving existing tree canopy and planting new trees in areas where tree canopy is low or has been removed are the most effective ways to protect future tree canopy and build climate and environmental resiliency; **NOW**

Therefore be it ordained by the City Council of Boston as follows:

That the City of Boston Code, Ordinances be amended in **Chapter VII** by adding the following after **7-14**:

7-15: ESTABLISHING PROTECTIONS FOR THE CITY OF BOSTON TREE CANOPY

7-15.1 PURPOSE: The preservation of existing tree canopy and replenishment of depleted tree canopy is intended to prevent adverse climate effects such as heat island effect, flooding, air pollution, and more, as well as improve the quality of living for residents in the City of Boston.

7-15.2 APPLICABILITY: The terms and provisions of this ordinance shall apply to trees within the City of Boston that are located on city-owned property, private property, or in the public right of way.

7-15.3 DEFINITIONS:

Caliper means a measurement of the tree trunk diameter used when purchasing tree plantings measured at twelve inches (12”) above the ground.

Capital Improvement Project means a major, non-recurring expenditure that generally meets all of the following criteria: M.G.L. c. 44, s. 7 and s. 8 permit the City to issue bonds to finance the expenditure, the expenditure is a facility or object or asset costing more than \$50,000, and the expenditure will have a useful life of ten years or more for infrastructure, buildings, and parks.

City Tree means a tree located on property owned by the City of Boston, including Public Shade Trees, trees in City parks, and trees on the grounds of City buildings.

Diameter at Breast Height (DBH) means the diameter of a tree trunk measured in inches at a height of four and a half (4.5) feet above the ground. For multiple trunk trees, DBH is the aggregate diameter of the trunks.

Invasive Plant means a plant that is both a non-native and able to establish on many sites, grow quickly, and spread to the point of disrupting plant communities or ecosystems, including but not limited to the trees listed on the Massachusetts Prohibited Plant List.

Park Project means a project involving the renovation and maintenance of existing parks and City-owned open spaces and the development of new parks and open spaces within the City of Boston. City-owned open spaces include parks, community gardens, playgrounds, school yards, library lawns, cemeteries, public plazas, triangles, and squares.

Private Tree means a tree located on private property.

Public Shade Tree means a tree located in the public way, as defined in the Massachusetts General Laws (M.G.L.) c.87, section 5.

Removal means the intentional cutting down of any tree, including all other acts which cause actual or effective removal through damaging, poisoning, or other direct or indirect actions that result in the death of the tree. This includes, but is not limited to, excessive pruning.

Replacement Caliper means the replacement caliper for Significant Trees shall be at least equal to the DBH of the tree removed.

Significant Tree means any living tree that is not an Invasive Plant and is eight inches (8") or more in DBH.

7-15.4 TREE WARDEN: The Tree Warden shall be an employee of the City, appointed by the Mayor, subject to confirmation by the City Council, for a term of three years.

1. The Tree Warden shall be qualified for the role as defined in M.G.L. c. 41 s.106, and also according to the standards established and published by the Massachusetts Tree Wardens and Foresters Association.
2. The duties and responsibilities of the Tree Warden shall conform to M.G.L. c. 87 and shall include, but not be limited to, the following:
 - a. Management of all trees within public rights-of-way and on City property.
 - b. Granting or denying and attaching reasonable conditions to all permits required under this ordinance.
 - c. Posting notices and holding public hearings for the Removal of Public Shade Trees and City Trees as required by this ordinance.
 - d. Enforcement of this ordinance.

7-15.5 SENIOR URBAN FORESTRY AND LANDSCAPE PLANNER: The Senior Urban Forestry and Landscape Planner shall be an employee of the City, appointed by the Mayor.

1. The Senior Urban Forestry and Landscape Planner shall be a Certified Arborist by the Massachusetts Arborist's Association, the International Society of Arboriculture, or any successor of either organization.
2. The duties and responsibilities of the Senior Urban Forestry and Landscape Planner shall include, but not be limited to, the following:
 - a. Seeking grants or other assistance concerning the preservation and maintenance of the City's tree canopy.
 - b. Develop and publish policies, regulations, tree inventory, manuals, and other data and documents necessary to carry out the purposes and intent of this ordinance.
 - c. Supervising the planting and care of City Trees to ensure that such planting and care meets these rules, regulations and standards.
 - d. Assisting and working closely with the Tree Warden to help the Tree Warden fulfill their responsibilities.

7-15.6 URBAN FORESTRY COMMITTEE: The Urban Forestry Committee will be charged with advising with respect to the management and maintenance of all existing and new trees and shrubs on all public grounds and public ways of the City of Boston.

1. Urban Forestry Committee Membership:
 - a. This Committee shall consist of the following members:
 - i. The Senior Urban Forestry and Landscape Planner
 - ii. The Tree Warden
 - iii. Nine (9) members of the public, with at least one member demonstrating expertise in the field of urban forestry, at least one member demonstrating expertise in the field of landscape design, and two members shall be between the ages of fourteen and seventeen at the time of their appointment or re-appointment
 - b. The Committee members will each serve a term of three years
 - c. Committee members shall be selected by the Mayor and subject to confirmation by the Boston City Council.
2. The duties of the Urban Forestry Committee shall be as follow:
 - a. Review planting policies for trees and shrubs on public grounds and public ways of the City of Boston, appraise the appropriateness of such plantings, their placement, and the type of maintenance necessary. The Urban Forestry Committee shall also review those planting proposals which it deems significant for trees and shrubs on public grounds and public ways of the City of Boston.
 - b. Have the ability to comment during any City of Boston permitting review process.
 - c. Elect to review issues related to the health, effective maintenance, and protection of existing trees and shrubs on public grounds and public ways of the City of Boston, recommend solutions to any problems identified with such plantings, update the tree inventory with detailed information, and support all public education and outreach by:
 - i. Promoting knowledge and awareness of the benefits of trees in the City;
 - ii. Developing and maintaining a website;

- iii. Developing and maintaining a noteworthy tree program;
 - iv. Developing educational materials regarding best management practices for tree care;
 - v. Supporting City staff in establishing a volunteer adopt-a-tree program; vi. Supporting City staff during Arbor Day Celebrations; and
 - vii. Considering and recommending incentives for tree planting and maintenance.
- d. Upon request of the applicant, this Committee shall consider and make recommendations to the Tree Warden on waivers for any required replantings or payments associated with the issuance of a Tree Permit.
- e. Keep records of trees planted and removed within the City of Boston and may issue regular reports on the overall status of the City's urban canopy.

7-15.7 CRITERIA FOR REMOVAL OF PUBLIC SHADE TREES: A public hearing may not be initiated under M.G.L. c. 87 section 3 to remove a Public Shade Tree unless the Tree Warden finds in writing that there is a public health, safety, or welfare basis for removing the Public Shade Tree, including but not limited to hardship to a property owner, economic development, facilitating the development of affordable housing, pedestrian access enhancement, transportation improvement, or public project development. Nothing in this section shall be construed to prevent the cutting, trimming, or removal of trees in accordance with M.G.L. c. 87 section 5.

7-15.8 NOTICE REQUIREMENTS FOR REMOVAL OF PUBLIC SHADE TREES: In addition to notice under M.G.L. c. 87 s. 3 for Removal of a Public Shade Tree, notice shall be given by the City by electronic notification where feasible and first-class mail to all property owners located within 150 feet of the Public Shade Tree proposed to be removed at least 14 days before the public hearing. To the extent feasible, the City shall notify all residents within 150 feet of the Public Shade Tree proposed to be removed by flyering at least 14 days before the public hearing. Notice shall also be given by placing notice on the City website at least 14 days before the public hearing. In the event that a public hearing is initiated under M.G.L. c. 87 s. 3 at the request of anyone other than the City, the requesting party shall pay for all costs of mailing and advertising, such costs to be determined by the City Clerk. The City Clerk may waive the costs if the requesting party demonstrated to the City Clerk that payment of the fee would cause financial hardship. Guidelines for determining financial hardship shall be established by the City Clerk. Applications for financial hardship shall be provided by the City Clerk.

7-15.9 TREE REPLACEMENT FOR PUBLIC SHADE TREES: Any healthy Public Shade Tree removed at the request of a property owner or agent thereof must be replaced within one year from the date of Removal. These replacement trees must be located at or near the location from which the tree was removed, and in no case shall trees planted in a different neighborhood qualify as replacements. The replacement trees must conform to the standards for size, species, and planting established by the Senior Urban Forestry and Landscape Planner.

7-15.10 STREET TREE STABILIZATION FUND: There shall be established a tree fund

which shall be held in a separate identifiable account, and administered in accordance with applicable provisions of General Laws. Any payment required by this article shall be deposited in the Street Tree Fund and shall be used in accordance with this section.

1. Payment for planting replacement Public Shade Trees: Where a healthy Public Shade Tree is removed at the request of a property owner or agent thereof, solely for reasons of private financial gain or personal preference, the requesting party shall make a contribution to the Street Tree Fund in an amount sufficient to pay for replacement trees as described in Section 7-15.9. This amount will be calculated using the schedule of costs established by the Senior Urban Forestry and Landscape Planner.
2. Maintenance of the Street Tree Fund: The Street Tree 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. The Senior Urban Forestry and Landscape Planner shall expend these funds for tree planting, transplanting, care, and other tree-related needs.

7-15.11 COMPLIANCE WITH STATE LAW: All Public Shade Tree hearings shall comply with the applicable requirements set forth in M.G.L. c. 87 s. 3.

7-15.12 CRITERIA FOR REMOVAL OF CITY TREES: This section shall apply exclusively to City Trees, as set forth in the Section 7-15.3. Nothing in this section shall be construed to apply to Public Shade Trees within the City of Boston, whose care, maintenance, trimming, planting, and Removal are governed by the Public Shade Tree Law, M.G.L. c. 87, and the City of Boston Code of Ordinances Chapter 7-4.7. The public notice and meeting requirements for Public Shade Trees shall remain in full force and effect and are entirely unaffected by the language of this section.

1. Cutting down or removal of trees: No person, including but not limited to City employees, the Tree Warden, and their deputies shall cut down or remove any tree on City-owned property without the Tree Warden first holding a public hearing.
 - a. The Tree Warden, or their designee, shall post notice of the time and place of the public hearing in two or more public places in the City and upon the tree in question at least seven (7) days prior to the public hearing. This notice shall identify the size, type, and location of the trees to be cut down or Removed, and include a brief statement of the reason for the proposed action. Notice of this public hearing shall be sent to each City Councilor, all members of the Urban Forestry Committee, and published on the City website.
 - b. No later than 48 hours prior to the cutting down or Removal of any City Tree, a notice on brightly colored paper will be placed upon the tree stating the anticipated date on which the action is expected to occur.
 - c. Nothing in this section shall prohibit the Tree Warden, or their designee, from cutting down or Removing any tree which in their opinion is dead or dying or constitutes a threat to public health or safety.
2. Exceptions to the public notice and hearing requirements:

- a. No public hearing shall be necessary prior to the Tree Warden, or their designee, cutting down or removing trees measuring less than one and one-half inches (1½”) in diameter one foot from the ground on City-owned property.
- b. Public projects that fall under Park Projects and Capital Improvement Projects shall be exempt if their public process included all of the following:
 - i. All public meetings at which cutting down or Removal of trees is discussed were duly noticed and advertised including, but not limited to, notice sent to all member of the Urban Forestry Committee
 - ii. The public was provided reasonable opportunity to provide input regarding tree(s) to be cut down or removed.
 - iii. Reasonable notice was posted on or around any trees to be cut down or removed at least two (2) weeks prior to such action taking place.

7-15.13 REMOVAL OF PRIVATE TREES: No person may remove any Significant Tree from private property without first obtaining a Tree Permit from the Tree Warden.

1. Application for a Tree Permit:

- a. Applications must be made in writing on forms specified by the Tree Warden. b. The Tree Warden, or their designee, will review applications for tree permits in accordance with the provisions of this article. The Tree Warden, or their designee, shall date stamp or otherwise record the date of filing of each application for a tree permit. The Tree Warden, or their designee, shall complete the review of each Tree Permit application no later than thirty (30) business days after the submission of a completed application. In the event that this review is not completed within the time required by this ordinance, and if the applicant did not request a waiver of fees or replanting, the permit shall be considered issued.
- c. The application shall include a plan showing the location, species, and DBH of each tree on the property, and must indicate clearly which trees are to be Removed.
- d. If replacement trees are to be planted, the plan shall indicate the planned location, species, and size of any replacement trees to be planted. In order to qualify as replacements, trees must be planted on the same or adjacent lot, and must conform to species and planting standards as defined by the Senior Urban Forestry and Landscape Planner. Trees planted in the adjacent right-of-way or otherwise located on public property shall not be considered suitable for consideration as replacement trees.
- e. There shall be no fee or charge to submit an application for a tree permit.

2. Conditions for Granting a Tree Permit:

- a. Removal of Significant Trees: If any Significant Trees are to be Removed, the plan must show planting of new trees equal to the total Replacement Caliper of those trees.
- b. Payment instead of Replacement: Payment to the Street Tree Fund may be made in lieu of planting some or all of the Replacement Trees, according to a cost schedule established by the Senior Urban Forestry and Landscape Planner. Such

fees shall be based on the actual costs associated with purchasing, planting, and maintaining the City's Public Shade Trees. Payment must be made prior to issuance of the permit.

- c. Request for Waiver: The application for a Tree Permit shall allow the applicant to request a waiver of the requirement for replanting or payment.
 - d. Hearing of Request for Waiver: The Tree Warden, or their designee, shall hear requests for such waivers within sixty (60) days of the date the application was received. This hearing may take place at a public meeting of the Urban Forestry Committee. The applicant shall have the opportunity to speak and to answer questions. The Committee may, at the request of the applicant, make a recommendation to approve or deny the waiver. Examples of reasons supporting a waiver include, but are not limited to: financial hardship associated with the care and upkeep of the trees; unreasonably high requirements for replacement or repayment; and ongoing or reasonably foreseen damage or risk from the trees. The Tree Warden shall consider such recommendation considering whether or not to grant the waiver. If the waiver is approved, a Tree Permit will be issued within ten (10) business days of the close of the hearing
 - e. Owner-Occupants: the owner-occupant of a lot containing a one, two, or three-family dwelling, who resides at the same property as demonstrated by issuance of, or good faith application for, a valid Residential Exemption shall at their request, be granted a waiver of the requirement for replanting or payment with no need for a hearing.
 - f. Departure of Owner-Occupant: If at any point during the 18 consecutive months following the issuance of a Tree Permit the owner no longer resides at that address, and if the requirements for replanting or payment were waived based on said owner-occupancy status as described above, then said waiver shall be revoked. In the case, the owner or, if the property has been sold, the new owner, shall be required to obtain a Tree Permit either for a replanting plan to make full payment within thirty (30) days of the fees that were waived.
3. Standards for Replacement Trees:
- a. Replacement Trees must be planted within eighteen (18) months from the date the tree permit is issued, or prior to transfer of property ownership, whichever comes first.
 - b. Replacement trees must be of the same or similar species and size as described in the application for the Tree Permit, and must be planted according to standards established by the Senior Urban Forestry and Landscape Planner.
 - c. In the event that trees of the size and species that were described in the application for the Tree Permit cannot be obtained at the time of planting, multiple smaller replacement trees may be planted with the authorization of the Tree Warden.
 - d. If a replacement tree dies within eighteen (18) months from the date of planting, it must be replaced. The person planting the tree shall provide documentation as to the date of the planting and file the same with the Tree Warden within fifteen (15) days of the planting of said replacement tree.

4. Exceptions to the Tree Permit Requirement:

- a. Emergencies: If any 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, verbal authorization may be given by the Tree Warden to remove such tree, and the tree may be removed without obtaining a written permit as otherwise required by this ordinance. The Tree Warden shall record in writing each such verbal authorization, and shall present these written notes at the next meeting of the Urban Forestry Committee.
- b. Waiver: The requirements of this article may be waived by the Tree Warden during the period of an emergency such as a hurricane, tornado, windstorm, flood, or similar threat to life and property.

5. Enforcement:

- a. If a Significant Tree is Removed without a Tree Permit, the property owner must apply for a Tree Permit within 30 days of the Removal. Each business day thereafter, until an application is filed, shall constitute a separate violation of this ordinance.
- b. Stop work order: Upon notice that trees are being removed without a Tree Permit, such work shall be immediately stopped by the Director of Inspectional Services or designee. The stop work order shall be in writing and shall be mailed to the owner of record of the property and posted at the front to the property in a conspicuous location, and if possible, 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.
- c. Injunctive relief: Whenever there exists reasonable cause to believe that a person is violating any applicable provision of this article, 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 or to cease the unlawful use of the property.

6. Penalties:

- a. For each offense under this ordinance the person in violation shall be subject to a \$100 fine.
- b. Failure to make payment of any fines may result in the revocation, suspension, or denial of any local license or permit, including renewals and transfers.

7. Safety of Life and Property: Nothing in this ordinance shall be construed to prevent a property owner from acting to Remove any Significant Tree, with written or oral authorization from the Tree Warden, that is an immediate and pressing health or safety hazard; that is dead or dying; or that is damaging existing structures or property; or could do so if it were to fall. In such cases, the Tree Warden may authorize immediate removal in writing or verbally, with written record to the Urban Forestry Committee as soon as practicable.

7-15.14 EFFECTIVE DATE: The provisions of this ordinance shall take effect 90 days after passage.

Filed in Council: January 9, 2023