



BOSTON CITY COUNCIL

Committee on Government Operations

Ricardo Arroyo, Chair

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REPORT OF COMMITTEE CHAIR

December 13, 2023

Dear Councilors:

Docket #0137, ordinance establishing protections for the City of Boston tree canopy, was referred to the Committee on January 11, 2023, and sponsored by Councilors Ricardo Arroyo, Liz Breadon, and Kendra Lara. The Committee held a hearing on March 13, 2023 where public comment was taken and a working session on April 20, 2023.

Summary of Legislation As Filed:

Docket #0137 would amend the City of Boston Code, Ordinances, by adding new sections and subsections to protect the City of Boston's tree canopy. The proposal develops standards to preserve the existing tree canopy and to replenish the depleted tree canopy in order to prevent adverse climate effects such as heat island effect, flooding, and air pollution. The provisions in the proposal are also designed to improve the quality of life for Boston's residents. The provisions of the proposal apply to all trees located in Boston on city property, private property, and in the public right of way. The docket codifies the tree warden position and outlines the tree warden's responsibilities. The docket also codifies a senior urban forestry and landscape planner and establishes an urban forestry committee. The docket provides criteria for the removal of public shade trees as well as notice requirements for such removal, tree replacement standards and establishes a street tree stabilization fund. The docket contains a provision that the ordinance be consistent with state law, criteria for removal of city trees, removal of private trees, application for a tree permit, conditions for granting a tree permit, standards for waiver requests, standards for tree replacement, enforcement provisions, and a penalty clause. the provisions of the proposal will be in effect 90 days after passage.

Information Gathered at the March 13, 2023 Hearing:

The Committee reviewed the provisions of the legislation. The following individuals participated from the Administration: Rev. Mariama White-Hammond, Chief of Environment, Energy and Open Space for the City of Boston; Ryan Woods, Commissioner of Parks and Recreation for the City of Boston; Todd Mistor, Director of Urban Forestry for the City of Boston; Liza Meyer, Chief Landscape Architect for the City of Boston; Max Ford-Diamond, Tree Warden for the City of Boston. The Administration reviewed the Boston Urban Forest Plan (Plan). Administration officials stated that the goals of the Plan are equity with a focus on investing and improvements in under-canopied areas; proactive care and preservation of trees; community led process to ensure that the community drives urban forest priorities, decisions, and management; and, prioritize and value trees by increasing awareness. The City has developed strategies to achieve the Plan's goals which include the following: the expansion and

reorganization of urban forest management; proactively protect and care for existing trees; equitably expand tree canopy; make space and improve conditions for trees; improve communications; improve information collection and sharing; build and support a local tree force.

The Administration discussed various language changes which include keeping the structure that the City now uses with regard to the Tree Warden, including root care protection, and consistency with the Urban Forest Plan. The Chair inquired if the City could require that developers take care of the trees. The City responded that the industry standard is two years after planting. The Chair inquired about land acquisition to create new spaces and Chief White-Hammond referred to the City's Open Space Plan. The Committee heard comments from the public that were supportive of more trees for the public health benefits and incorporating tree infrastructure into planning and zoning.

Councilors discussed the importance of maintaining and replenishing the tree canopy in Boston. Councilors inquired about the impact of gas leaks on trees, the density of trees in environmental justice neighborhoods, using a GIS system for trees, common reasons for tree removal on private land, and resources that the City has to help residents maintain trees. Councilors asked about neighborhoods that are not environmental justice neighborhoods but may not have a lot of trees. Councilors also asked about developing partnerships. Councilors asked about tracking trees and having tree maintenance included in the final design for projects. Councilors asked about public versus private trees and priority zones and the community engagement process.

Information Gathered at the April 20, 2023 Working Session:

The Chair provided opening remarks and reviewed the provisions of the ordinance and explained that the Committee will review language changes. The following individuals from the Administration participated: Reverend Mariama White-Hammond, Chief of Environment, Energy and Open Space; Ryan Woods, Commissioner, Boston Parks and Recreation Department; Todd Mistor, Director of Urban Forestry, Boston Parks and Recreation Department (BPRD); Liza Meyer, Chief Landscape Architect, BPRD; Max Ford-Diamond, Tree Warden, BPRD; Aladdine Joroff, Director of Climate Policy, Environment Department; and Kat Eshel (ee-shell), Chief of Staff, Mayor's Office of Environment, Energy and Open Space. The Chair reviewed the language of the proposal section by section to discuss the Administration's edits along with suggestions from the community. The Administration reviewed the changes made to the docket which included removing private trees from the ordinance because protection of trees on publicly owned land requires a different approach.

The Administration stated that other changes to the Ordinance include removing redundant language, clarifying applicability, definitions, roles, and responsibilities, and removal authority, as well as adding a section on enforcement and overall amending language to ensure the Ordinance aligns with all City policies and fits within MGL c. 87, state law regulating public shade trees.

Summary of Amendments:

Based upon information gathered at the hearing and working session, the following changes have been made to the docket: ~~7-15:~~ **7-4.7 ESTABLISHING PROTECTIONS FOR THE CITY OF BOSTON TREE CANOPY**, amendments were made changing language under existing sections and adding language and sections to encompass sections removed.

SECTION 1

The following sections are removed from the proposal:

- **7-15.5 SENIOR URBAN FORESTRY AND LANDSCAPE PLANNER**
- **7-15.6 URBAN FORESTRY COMMITTEE**
- **7-15.7 CRITERIA FOR REMOVAL OF PUBLIC SHADE TREES**
- **7-15.8 NOTICE REQUIREMENTS FOR REMOVAL OF PUBLIC SHADE TREES**
- **7-15.9 TREE REPLACEMENT FOR PUBLIC SHADE TREES**
- **7-15.10 STREET TREE STABILIZATION FUND:**
- **7-15.11 COMPLIANCE WITH STATE LAW**
- **7-15.12 CRITERIA FOR REMOVAL OF CITY TREES**
- **7-15.13 REMOVAL OF PRIVATE TREES**

Language changes have been made to **~~7-15.1~~ Subsection (A)**; **~~7-15.2~~ Subsection (B)**; **~~7-15.3~~ Subsection (C)**; and **~~7-15.4~~ Subsection (E)**

- Under **~~7-15.1~~ Subsection (A) PURPOSE**, language is added to clarify the purpose of the ordinance. The amended purpose clause appears as follows:
 - ***A. PURPOSE:** This Ordinance recognizes the importance of the preservation of the existing tree canopy and replenishment of the depleted tree canopy. Protecting and expanding Boston's tree canopy will reduce heat island effects, help address local flooding, and mitigate other adverse impacts of climate change and extreme weather. Further, protecting and expanding Boston's tree canopy will lessen air pollution and protect public health, provide sound buffers, preserve and expand wildlife habitat and local ecosystems, advance City goals for green infrastructure, address long-standing disparate environmental impacts across Boston's neighborhoods, and promote the health, safety, convenience, and welfare of all inhabitants of the City of Boston.*
- Under **~~7-15.2~~ Subsection (B), APPLICABILITY**, is amended to remove trees on private property from the purview of the ordinance and to include the Boston Water and Sewer Commission, the Boston Housing Authority, Boston Public Schools, and the Boston Redevelopment Authority d/b/a the Boston Planning and Development;
- **~~7-15.3~~ Subsection (C) DEFINITIONS** is amended as follows:
 - *Caliper* is amended by striking the following words: "used when purchasing tree plantings measured";
 - *Capital Improvement Project* is amended by removing language; the amended language appears as follows: Capital Improvement Project means a project funded through a non-recurring expenditure that generally meets all of the following criteria: applicability of M.G.L. c. 44, s. 7 and s. 8 whereby the City may issue bonds to finance the expenditure, the expenditure is for a facility or object or asset costing \$50,000 or more, and the facility will have a projected useful life of ten years or more;
 - *Removal* is amended by adding the following words after "pruning": "*and damage to a tree's root system.*";
 - **New definition:** BPRD to refer to the Boston Parks and Recreation Department;
 - **New definition:** *Certified Arborist means an arborist certified by the Massachusetts Arborists' Association (MAA) or the International Society of Arboriculture (ISA), or any successor of either organization.*
 - **New definition:** *City Property Tree means a tree located on property owned by the City of Boston, including trees in City parks, trees on land under the ownership or jurisdiction of the Boston Water and Sewer Commission, the Boston Housing Authority, Boston Public Schools, or the Boston Redevelopment*

Authority d/b/a the Boston Planning and Development Agency and any of their successors, and trees on the grounds of other City buildings. City Property Trees do not include Public Shade Trees as defined by M.G.L. c. 87 sec. 1, which are governed under M.G.L. c. 87, trees that are located on City-owned properties subject to a ground lease held by a non-City entity other than the Boston Housing Authority, or trees on the grounds of buildings leased by the City.

- **New definition:** *Commission means the City of Boston Parks and Recreation Commission.*
- **New definition:** *Commissioner means the Commissioner of the City of Boston Parks and Recreation Department.*
- **New definition:** *Critical Root Zone (CRZ) means an area equal to 1-foot radius from the base of the tree's trunk for each 1 inch of the tree's diameter at 4.5 feet above grade;*
- **Removed:** *Private Tree; Replacement Caliper; Significant Tree;*
- **7-15.4 Subsection (E) TREE WARDEN:** the provisions governing the Tree Warden position are amended to remove appointment and confirmation language and to add language that the Tree Warden is designated by the Parks Commissioner and is under the direction of BPRD; new language is also added about the qualifications of the Tree Warden as well as additional language that defines the Tree Warden's duties, responsibilities and authority; language is added that the Tree Warden has the authority to remove tree in certain circumstances;

The following subsections have been added to encompass sections removed:

- **Subsection (D) AUTHORITY OF THE COMMISSIONER.** This new section explains the Commissioner's authority to have care and superintendence of all trees, plants and shrubs belonging to the City and Discretion to issue regulations and policies relevant to M.G.L. c. 87. The amended language is as follows:
 - **D. AUTHORITY OF THE COMMISSIONER:** The Commissioner of Parks and Recreation shall have the care and superintendence of all trees, plants and shrubs belonging to the City; shall trim all shade trees standing in the street so that they shall not interfere with public travel; shall carry out all orders of the Commissioner of Public Works made after public notice and hearing to remove trees standing in the street; shall, upon request of the officer having charge of the public lamps, trim in such manner as said officer may require any tree which interferes with the proper lighting of a street; shall cause all statutes and ordinances for the protection of trees, shrubs and flowers in the public grounds and streets to be strictly observed. The Commissioner or their designee shall be deemed to be the official having charge of shade trees within the meaning of Chapter 87, Section 13 of the General Laws and may, at their discretion, issue regulations and policies relevant to the implementation of M.G.L. c. 87.
- **Subsection (F) PROTECTION OF PUBLIC SHADE TREES:** replaces ~~7-15.7 CRITERIA FOR REMOVAL OF PUBLIC SHADE TREES; 7-15.8 NOTICE REQUIREMENTS FOR REMOVAL OF PUBLIC SHADE TREES; 7-15.9 TREE REPLACEMENT FOR PUBLIC SHADE TREES;~~ and ~~7-15.10 STREET TREE STABILIZATION FUND;~~ This new section aligns the protection of public shade trees with MGL c.87; the amended language is as follows:

- **F. PROTECTION OF PUBLIC SHADE TREES:** *No Public Shade Tree shall be cut, trimmed or removed unless the Removal is approved in accordance with M.G.L. c. 87 and this section.*
 - 1. *Any person wishing to remove a Public Shade Tree shall first submit a written request in the manner prescribed by the Department and obtain written approval, from the Tree Warden in accordance with M.G.L. c. 87.*
 - 2. *In reviewing any written request to cut, trim, or remove a Public Shade Tree, , the Tree Warden shall consider tree health and size, current growing conditions, proposed growing conditions of replacement trees, alternative design or construction options, and viability of tree survival after any proposed construction is completed, in addition to public input pursuant to M.G.L. c. 87 and any further criteria adopted in accordance with subsection 7-XX.11. Natural ecosystem functions of trees shall generally not provide a basis for approval of a proposed Removal.*
 - 3. *The Tree Warden may set conditions for any approved tree Removal such as use of a Certified Arborist or other qualified contractor; measures to prevent damage to surrounding curbs, sidewalks, and parkways, or requirements for site clean-up and restoration.*
 - 4. *Any healthy Public Shade Tree removed at the request of a property owner or agent thereof and approved pursuant to M.G.L. c. 87 sec. 3 must be replaced as required by M.G.L. c. 87 and this section. Removed Public Shade Trees may be replaced with other trees or with the replacement value of the Public Shade Trees if replacement is not feasible. This section shall not apply to trees that require Removal, as determined by the Tree Warden, due to being dead, dying, diseased, or posing a risk to persons and/or property, determined to be an invasive tree species, or for the suppression of pests.*
 - a. *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 be approved by the Tree Warden in accordance with M.G.L. c. 87 sec. 7 and any other standards for size, species, and planting as may be established by the Department. Replacement trees shall be planted on a schedule as may be stipulated in a permit for Removal and must be warrantied and maintained by the applicant for two (2) years, or a longer period if the Tree Warden deems it consistent with best management practices, before the replacement trees will be accepted in the City's street tree inventory.*
 - b. *If replacement is not feasible based on the assessment of the Tree Warden, the applicant shall pay a replacement fee equal to \$550 per caliper inch (DBH). The Department shall review and revise as necessary the replacement fee every three (3) years to be commensurate with the current costs of street tree plantings. If*

replacement becomes feasible after a replacement fee has been paid, the applicant shall be reimbursed based on the diameter of the replacement tree at the time of planting. Any replacement tree shall be subject to the warranty and maintenance provisions in section 7-15.7(1). Fees shall be directed to the Fund for Parks and Recreation or any successor fund.

- **Subsection (G) PROTECTION OF CITY PROPERTY TREES:** is added and applies specifically to City Property Trees requiring public comment and a public meeting or hearing with limited exceptions. The amended language is as follows:
 - **G. PROTECTION OF CITY PROPERTY TREES:** This section shall apply exclusively to City Property Trees, as defined in Section 3 of this Ordinance. Nothing in this section shall be construed to apply to Public Shade Trees.
 1. Except as provided in Section G(2) of this Ordinance, no person or entity, including the Tree Warden and their deputies, shall cut, trim or remove any City Property Tree without an opportunity for public comment at a duly noticed and advertised public meeting or hearing. Eligible public meetings and hearings shall include:
 - a. For City Capital Improvement Projects and non-City projects that propose Removal of City Property Trees, any project-related noticed public meeting or hearing, provided, that:
 - i. An initial tree survey was performed, including a conditions assessment performed by a Certified Arborist, and such survey and assessment are available for public review. The tree survey shall include tree size, location and species of all trees three (3) inches or greater in DBH, and shall be submitted to the Tree Warden for review. Where available, a publicly procured tree survey shall be the survey of reference for any discussion related to a Capital Improvement Project.
 - ii. All public meetings at which Removal of City Property Trees is discussed were duly noticed and advertised. Such advertisement shall include posting a notice on or around any City Property Trees proposed to be removed at least one (1) week before the public meeting.
 - iii. The public was provided a reasonable opportunity to provide input at public meetings and/or beforehand in writing regarding tree(s) to be cut down or removed.
 - b. For any project that proposes Removal of City Property Trees three inches (3”) or greater in DBH that is not otherwise subject to a public meeting or hearing, a public hearing shall be held by the Tree Warden. Notice will be provided in the same manner as for Public Shade Trees, in accordance with M.G.L. 87 sec. 3, and include a brief statement of the reason for the proposed action.

- i. Abutters located within three hundred (300) feet of the parcel where a given City Property Tree is located may appeal decisions of the Tree Warden to the Commission within thirty (30) calendar days.
 2. No public hearing shall be necessary prior to:
 - a. The Removal by the Tree Warden, or their designee, of City Property Trees measuring less than three inches (3”) in DBH one foot from the ground.
 - b. The Removal of any City Property Tree or any part of any City Property Tree that (i) is dead, dying, diseased, (ii) poses a risk or hazard to persons and/or property, (iii) is determined to be an invasive tree species, or (iv) is necessary for the suppression of pests.
 - c. Any Removal pursuant to Section G(2) shall be based on the determination of the Tree Warden or of a Certified Arborist in the employ of the City in accordance with the ANSI A300 Standard and best management practices.
 - d. In the case of an emergency, such a determination shall not be required if the delay would endanger public safety, services, or property.
 3. Any Removal of a City Property Tree shall be reported to the Department which may, at its discretion, also request copies of assessments by Certified Arborists created pursuant to Section G(2).
 4. For projects that involve Removal of City Property Trees, a Certified Arborist shall be employed by the project contractor to review and oversee tree protection and adjacent excavation within a development area, including development of a tree protection plan. Such a plan shall be in compliance with any standards set by the Department and submitted to the Tree Warden for review. If site conditions result in the need to remove any City Property Trees in addition to any trees discussed in public meetings, the proposed removal will be brought to the Tree Warden for review and determination.
- **Subsection (H) WORK AFFECTING CRITICAL ROOT ZONES** is added, to provide standards developed by the BPRD, Public Works, and the Boston Transportation, for any work within a CRZ to safeguard CRZs; The amended language is as follows:
 - **H. WORK AFFECTING CRITICAL ROOT ZONES:** Regardless of whether a project undertaken by the City or a private party would result in Removal of Public Shade Trees or City Property Trees, any work within the CRZ, including but not limited to excavation and construction work, shall comply with standards developed jointly by the Department, the Boston Public Works Department and the Boston Transportation Department and issued by the Department and/or Tree Warden. Such standards shall be designed to safeguard CRZs so as to protect the long-term health and safety of Public Shade Trees, City Property Trees, and the

public and surrounding buildings. Except in an emergency, such standards shall apply to any City work in a CRZ and compliance with such standards shall be a condition in permits issued by the City for excavation, construction or other work in a CRZ. Such standards may consider complete or partial exemptions for limited work such as milling of roadways and sidewalk maintenance.

- **Subsection (I) OPEN SPACES MANAGED FOR BOTANICAL, ARBORETUM OR CONSERVATION PURPOSES**, is added exempting the Arnold Arboretum and the Boston Public Garden from the provisions of this ordinance because of use as a public park for the Arnold Arboretum and for the Boston Public Garden and its properties because such are maintained for natural conservation purposes such as urban wilds;
 - **I. OPEN SPACES MANAGED FOR BOTANICAL, ARBORETUM OR CONSERVATION PURPOSES:** The Arnold Arboretum shall remain exempt from all provisions of this Ordinance during such times as the December 20, 1883 Indenture remains in force between the City of Boston and the President and Fellows of Harvard College concerning the use of the Arnold Arboretum as a public park. The Boston Public Garden and properties maintained for natural conservation purposes, such as urban wilds, shall also remain exempt from all provisions of this Ordinance.
- **Subsection (J) POLICIES AND REGULATIONS**, this new section gives the Commissioner and the Tree Warden the authority to issue regulations to implement the provisions of the ordinance has been added as Section. the amended language is as follows:
 - **J. POLICIES AND REGULATIONS:** The Department may adopt policies and standards as necessary to implement this subsection and make recommendations for regulations as may be further necessary to implement this subsection to the Commission, pursuant to City of Boston Code Section 7-4.8.
- **Subsection (K) URBAN FORESTRY ADVISORY COMMITTEE** Advisory Committee language is added in place of ~~7-15.6 URBAN FORESTRY COMMITTEE~~; the language gives the BPRD the discretionary authority to establish an Advisory Committee; the amended language is as follows:
 - **K. URBAN FORESTRY ADVISORY COMMITTEE:** The Commissioner shall convene an Urban Forestry Advisory Committee solely for the purpose of advising the Commissioner with regards to implementation of the Urban Forest Plan. The Advisory Committee's purview shall be limited to implementation of the Urban Forest Plan and exclude matters related to specific Removals or implementation of M.G.L. c. 87. The Advisory Committee shall have at least seven (7) members. All members of the advisory committee shall be appointed by the Commissioner. The Advisory Committee shall be staffed by the Department. The Commissioner shall prioritize participation from residents from historically marginalized or under-canopied neighborhoods and invite participation from residents between the ages of fourteen (14) and seventeen (17). The Commissioner may establish subcommittees, working groups, or any other forms of subordinate organization of the advisory committee as may be necessary and useful to carry out its advisory functions. The Advisory Committee shall be

convened within the first six (6) months following the adoption of this subsection and shall present an annual report of its activities to the Commission.

SECTION 2: this new section amended language is as follows:

- **SEVERABILITY:** If any provision of this ordinance is held invalid by a court of competent jurisdiction, then such provision should be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

SECTION 3: this new section amended language is as follows:

- **EFFECTIVE DATE:** The provisions of this ordinance shall take effect ninety (90) calendar days after passage. Nothing in this Ordinance shall be construed to apply to Capital Improvement Projects that are in design or construction at the time that this ordinance takes effect.

SECTION 4: this new section amended language is as follows:

That the City of Boston Code, Ordinances be further amended in Chapter VII by adding the following statement at the end of 7-4.8:

“Upon recommendation of the Department, pursuant to the authority granted to it in Section 5 of Chapter 45 of the General Laws, the Commission may adopt regulations as may be necessary to implement City of Boston Code Section 7-4.7 following a thirty (30) calendar day public comment period.”

Rationale and Recommended Action:

Passage of this ordinance in its amended draft clarifies the purpose of the ordinance and the duties and qualifications of the Tree Warden. The amended draft is consistent with the City’s policies and plans, defines standards for the replacement of public shade trees and includes language that MGL c. 87 procedures be followed. The amended draft also provides standards for the protection of city property trees. Codifying the position of tree warden and establishing standards for the protection of city property trees and replacement of public shade trees will ensure that the City’s tree canopy is maintained and enhanced. Protecting the City’s tree canopy will help reduce adverse climate impacts such as heat island effects and will help reduce local flooding.

By the Chair of the Committee on Government Operations, to which the following was referred:

Docket #0137, ordinance establishing protections for the City of Boston tree canopy,

submits a report recommending that this docket **ought to pass in a new draft.**

For the Chair:



Ricardo Arroyo, Chair
Committee on Government Operations