

CITY OF SOMERVILLE
ORDINANCE NUMBER 2019-15
IN CITY COUNCIL: June 27, 2019

TREE PRESERVATION ORDINANCE

Be it ordained by the City Council, in session assembled, that Chapter 12 of the Code of Ordinances of the City of Somerville, is hereby amended by replacing the existing Article VI with a new Article VI as follows.

ARTICLE VI. - TREE PRESERVATION ORDINANCE

Section 12-100. Intent and purpose.

The preservation of the tree canopy and the planting of replacement trees is intended to enhance the quality of life and the environment of the city; to reduce energy consumption; to protect air quality; to provide protection from glare and heat; to baffle noise; to reduce topsoil erosion and stormwater runoff; to preserve and enhance habitat for wildlife; to protect and increase property values; to combat climate change through carbon sequestration; to provide natural privacy for neighbors; to enhance the overall appearance of the City; and to acknowledge the intrinsic value of the mature trees within our community.

Section 12-101. Applicability.

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

Section 12-102. Definitions.

Caliper: A measurement of the tree trunk diameter used when purchasing tree plantings measured at 12” above the ground.

City Tree: A tree located on property owned by the City of Somerville, including Public Shade Trees, trees in City parks, and trees on the grounds of City buildings.

DBH (Diameter at Breast Height): 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: A plant that is both 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.

Private Tree: A tree located on private property.

Public Shade Tree: A tree located in the public way, as defined in G.L. c. 87, section 5.

Removal: 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: The replacement caliper for Significant trees shall be at least equal to the DBH of the tree removed.

Significant Tree: Any living tree that is not an Invasive Plant and is 8 inches or more in DBH.

Section 12-103. 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 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 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.

Section 12-104. 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.

Sec. 12-105. Urban forestry committee.

1. *Purpose:* 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 Somerville.
2. *Duties:* The Urban Forestry Committee shall:
 - a. Review planting policies for trees and shrubs on public grounds and public ways of the City of Somerville, 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 Somerville.
 - b. This Committee shall have the ability to comment during any City of Somerville permitting review process.
 - c. This Committee may 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 Somerville, 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. This Committee may keep records of trees planted and removed within the City of Somerville and may issue regular reports on the overall status of the City's urban canopy.
3. *Membership*: This Committee shall consist of the following members:
- a. The Senior Urban Forestry and Landscape Planner
 - b. The Tree Warden, and
 - c. Nine members of the public, with at least one member demonstrating expertise in the field of urban forestry, and 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, each serving a term of three years, selected by the Mayor, and subject to confirmation by the City Council.

Section 12-106. Criteria for removal of public shade trees.

A public hearing may not be initiated under G.L. c. 87, s. 3 to remove a healthy 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 G.L. c. 87, s. 5.

Section 12. 107. Notice requirements for removal of public shade trees.

In addition to notice under G.L. c. 87 s. 3 for Removal of a Public Shade Tree, notice shall be given by the City by electronic notification when 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 and cable wheel at least 14 days before the public hearing. In the event that a public hearing is initiated under 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 demonstrates 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.

Section 12. 108. 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.

Section 12. 109. Street tree stabilization fund.

1. *Establishment:* 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 payments required by this article shall be deposited in the Street Tree Fund and shall be used in accordance with subsection (3) below.
2. *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 12.108. This amount will be calculated using the schedule of costs established by the Senior Urban Forestry and Landscape Planner.
3. *Maintenance of 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.

Section 12. 110. Compliance with state law.

All public shade tree hearings shall comply with the applicable requirements set forth in G.L. c. 87 s. 3.

Section 12. 111. Criteria for removal of city trees.

1. *Purpose:* The purpose of this section is to extend the public notice and public hearing requirements of the Massachusetts Public Shade Tree Law G.L. c. 87 to trees on City of Somerville owned property.
2. *Definitions:* The following words, terms, and phrases when used in this Section shall have the following meanings ascribed to them:
 - a. *Capital Improvement Project:* A major, non-recurring expenditure that generally meets all of the following criteria: G.L. c 44, ss. 7 and 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 or ten years

- or more for infrastructure, buildings, and parks.
 - b. *Park Project*: 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 Somerville. The phrase “City-owned open spaces” includes parks, community gardens, playgrounds, school yards, library lawns, cemeteries, public plazas, triangles, and squares.
 - c. *Tree on City-owned property*: Any tree located on land owned by the City of Somerville. This does not include any tree that fits the definition of a Public Shade Tree under G.L. c. 87.
- 3. *Applicability*: This section shall apply exclusively to trees on City-owned property as defined above in section (b). Nothing in this section shall be construed to apply to Public Shade Trees within the City of Somerville, whose care, maintenance, trimming, planting, and Removal are governed by the Public Shade Tree Law, G.L. c. 87, and the City of Somerville Code of Ordinances. 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.
- 4. *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 his or her 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 days prior to the public hearing. This notice shall identify the size, type, and location of the tree 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 tree on city-owned property, 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 and his or her 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.
- 5. *Exceptions to the public notice and hearing requirements*: No public hearing shall be necessary prior to the Tree Warden, or his or her designee, cutting down or removing trees measuring less than one and one-half inches in diameter one foot from the ground on City-owned property.
- 6. The following types of public projects, which have undergone a public process that includes public notification and public meetings, shall be exempt from the requirements of section (4) above.
 - a. Park projects and
 - b. Capital improvement projects.
 - c. This exemption shall only apply to a public project of the type listed in (a) and (b) if such 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 members 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 weeks prior to such action taking place.

Section 12-112. Removal of private trees.

1. *Permit Required:* No person may Remove any Significant Tree from private property without first obtaining a Tree Permit from the Tree Warden.
2. Application for a Tree Permit:
 - a. Applications must be made in writing on forms specified by the Tree Warden.
 - b. The Tree Warden, or his or her designee, will review applications for tree permits in accordance with the provisions of this article. The Tree Warden, or his or her designee, shall date stamp or otherwise record the date of filing of each application for a tree permit. The Tree Warden, or his or her designee, shall complete the review of each Tree Permit application no later than 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.
3. 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 his or her designee, shall hear requests for such waivers within 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, ongoing or reasonably foreseen damage or risk from the trees, and desire to create a benefit to the public. The Tree Warden shall consider such recommendation in considering whether or not to grant the waiver. If the waiver is approved, a Tree Permit will be issued within 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 that 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 requirements 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 in section (e) above; said waiver shall be revoked. In this 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 or to make full payment within 30 days of the fees that were waived, unless such new owner is eligible for an owner occupant waiver under Section (e) above.
4. Standards for Replacement Trees:
- a. Replacement trees must be planted within 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 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 15 days of the planting of said replacement tree.
5. 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.

6. 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 of 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.
7. Penalties:
 - a. For each offense under this ordinance the person in violation shall be subject to a fine as established in section 1-11 of the Somerville Code of Ordinances.
 - 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, pursuant to section 8-3 of the Code of Ordinances and / or a municipal charges lien being placed on the violator's property located within the city pursuant to the authority and provisions of Chapter 252 of the Acts of 1996.
8. *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.

Section 12-113. Effective date.

This ordinance shall take effect on August 1, 2019.

Approved:

President, City Council