

CHAPTER 87

SHADE TREES

Section

1. Public shade trees; definition.
2. Powers of tree wardens.
3. Cutting of public shade trees; public hearing; damages to fee owner.
4. Cutting down or removing public shade trees; approval of selectmen or mayor.
5. Cutting down, trimming or removing bushes and small trees.
6. Penalty for violation of Sec. 3, 4 or 5.
7. Planting of shade trees.
8. Trees on state highways.
9. Signs or marks on shade trees.
10. Injury to trees on state highways.
11. Injury to trees of another person.
12. Injury to shrubs, trees or fixtures.
13. Powers and duties of tree wardens in cities.

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§ 1. Public shade trees; definition

All trees within a public way or on the boundaries thereof including trees planted in accordance with the provisions of section 7 shall be public shade trees; and when it appears in any proceeding in which the ownership of or rights in a tree are material to the issue, that, from length of time or otherwise, the boundaries of the highway cannot be made certain by records or monuments, and that for that reason it is doubtful whether the tree is within the highway, it shall be taken to be within the highway and to be public property until the contrary is shown.

Amended by St.1998, c. 182, § 1.

SHADE TREES

87 § 3

sions of law for their preservation, with the exception of trees under the jurisdiction of park commissioners, but of those also upon request of the park commissioners, and with the further exception that no shade trees shall be planted within a public way without license from the selectmen or road commissioners where such authority has been vested in them. These sections define the power and authority of the tree warden respecting shade trees. They leave substantially nothing in this regard for the municipi-

pal action of such cities as have no special charter provision touching the subject."

Tree wardens, elected under provisions of St.1899, c. 330, may not interfere with or overrule the authority of the highway commission, but, subject to their right, their duty of police jurisdiction over shade trees in state highways is the same as that with relation to other public shade trees in the towns. 2 Op.Atty.Gen.1901, p. 244.

§ 3. Cutting of public shade trees; public hearing; damages to fee owner

Except as provided by section five, public shade trees shall not be cut, trimmed or removed, in whole or in part, by any person other than the tree warden or his deputy, even if he be the owner of the fee in the land on which such tree is situated, except upon a permit in writing from said tree warden, nor shall they be cut down or removed by the tree warden or his deputy or other person without a public hearing and said tree warden or his deputy shall cause a notice of the time and place of such hearing thereof, which shall identify the size, type and location of the shade tree or trees to be cut down or removed, to be posted in two or more public places in the town and upon the tree at least seven days before such hearing and published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than seven days before the day of the hearing or if no such local newspaper exists then in accordance with the provisions of section six of chapter four; provided, however, that when a public hearing must be held under the provisions of this section and under section fifteen C of chapter forty prior to the cutting or removal of a tree, such hearings shall be consolidated into a single public hearing before the tree warden and the planning board, or if there is no planning board, the selectmen of a town or the city council of a city, and notice of such consolidated public hearing shall be given by the tree warden or his deputy as provided herein. Any person injured in his property by the action of the officers in charge of the public shade trees as to the trimming, cutting, removal or retention of any such tree, or as to the amount awarded to him for the same, may recover the damages, if any, which he has sustained, from the town under chapter seventy-nine.

Amended by St.1978, c. 114; St.1979, c. 552, § 2.

Historical and Statutory Notes

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| St.1867, c. 242, § 1. | St.1897, c. 428, § 1. | St.1908, c. 296, §§ 3, 4. |
| P.S.1882, c. 54, §§ 10, 11. | St.1899, c. 330, § 3. | St.1915, c. 145, §§ 3, 13. |
| St.1896, c. 190, § 3. | R.L.1902, c. 53, § 13. | |

St.1978, c. 114, approved April 28, 1978, re-wrote the first sentence, which prior thereto read, "Except as provided by section five, public shade trees shall not be cut, trimmed or removed, in whole or in part, by any person other than the tree warden or his deputy, even if he be the owner of the fee in the land on which such

tree is situated, except upon a permit in writing from said tree warden, nor shall they be cut down or removed by the tree warden or his deputy or other person without a public hearing at a suitable time and place, after notice thereof posted in two or more public places in the town and upon the tree at least seven days before

(3) Any other similar method that prevents the removal of shopping carts from the premises.

(b) Each and every shopping cart owner shall post a sign having a minimum dimension of 12 inches by 18 inches in a conspicuous location at each entrance to the premises notifying shopping cart users of the containment measures put into place pursuant to this section.

(c) Each and every shopping cart owner shall implement shopping cart containment measures and otherwise come into compliance with the requirements of this section within 120 days of final approval of this section.

(d) The provisions of this article may be enforced by the superintendent of inspectional services or the police department by a noncriminal disposition pursuant to G. L. c. 40, § 21D. Each day on which a violation exists shall be deemed a separate offense. Any person, firm, corporation, association or other entity violating any provision of this article shall be punished by a fine in accordance with section 1-11(b). (Ord. No. 2007-03, 3-8-2007)

ARTICLE VI. TREE PRESERVATION ORDINANCE

Sec. 12-100. Establishment of tree advisory committee.

A Somerville Tree Advisory Committee charged with advising with respect to the management and maintenance of existing and new public shade trees shall be established, consisting of the following:

- (1) The mayor or his or her designee;
- (2) A representative selected by the board of aldermen, to serve for a term of three years;
- (3) A representative of the office of strategic planning and community development;
- (4) The tree warden;
- (5) One member of the Somerville Garden Club, or similar organization, to serve for

a term of three years, selected by the mayor, subject to confirmation by the board of aldermen.

Such tree committee shall have no authority to interfere with the daily operations or conduct of business by the tree warden or city arborist.

It shall be the responsibility of the Somerville Tree Advisory Committee to study, investigate, counsel and develop and/or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan shall be presented annually to the mayor's office by April 1 for review and comment. Upon the mayor's acceptance and approval, the plan shall constitute the official comprehensive city tree plan for the City of Somerville. Further, the committee, when requested by the mayor, shall consider, investigate, make findings, report and recommend upon any special matter of question coming within the scope of its work. (Ord. No. 2009-04, 4-23-2009; Ord. No. 2009-08, 6-11-2009)

Sec. 12-101. Criteria for removal.

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. (Ord. No. 2009-04, 4-23-2009; Ord. No. 2009-08, 6-11-2009)

Sec. 12-102. Notice requirements.

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 owners of real property located within 150 feet of the public

shade tree proposed to be removed 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.

(Ord. No. 2009-04, 4-23-2009; Ord. No. 2009-08, 6-11-2009)

Sec. 12-103. Tree replacement.

Any healthy public shade tree removed at the request of a property owner, or agent thereof, shall be replaced within one year from date of removal. The replacement tree shall be of such size and species as specified by the tree warden. (Ord. No. 2009-04, 4-23-2009; Ord. No. 2009-08, 6-11-2009)

Sec. 12-104. Tree replacement fund.

(a) *Establishment.* There shall be established a tree replacement fund which shall be held in a separate identifiable account and administered in accordance with applicable provisions of 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 for planting replacement tree.* Where a healthy public shade tree is removed at the request of a property owner, or agent thereof, for the purposes of economic development, as determined by the tree warden, the requesting party shall make a contribution to a tree replacement fund in an amount deemed equal to the cost to replace the tree, which cost shall be determined by the tree warden or his or her designee, based on standards set forth by council of tree and landscape appraisers, plus the value of the tree to

be replaced, which value shall be determined by the tree warden or his or her designee, based on standards set forth by the council of tree and landscape appraisers.

(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. 2009-04, 4-23-2009; Ord. No. 2009-08, 6-11-2009)

Sec. 12-105. Compliance with state law.

All public shade tree hearings shall comply with the applicable requirements set forth in G.L. c. 87, s. 3. (Ord. No. 2009-04, 4-23-2009; Ord. No. 2009-08, 6-11-2009)

87 § 4

SHADE TREES

Note 3

Public Works of Pittsfield (1934) 189 N.E. 820, 285 Mass. 544. Municipal Corporations 678

the will of the person whose private property they are to be taken to be under G.S.1860, c. 46, § 6; and one who assumes, without such authority, to remove or destroy such trees, on the ground that they are a public nuisance, is liable in damages to such person. White v. Godfrey (1867) 97 Mass. 472; Bliss v. Ball (1868) 99 Mass. 597.

4. Unauthorized removal

Only the mayor and aldermen, or selectmen, have authority to cause shade trees lawfully standing in a public way to be removed against

§ 5. Cutting down, trimming or removing bushes and small trees

Tree wardens and their deputies, but no other person, may, without a hearing, trim, cut down or remove trees, less than one and one half inches in diameter one foot from the ground, and bushes, standing in public ways; and, if ordered by the mayor, selectmen, road commissioners or highway surveyor, shall trim or cut down trees and bushes, if the same shall be deemed to obstruct, endanger, hinder or incommode persons traveling thereon or to obstruct buildings being moved pursuant to the provisions of section eighteen of chapter eighty-five. Nothing contained in this chapter shall prevent the trimming, cutting or removal of any tree which endangers persons traveling on a highway, or the removal of any tree, if so ordered by the proper officers for the purpose of widening the highway and nothing herein contained shall interfere with the suppression of pests declared to be public nuisances by section eleven of chapter one hundred and thirty-two, including the Dutch elm disease.

Amended by St.1941, c. 490, § 18; St.1949, c. 761, § 12; St.1961, c. 265.

Historical and Statutory Notes

St.1915, c. 145, § 5.

St.1941, c. 490, § 18, approved July 18, 1941, in the second sentence, changed "gypsy and brown tail moth suppression, as carried on under the direction of the state forester" to "the suppression of gypsy and brown tail moths and tent caterpillars as carried on by the director of the division of forestry in the department of conservation,".

St.1949, c. 761, § 12, approved Aug. 27, 1949, substituted the latter part of the second sentence beginning with the word "suppres-

sion" for the words, "suppression of gypsy and brown tail moths and tent caterpillars as carried on by the director of the division of forestry in the department of conservation and the United States department of agriculture, except so much as relates to the cutting and removal of trees, shrubs and growths that are one and one half inches or more in diameter one foot from the ground."

St.1961, c. 265, approved March 21, 1961, authorized cutting or trimming of trees to expedite moving of buildings.

Cross References

Duty to suppress foliage-destroying pests, see c. 132, § 25.

Library References

Municipal Corporations 678. Westlaw Topic No. 268.

SHADE

Hearings
Liability
Scope of authority
Trees endangering
Widening of highway

1. Scope of authority

R.L.1902, c. 113, § 1. The mayor having charge of the municipality may, and the road commissioner may, cause public shade trees standing in ways, to be ordered by the warden to be cut down to cut off parts of a street. Commonwealth v. Pittsfield (1934) 189 N.E. 820, 285, 200 Mass. 544. Municipal Corporations 678

2. Widening of highway

This section and the mayor's approval of order for widening the highway or extension of highway or extension of highway by means of a location by means of a main; term "widening" is defined in the broader sense. Board of Public Works of Pittsfield v. Board of Public Works of Pittsfield (1934) 189 N.E. 820, 285, 200 Mass. 544. Municipal Corporations 678

"Widening the highway" dispensing with the approval of order for widening the highway or extension of highway or extension of highway by means of a location by means of a main; term "widening" is defined in the broader sense. Board of Public Works of Pittsfield v. Board of Public Works of Pittsfield (1934) 189 N.E. 820, 285, 200 Mass. 544. Municipal Corporations 678

3. Trees endangering

Designated town officers hearing were bound to remove tree dangerously situated. Town of Great Barrington v. Board of Public Works of Pittsfield (1934) 189 N.E. 820, 285, 200 Mass. 544. Municipal Corporations 678

§ 6. Penalty for violation

Violations of any provision of this chapter by forfeiture of not less than one hundred dollars to the town.

St.1915, c. 145, § 6.