

PROPOSED CHANGES TO CHAPTER 87 OCTOBER 2011

CHAPTER 87. SHADE TREES

Section 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.

Section 2 Powers of tree wardens

The tree warden of a town may appoint and remove deputy tree wardens. He and they shall receive such compensation as the town determines or, in default thereof, as the selectmen allow. He shall have the care and control of all public shade trees, shrubs and growths in the town, except those within a state highway, and those in public parks or open places under the jurisdiction of the park commissioners, and shall have care and control of the latter, if so requested in writing by the park commissioners, and shall enforce all the provisions of law for the preservation of such trees, shrubs and growths. He shall expend all money appropriated for the setting out and maintenance of such trees, shrubs and growths, and no tree shall be planted within a public way without the approval of the tree warden, and in towns until a location therefor has been obtained from the selectmen or road commissioners. He may make regulations for the care and preservation of public shade trees and establish fines and forfeitures of not more than twenty dollars in any one case for violation thereof; which, when posted in one or more public places, and, in towns, when approved by the selectmen, shall have the effect of town by-laws.

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Comment [MW1]: DELETED SEE CHANGE BELOW

Change to - He shall have the care and control of all public shade trees, shrubs and growths in the town, except those in public parks or open places under the jurisdiction of the park commissioners, and shall have care and control of the latter, if so requested in writing by the park commissioners, and shall provide a formal, written consultation regarding actions to those trees, shrubs and growths within a state highway under state jurisdiction, and shall enforce all the provisions of law for the preservation of such trees, shrubs and growths.

Comment [MW2]: Added language that would allow Tree Warden to make comments and suggestions relative to State highways

He shall expend all money appropriated for the setting out and maintenance of such trees, shrubs and growths, and no tree shall be planted within a public way without the approval of the tree warden, and in towns until a location therefor has been obtained

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Comment [MW3]: DELETED SEE CHANGE BELOW

Change to - He may make regulations for the care and preservation of public shade trees which, when posted in one or more public places, and, in towns, when approved by the selectmen, shall have the effect of town by-laws, and may establish fines and forfeitures for violations thereof pursuant to rules and regulations promulgated under section 15.

Comment [MW4]: Added the ability for the Tree Warden to create realistic fines as allowed under new section 15.

Section 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.

Section 4 Cutting down or removing public shade trees; approval of selectmen or mayor

Tree wardens shall not cut down or remove or grant a permit for the cutting down or removal of a public shade tree if, at or before a public hearing as provided in the preceding section, objection in writing is made by one or more persons, unless such cutting or removal or permit to cut or remove is approved by the selectmen or by the mayor.

Section 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.

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Change to - Tree wardens and their deputies, but no other person, may, without a hearing, trim, cut down or remove trees, less than four 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 that, following an inspection based on accepted industry or government arboricultural standards for the determination of hazardous or dangerous trees, are 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 after securing a formal, written consultation from the tree warden 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.

Comment [MW5]: DELETED SEE CHANGE BELOW

Comment [MW6]: Changed the size of the tree from 1.5 inches to 4 inches.

Comment [MW7]: Added specific language that cites the use of industry accepted hazard standards

Comment [MW8]: Added language that requires the Tree Warden to comment on the tree(s) removal and allows Tree Warden the opportunity to recommend alternatives.

Section 6 Penalty for violation of sections 3, 4 and 5

Violations of any provision of the three preceding sections shall be punished by forfeiture of not more than five hundred dollars to the use of the city or town.

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Change to - Violations of any provision of the three preceding sections shall be punished by forfeiture of not more than the professionally assessed value of the tree or trees pursuant to rules and regulations promulgated under section 15. Such monies shall be collected to the use of the city or town.

Comment [MW9]: DELETED SEE CHANGE BELOW

Comment [MW10]: Added language that allows the Tree Warden to assess fines that more accurately match the value of the lost tree(s) as outlined in the new section 15

Section 7 Planting of shade trees

Cities and towns may appropriate money for the purpose of acquiring and planting shade trees in public ways. The tree warden, or a private organization acting with the written consent of the tree warden, may plant shade trees acquired with public or private funds in a public way, or if he deems it expedient, upon adjoining land at a distance not exceeding 20 feet from the layout of such public way for the purpose of improving, protecting, shading or ornamenting the same; provided, however, that the written consent of the owner of such adjoining land shall first be obtained.

Section 8 Trees on state highways

The department of highways, in this chapter called the department, shall have the care and control of all trees, shrubs and growths within state highways, and may trim, cut or remove such trees, shrubs and growths, or license the trimming, cutting or removal thereof. No such tree, shrub or other growth shall be trimmed, cut or removed by any person other than an agent or employee of the department, even if he be the owner of the fee in the land on which such tree, shrub or growth is situated, except upon a permit in writing from the department. Any person injured in his property by the action of the department as to the trimming, cutting, removal or retention of any such tree, shrub or other growth, may recover the damages, if any, which he has sustained, from the commonwealth under chapter seventy-nine.

Section 9 Signs or marks on shade trees

Whoever affixes to a tree in a public way or place a notice, sign, advertisement or other thing, whether in writing or otherwise, or cuts, paints or marks such tree, except for the purpose of protecting it or the public and under a written permit from the officer having the charge of such trees in a city or from the tree warden in a town, or from the department in the case of a state highway, shall be punished by a fine of not more than fifty dollars. Tree wardens shall enforce the provisions of this section; but if a tree warden fails to act in the case of a state highway within thirty days after the receipt by him of a complaint in writing from the department, the department may proceed to enforce this section.

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Change to - Whoever affixes to a tree in a public way or place a notice, sign, advertisement or other thing, whether in writing or otherwise, or cuts, paints or marks such tree, except for the purpose of protecting it or the public and under a written permit from the officer having the charge of such trees in a city or from the tree warden in a town, or from the department in the case of a state highway, shall be punished by a fine pursuant to rules and regulations promulgated under section 15.

Comment [MW11]: DELETED SEE CHANGE BELOW

Comment [MW12]: Added language that allows the Tree Warden to assess fines that more accurately match the value of the lost tree(s) as outlined in the new section 15

Section 10 Injury to trees on state highways

Whoever without authority trims, cuts down or removes a tree, shrub or growth, within a state highway or maliciously injures, defaces or destroys any such tree, shrub or growth shall be punished by imprisonment for not more than six months, or by a fine of not more than five hundred dollars to the use of the commonwealth.

Section 11 Injury to trees of another person

Whoever wilfully, maliciously or wantonly cuts, destroys or injures a tree, shrub or growth which is not his own, standing for any useful purpose, shall be punished by imprisonment for not more than six months or by a fine of not more than five hundred dollars.

Section 12 Injury to shrubs, trees or fixtures

Whoever wantonly injures, defaces or destroys a shrub, plant or tree, or fixture of ornament or utility, in a public way or place or in any public enclosure, or negligently or wilfully suffers an animal driven by or for him or belonging to him to injure, deface or destroy such shrub, plant, tree or fixture, shall be punished by a fine of not more than five hundred dollars, and shall in addition thereto be liable to the town or any person for all damages to its or his interest in said shrub, plant, tree or fixture caused by such act. Whoever by any other means negligently or wilfully injures, defaces or destroys such a shrub, plant, tree or fixture shall likewise be liable to the town or any person for all damages to its or his interest in said shrub, plant, tree or fixture caused by such act.

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Change to - **Whoever wantonly injures, defaces or destroys a shrub, plant or tree, or fixture of ornament or utility, in a public way or place or in any public enclosure, or negligently or wilfully suffers an animal or vehicle driven by or for him or belonging to him to injure, deface or destroy such shrub, plant, tree or fixture, shall be punished by a fine of not more than five hundred dollars, and shall in addition thereto be liable to the town or any person for all damages to its or his interest in said shrub, plant, tree or fixture caused by such act.**

Comment [MW13]: Adds language to include vehicles to more accurately reflect the era we live in

Section 13 Powers and duties of tree wardens in cities

The powers and duties conferred and imposed upon tree wardens in towns by this chapter shall be exercised and performed in cities by the officers charged with the care of shade trees within the limits of the highway.

Add new - In accordance with section 106 of chapter 41, the tree warden in any city or town which exceeds 10,000 inhabitants shall be qualified by training and experience in the field of arboriculture and licensed with the department of food and agriculture in accordance with the provisions of section 10 of chapter 132B. A qualified tree warden shall be defined as a person who has 1) completed a degree in a forestry or natural resource management field, or 2) attained ISA, MCA or other equivalent professional certification or, 3) for communities with less than 10,000 inhabitants, completed a full series of Professional Development courses offered by the Massachusetts Tree Wardens and Foresters Association or equivalent training.

Comment [MW14]: Adds language that establishes the base qualifications of the Tree Warden

Section 14

For the purposes of this section, a utility shall be defined as any distribution company as defined in chapter 164.

(a) A utility may or at the request of the tree warden shall submit a n annual vegetation management plan describing the maintenance work to be performed in the municipality . The plan shall include, at a minimum, a map of the circuits where the maintenance work will be per formed, the tree maintenance standards that will be followed and any foreseeable variance from those standards. In addition, the plan shall comply with local ordinances and regulations.

The vegetation management plan shall be submitted not less than 90 da ys prior to the date the utility proposes to begin its maintenance work. Upon receipt of the plan, the tree warden or their designee shall have 60 days to notify the utility in writing whether the plan has been approved .

Upon receiving written notification that the plan has been approved, or approved with modifications agreed to by both parties, the utility shall be exempted from the requirements of sections 3 and 5 for the work described in the approved plan .

(b) A utility may or at the request of the tree warden shall submit an annual hazard tree removal plan describing hazard tree removal work to be performed in the municipality. The plan shall include, at a minimum, the specific trees that the utility has identified as a hazard and proposes to remove. In addition, the plan shall comply with local ordinances and regulations.

The hazard tree removal plan shall be submitted not less than 90 days prior to the date the utility proposes to begin tree removal. Upon receipt of the plan, the tree warden or their designee shall have 60 days to notify the utility in writing whether the plan has been approved .

Upon receiving written notification that the plan has been approved, or approved with modifications agreed to by both parties, the utility shall be exempted from the requirements of sections 3 and 5 for the work described in the approved plan .

(c) If the tree warden fails to notify the utility whether the vegetation management plan or hazard tree removal plan has been approved within 60 days of receipt of the plan, the utility may request a decision by the selectmen , mayor or chief administrative officer of th e municipality.

(d) Notwithstanding the fact that a vegetation management plan or hazard tree removal plan has been approved, the utility shall notify t he tree warden in writing not less than 14 days prior to beginning maintenance work or tree removal work in a municipality . If a local ordinance or regulation requires more than 14 days notice, the utility shall comply with such ordinance or regulation. Such notice shall include the date on which the utility will begin work and the phone number of the person or persons supervising the work in the field.

(e) The utility shall provide to the state forester, or any such person or agency as designated by the secretary of energy and environmental affairs, a copy of the annual vegetation management plan or hazard tree removal plan and a copy of the approval or denial letter from each tree warden. The state

forester, or any such person or agency as designated by the secretary of energy and environmental affairs, shall provide the utility with a read receipt.

(f) The utility shall , annually, submit a set of utility tree maintenance standards and specifications and evidence that these standards have been adopted by the utility company to the state foresters office. These standards and specifications shall be in conformance with the following : American National Standard Institute A-300, American National Standard Institute Z-133, National Electric Safety Code 218 Tree Trimming and OSHA 29 CFR Part 1910 Line Clearance Tree Trimming Operations, as amended by the issuing authority. The state forester, or any such person or agency as designated by the secretary of energy and environmental affairs, shall make these standards and specifications available to the public on their websites or other accessible locations. They shall accept , and maintain a publicly accessible record of , comments received on the standards and specifications and shall transmit them to the utilities.

Section 15

Add new - The State Forester's Office of the Department of Conservation and Recreation shall promulgate and periodically review as necessary all rules and regulations pertaining to this chapter.

Comment [MW15]: Creates a new section 15 which allows the State DCR to create regulations that accurately address the current needs of Tree Wardens and are based on current standards.