

City of Biddeford Sustainability Commission

April 7, 2025 at 5:30 PM

City Hall Second Floor Conference Room & Zoom

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Meeting ID: 956 0965 9904

Passcode: 619401

1. Discussion/Review
 - 1.a Tree Protection Ordinance-Guest Speaker Jake Pierson
 - 1.b Discussion/Update on the Earth Day Event, April 26th
 - 1.c Amending/Updating the Climate Action Plan
2. Adjourn



How to Write a Municipal Tree Ordinance



***T**ree City USA is a powerful force for the promotion of tree care and urban forestry. It is a program that has caught the imagination of citizens, elected officials, and urban tree professionals. More than 3,400 communities now fly the flag of accomplishment, a composite area that is home to some 137 million Americans.*

At the heart of the Tree City USA program are four basic requirements:

The community must have (1) a tree board or department, (2) an annual community forestry program backed by the expenditure of at least \$2 per capita for trees and tree care, (3) an annual Arbor Day proclamation and observance, and (4) a tree care ordinance.

In this issue of Tree City USA Bulletin, sections of a model ordinance are presented, explained, and illustrated with actual examples. Not every section will be appropriate to all communities, and there are others in use that are not included in this general coverage of the topic.

The purpose of this issue is to encourage all citizens to support their town having an appropriate, current tree ordinance and to provide a starting point for thousands of communities to create or enhance an existing ordinance. Although an ordinance is only as good as the administrative program that backs it up — including support for education and, when necessary, enforcement — a municipal tree ordinance and involvement in the Tree City USA program are giant strides in the direction of healthier urban trees and a quality environment.



Why a Tree Ordinance?

Ordinances reflect the values of a community — the values its residents believe are worth protecting to maintain their quality of life and an environment that is both safe and pleasant. A community's trees, often called the urban forest, are very much the kind of community asset that deserves to be protected and managed for the common good.

A tree ordinance encourages beautification, air cooling and purification, noise abatement, property value enhancement, and the other attributes of trees within a city. It also enables citizens to prevent and control the spread of diseases, to preserve trees in the path of development, and to avoid unnecessary costs associated with sewer clogging, sidewalk replacement, and tree-related accidents. An ordinance may also give force and direction to professional tree care within the municipality's workforce and helps control unscrupulous or careless operators.

Ordinances vary in length and complexity, but the key to effectiveness is to write the ordinance simply, clearly, and tailored to the needs of your community. In the end, a tree ordinance is just another tool for proper tree care. Like any tool, it needs to be of high quality, matched properly to the job, and used with skill and care.



Friends of Trees organized a tree planting along a multiple-use corridor in Portland, Oregon. These trees will provide a forested buffer between the local neighborhood and the interstate, decreasing road noise and adding significant beautification to the area.

THE SEARCH FOR AN IDEAL ORDINANCE

For several decades, citizens who have wanted better tree protection in their communities have searched for model ordinances to guide the way. The ordinance sections and their descriptions found in this bulletin are based largely on just such a model ordinance developed by Philip J. Hoefer of the Colorado State Forest Service. They are condensed from *Municipal Tree Ordinance Manual*, a publication of the International Society of Arboriculture and currently out of print.

An important point made by Hoefer is that in addition to an ordinance, there should be an appended standards and specifications document. This presents detailed guidelines for arboricultural practices such as planting and pruning, tree care, removal, landscaping, contracting, and similar activities that are important in any community forestry program.

It is recommended that the standards and specifications section be a separate but companion part of a municipal ordinance. This is because including such a large amount of detail directly in the ordinance itself is cumbersome and difficult to change. For greater flexibility, it is better to keep the ordinance brief, but to authorize the designated forestry body (board, commission, or department) to publicize rules, regulations, standards, and specifications. These can be published separately and revised as necessary, but still be subject to final approval by the city council or other elected officials.

Importantly, each community has different circumstances that need to be addressed in an ordinance and its accompanying standards and specifications. Use the model ordinance sections in this bulletin and the ordinances of other communities as starting points for developing your own ordinance or to revise one that is not working well, but add or delete sections to match the unique needs and circumstances of your community. Be sure to search your own city codes for any references to trees that may already exist. Finally, use the services of an attorney to review or help write all drafts to ensure that your final product is legally sound as well as beneficial to the future of your community's trees.

To locate sample ordinance provisions, search online for "sample tree ordinances," or search for "ordinances" on the following sites:

- www.isa-arbor.com/home.aspx
- www.actrees.org

IN ADDITION TO AN ORDINANCE,
THERE SHOULD BE AN APPENDED
**STANDARDS AND
SPECIFICATIONS DOCUMENT.**

Suggested Sections for a Tree Ordinance

Although no two tree ordinances will be exactly alike, there are some basic elements that will help ensure that the document is workable and effective. These elements are called sections, and they are presented here with examples and principles that illustrate why each one is necessary.

I. PURPOSE

PRINCIPLE: An opening statement that clearly sets forth the purpose of the ordinance will help avoid ambiguity in interpretation. This initial section is usually capitalized and in bold print.

EXAMPLE: It is the purpose of this ordinance to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants within the city of _____.



A clearly stated purpose prevents misinterpretation.

II. AUTHORITY AND POWER

PRINCIPLE: Someone within city government must have the clearly designated authority to administer the provisions of the ordinance. This section defines, designates, or creates a department, board, commission, or person responsible for the planting, care, and protection of the city's trees.

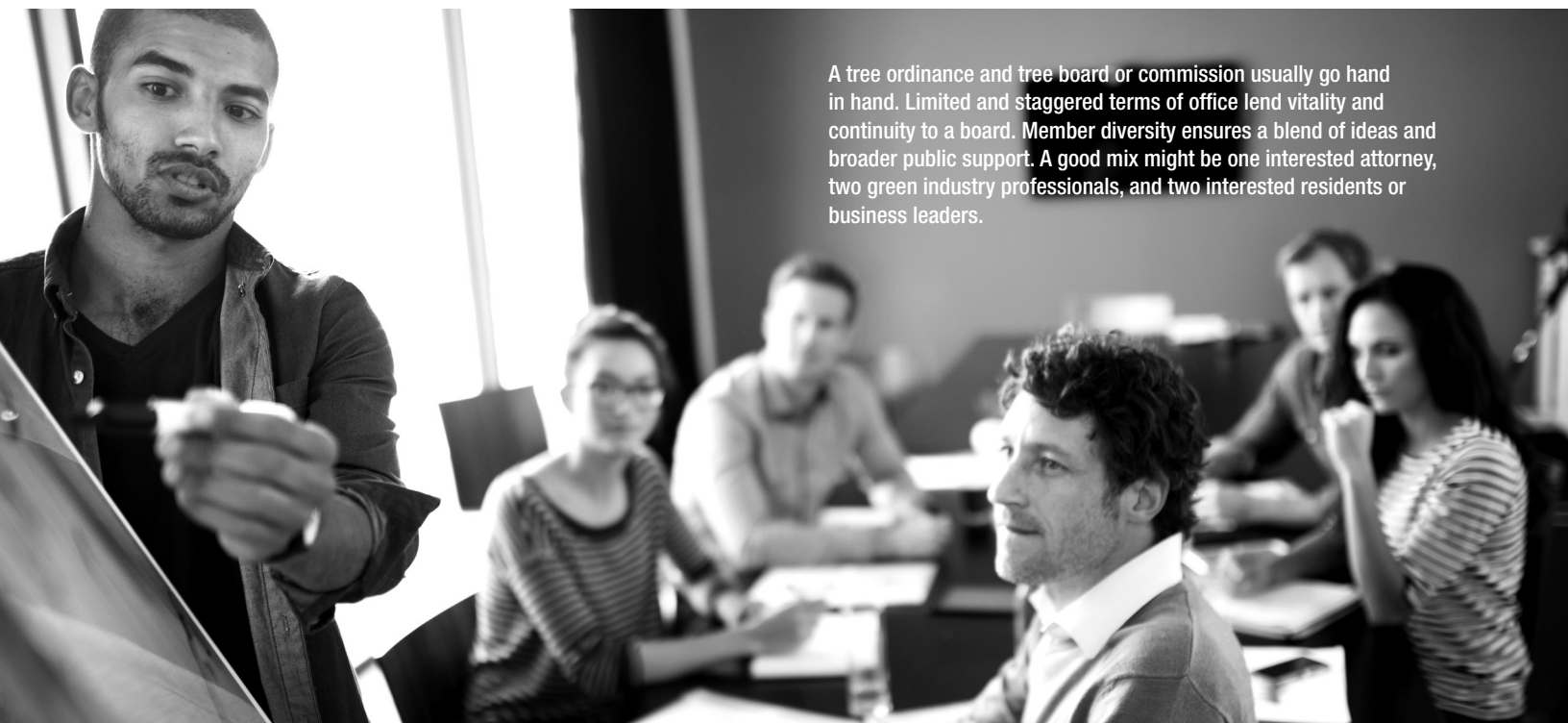
EXAMPLE: There is hereby created and established a City Tree Board for the City of _____, which shall consist of five members, citizens, and residents of this city, who shall be appointed by the mayor with the approval of the city council. Members of the board shall serve without compensation.

HOME RULE AUTHORITY: In order to avoid conflicts with state laws governing trees, a statement transferring regulations to the city may be necessary. State, county, and city laws will explain this process. If needed, the statement should be added as a section.

III. TERM OF OFFICE

PRINCIPLE: Reasonable and clearly stated terms of office for volunteer boards or commissions will help infuse the program with new ideas on a periodic basis and will help avoid the problems created by obstructionists with life or long-term tenure. This section defines length of service, a method for filling vacancies, and the number of consecutive terms (if any) that can be served. Staggering terms can help ensure continuity and stability.

EXAMPLE: The term of the five persons to be appointed by the mayor shall be three years, except that the term of two of the members appointed to the first board shall be for only one year and the term of two members of the first board shall be for two years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term.



A tree ordinance and tree board or commission usually go hand in hand. Limited and staggered terms of office lend vitality and continuity to a board. Member diversity ensures a blend of ideas and broader public support. A good mix might be one interested attorney, two green industry professionals, and two interested residents or business leaders.

IV. APPLICABILITY

PRINCIPLE: This section is needed to clarify which property is covered by the ordinance. This usually includes trees on rights-of-way, public parks, cemeteries, and other public grounds. Private property is also sometimes included.

EXAMPLE: This ordinance provides full power and authority over all trees, plants, and shrubs located within street rights-of-way, parks, and public places of the city and over trees, plants, and shrubs located on private property that constitute a hazard or threat as described herein.



An ordinance must specify which property it covers, such as rights-of-way, public parks, and cemeteries.

V. DEFINITIONS

PRINCIPLE: To prevent misunderstanding, words that may be unfamiliar to lay citizens should be defined. If a standards and specifications appendix accompanies the ordinance, many arboricultural terms can be placed there instead of in this section.

EXAMPLES OF WORDS OR TERMS TO DEFINE: arborist, contractor, city forester or city arborist, tree, public tree, private tree, tree lawn, parkway, right-of-way, easement, etc.

VI. LICENSING

PRINCIPLE: One way to protect trees and citizens from irresponsible companies or individuals who pose as arborists is to require practitioners to have a license. Conditions for obtaining the license may even require that the person be a certified arborist. (See Bulletin No. 6.) This section provides licensing authority and includes details such as fees, frequency of renewal, testing procedures, types of licenses, suspensions and appeals, surety bonds, showing identification on equipment, etc.

EXAMPLE: It shall be unlawful for any person to engage in the business of planting, cutting, trimming, pruning, removing, spraying, or otherwise treating trees, shrubs, or vines within the City without first producing evidence of certification/license before the City. (An explanation of requirements and fees is then presented.)

VII. INSURANCE

PRINCIPLE: Arborists work under dangerous circumstances and around high-value property. Since it is often difficult for homeowners to ascertain whether property and tree workers are adequately covered, or to insist on such coverage, a provision in the tree ordinance can easily correct the situation.

EXAMPLE: Before any license shall be issued, each applicant shall first file evidence of possession of worker compensation and liability insurance in the minimum amounts of \$1,000,000 for bodily injury or death and \$100,000 property damage indemnifying the City or any person injured or damaged resulting from the pursuit of such endeavor as herein described.

A license requirement protects both trees and property owners.



Important details of planting and tree care can be best placed in a separate standards document, but can also be listed in the ordinance or in an appendix. Specification examples include suitable species, spacing, distance from curb and sidewalk, and acceptable pruning practices.



VIII. LANDSCAPING

PRINCIPLE: This section can ensure that trees will be a part of new developments. But planted vegetation can be an asset or a liability — depending on what is planted and how it is done. This part of the ordinance can define a process for having new landscape plans reviewed and approved by the city forester or tree board, with the issuance of building permits only after such a review.

EXAMPLE: In new subdivisions or when the development of commercial property occurs, the city forester shall review landscaping plans and may require street trees to be planted in any of the streets, parking lots, parks, and other public places abutting lands henceforth developed and/or subdivided.

IX. TREE PLANTING, MAINTENANCE, AND REMOVAL

PRINCIPLE: Good tree care and management is possible only if people have specific information about practices that result in safe, healthy trees that contribute to a quality environment rather than to creating problems. The purpose of this section is to provide that information in the form of requirements. In many ways, it is the heart of a good ordinance. Actually, the material in this section is best included in a separate standards and specifications chapter, but placing it directly in the ordinance is an option. Either way, all specifications should be reviewed at least every five years and should include such specifics as desirable and undesirable tree species, spacing, pruning techniques, high-risk trees, sight obstruction, and vandalism.

A good way to clearly specify pruning and other tree work standards is to use the terms and definitions as contained in ANSI A300 standards. For nursery stock, use ANSI Z60.1, available online at the site of AmericanHort.

EXAMPLES:

TREE SPECIES — The Town Tree Board develops and maintains a list of desirable trees for planting along streets in three size classes: small, medium, and large.

SPACING — The spacing of street trees will be in accordance with the three species size classes listed in this ordinance. No trees may be planted closer together than the following, except in special plantings designed or approved by a landscape architect: small trees, 30 feet; medium trees, 40 feet; and large trees, 50 feet.

UTILITIES — No street trees other than those species listed herein as small trees may be planted under or within 10 lateral feet of any overhead utility wire, or over or within 5 lateral feet of any underground water line, sewer line, transmission line, or other utility.

DISTANCE FROM CURB AND SIDEWALK — The distance trees may be planted from curbs or curblines and sidewalks will be in accordance with the three species size classes listed in Section ____ of this ordinance, and no trees may be planted closer to any curb or sidewalk than the following: small trees, 2 feet; medium trees, 3 feet; and large trees, 4 feet.

TOPPING — It shall be unlawful as a normal practice for any person, firm, or city department to top any street tree, park tree, or other tree on public property. Topping is defined by the International Society of Arboriculture as an inappropriate technique to reduce tree size that cuts through a stem more than two years old at an indiscriminate location. (Such a point is usually between branches, leaving a stub.)

X. ADJACENT LANDOWNER RESPONSIBILITY

PRINCIPLE: Quite naturally, homeowners often want to plant trees or do work on trees that abut their property but are on a public right-of-way. This section describes a process by which the homeowner can do the work, but only in accordance with the sound principles of urban forestry management and arboriculture.

EXAMPLE: No person shall plant, remove, cut above the ground, or disturb any tree on any street, park, or other public place without first filing an application and procuring a permit from the city forester. The person receiving the permit shall abide by the standards set forth in this ordinance.



An ordinance may provide authority to investigate privately owned trees that may pose a threat to the public and require removal or mitigation, such as pruning.

XI. TREE PROTECTION

PRINCIPLE: Protecting existing trees is a major challenge. Therefore, more and more progressive communities are using this section not only to prevent insect and disease epidemics, but also to protect trees on both public and private property from damage during construction. Increasingly, another use of this section is to identify and protect trees of historic value or unusual qualities (called heritage trees). Requiring permits for all tree removal is one way to achieve these goals. Penalties may be established requiring violators to pay a fine in the amount of the tree's appraised value. Ideally, such funds will be designated solely for planting more trees.

EXAMPLE 1: Upon the discovery of any destructive or communicable disease or other pestilence that endangers the growth or health of trees or threatens to spread disease or insect infestations, the city forester may at once cause written notice to be served upon the owner of the property upon which such diseased or infested tree is situated, and the notice shall require such property owner to eradicate, remove, or otherwise control such condition within reasonable time to be specified in such notice.

EXAMPLE 2: The following guidelines and standards shall apply to trees proposed in a developer's tree protection plan to be retained. (Rules are then specified such as not grading or locating utilities within the tree's drip line, placing protective barriers around trees, preventing siltation, etc. Or, developers may be required to preserve a percent of forested tracts, plant trees in open space, or pay into a county tree-planting fund so that there is no net loss of tree cover.)

EXAMPLE 3: The city forester shall have as one of his/her duties the location, selection, and identification of any trees that qualify as heritage trees. A tree may qualify as a heritage tree if it meets one or more of the following criteria: (Criteria may include species rarity, old age, association with a historical event or person, abnormality, scenic enhancement, etc.)

XII. PRIVATE TREES

PRINCIPLE: Since trees on private property often affect the safety and welfare of other trees and people other than the owner, a provision is needed to allow community action in such cases. This section provides authority to inspect private trees, designate them as public nuisances, and demand their removal or mitigation, such as pruning, when necessary.

EXAMPLE: The city forester or his/her official designee has the authority to enter onto private property whereon there is located a tree, shrub, plant, or plant part that is suspected to be a public nuisance and to order its removal if necessary. (Note: An appropriate legal definition of a public nuisance is needed here, such as any tree with an infectious disease or insect problem that poses a significant threat to the community's tree population; dead or dying trees; a tree or limb(s) that obstruct street lights, traffic signs, the free passage of pedestrians or vehicles; a tree that poses a threat to safety, etc. Also needed is a description of the legal process for notifying property owners and causing abatement of the nuisance, including removal and billing for costs by the city if action is not taken by the owner.)

XIII. PERMITS

PRINCIPLE: Permits provide a way to make certain that anyone who plants, works on, or removes public trees (and sometimes private trees) is knowledgeable and capable of doing the job right. Permits are also a means to ensure compliance with standards and specifications, allow for follow-up inspections, and generally serve as a tool for enabling a community to control the future of its urban forest.

EXAMPLE: No person except the city arborist, his/her agent, or a contractor hired by the city arborist may perform any of the following acts without first obtaining from the city arborist a permit for which no fee shall be charged: (treatments and actions are listed, each one specifying whether it applies to trees on public land or to any tree, public or private).

XIV. ENFORCEMENT

PRINCIPLE: For an ordinance to be more than a piece of paper, authority must be given to the city forester or other official to enforce the provisions. This includes the right to issue notices of violation, notices to perform work, and the ability to stop work.

EXAMPLE: The city forester shall have the authority to publicize and enforce rules, regulations, and specifications concerning the trimming, spraying, removal, planting, pruning, and protection of trees, shrubs, vines, hedges, and other plants upon the right-of-way of any street, alley, sidewalk, or other public place in the city. (Details about the process of rule-making, review, and approval by the governing body and enforcement need to be included.)

XV. PENALTIES, CLAIMS, AND APPEALS

PRINCIPLE: Enforceable, meaningful ordinances must contain provisions for penalties and violations. Most cities have standard statements that will work in a tree ordinance, or one may be written specifically related to trees. There needs to be a process for the city to do needed work if a landowner fails to comply with an order, and there should also be an appeal process.

EXAMPLES:

VIOLATIONS — Any person who violates any provision of this ordinance or who fails to comply with any notice issued pursuant to provision of the ordinance, upon being found guilty of violation, shall be subject to a fine not to exceed \$500 for each separate offense. Each day during which any violation of the provisions of this ordinance shall occur or continue shall be a separate offense. If, as the result of the violation of any provision of this ordinance, the injury, mutilation, or death of a tree, shrub, or other plant located on city-owned property is caused, the cost of repair or replacement, or the appraised dollar value of such tree, shrub, or other plant, shall be borne by the party in violation. The value of trees and shrubs shall be determined in accordance with the latest revision of *A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens*, as published by the International Society of Arboriculture.



Each community's ordinance must be written to serve that community's unique needs and circumstances.

ASSESSMENT OF CLAIM — In the event that a nuisance is not abated by the date specified in the notice, the city arborist is authorized to cause the abatement of said nuisance. The reasonable cost of such abatement shall be filed as a lien against the property on which the nuisance was located. In addition, the owner of the property upon which the nuisance was located shall be subject to prosecution.

APPEALS — (Include your municipality's standard appeals process.)

XVI. OTHER

Because circumstances vary so widely between municipalities, there may be other sections necessary to fashion an ordinance to the needs of your community. These range from sections that local government may require in all its ordinances (such as a severability clause that states that if any section of the ordinance is found to be invalid or unconstitutional, it does not affect the validity of remaining sections) to how the urban forestry program is to be financed. The ordinance must fit your town's needs.

Don't Overlook Evaluating and Revising

The basic steps toward protecting and managing the trees in any community are (1) determining what you have (an inventory), (2) deciding what you want, i.e., what is right for your community (safety, a certain percent crown cover, diversity, etc.), and (3) establishing goals and an implementation strategy (a plan). Tree ordinances are part of the latter. They are one of the ways of attaining the desires of residents to have the kind of community forest they deserve for a quality lifestyle.

No tree ordinance is static. As communities grow and change, it is essential to review your ordinance and make certain it keeps pace with the changing needs and challenges. Review what works and what doesn't work. For example, if homeowners in new suburbs are encouraged to plant street trees but this is being ignored by non-resident owners of duplexes or apartments, what might be changed in the ordinance to solve the problem?

Monitoring is often the overlooked step in urban forestry. It is made easier when a tree board or department sets management goals annually and reviews the city's vision statement regularly. It also helps to stay current on what is being done in other cities with similar growth patterns and challenges. The bottom line is that ordinances are not one-time documents. They are a tool, and they need to be updated or replaced like any other tool in order to serve best.



Tree ordinances are important for large cities, small towns, and developing suburban areas.

FOR MORE INFORMATION ...

For more information and references, please visit arborday.org/bulletins. Explore the Foundation's website for other helpful pages on trees, sale items, the Tree City USA program, public education, the management of community forests, and much more.

Tree City USA Bulletin ORDER FORM

Name _____
 Organization _____
 Address _____
 City _____ State _____ Zip _____
 Phone _____

For a complete list of Tree City USA Bulletins, visit arborday.org.

	1 Issue \$3.00 ea.
1. How to Prune Young Trees	1. \$
2. When a Storm Strikes	2.
3. Resolving Tree/Sidewalk Conflicts	3.
4. The Right Tree for the Right Place	4.
5. Living With Urban Soils	5.
6. How to Hire an Arborist	6.
7. How to Save Trees During Construction	7.
8. Don't Top Trees!	8.
9. Writing a Municipal Tree Ordinance	9.
---- Tree City USA Annual Report	
TOTALS:	\$

Annual Friends of Tree City USA
 Membership \$15.00 \$
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Order Tree City USA Bulletins online at arborday.org or send this form and mail with your payment to:

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1925 101

THE TREE CITY USA PROGRAM IS SPONSORED BY THE
 Arbor Day Foundation in cooperation with the U.S.
 Forest Service and National Association of State
 Foresters. To achieve the national recognition of being
 named as a Tree City USA, a town or city must meet
 four standards:

- Standard 1: A tree board or department
- Standard 2: A tree care ordinance
- Standard 3: A community forestry program with an
annual budget of at least \$2 per capita
- Standard 4: An Arbor Day observance and proclamation

Each recognized community receives a Tree City USA flag, plaque, and community entrance signs. Towns and cities of every size can qualify. Tree City USA application forms are available from your state forester, the Arbor Day Foundation at arborday.org/treecity, or your state forestry agency.

PHOTO COURTESY OF: Friends of Trees (page 2).

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ARTICLE XXI. TREE PROTECTION

Sec. 27-2101. Purpose.

The purpose of this Article is to protect and preserve trees and wooded ecosystems within the City ("Tree Resources"), and if Tree Resources are impacted through the orderly development of the community, to provide commensurate and reasonable mitigation to the City. In protecting, preserving, and mitigating for the loss of Tree Resources, this Article recognizes the value that Tree Resources provide with respect to enhancing quality of life and the environment in the City; protecting air quality; reducing excessive glare and heat; reducing noise nuisances; reducing topsoil erosion and stormwater runoff; preserving and enhancing habitat areas for significant wildlife; protecting and increasing property values; combating climate change through carbon sequestration; supporting privacy between neighboring properties; enhancing overall neighborhood aesthetics; protecting culturally and historically significant trees; and acknowledging the intrinsic value of mature trees in our community.

Sec. 27-2102. Definitions.

For purposes of this Article, the following terms shall have the following meanings:

(a) Affordable Housing Projects.

Projects proposing 3 or more dwelling units, where at least 50% of the dwelling units are decent, safe, sanitary, and affordable as follows:

- (1) For rental housing, a dwelling unit is affordable if a household whose income does not exceed 80% of the local area median income (*i.e.*, the "Portland, ME HUD Metro Fair Market Rent Area" as defined by the U.S. Department of Housing and Urban Development under the U.S. Housing Act of 1937, as amended), can afford to lease the dwelling unit without spending more than 30% of the household's monthly income on housing costs. For a rental unit, housing costs include the cost of rent; any utilities (electric, heat, water, sewer, and/or trash); and any other contractual service costs or costs that are otherwise required to be paid by a tenant household through a lease or rental agreement with the landlord in order for the tenant household to occupy the rental unit.
- (2) For owned housing, a dwelling unit is affordable if a household whose income does not exceed 120% of the local area median income (*i.e.*, the "Portland, ME HUD Metro Fair Market Rent Area" as defined by the U.S. Department of Housing and Urban Development under the U.S. Housing Act of 1937, as amended), can afford to purchase the dwelling unit without spending more than 30% of the household's monthly income on housing costs. For an ownership unit, housing costs include the

cost of mortgage principal and interest, real estate taxes, private mortgage insurance, homeowner's insurance, condominium fees, and homeowners' association fees.

(b) Caliper.

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

(c) Crown Cover.

The proportion of the ground covered by the crowns of live trees. This term is synonymous with the drip line of the tree.

(d) DBH (Diameter at Breast Height).

This term shall have the same meaning as set forth in Sec. 27-201. For multi-stemmed trees, DBH is the aggregate diameter of the trunks.

(e) Environmental Management Organizations.

Organizations whose mission and purpose is the long term preservation and conservation of open space and natural resources, and that include, but are not limited to, the following: The City's Parks, Recreation and Waterfront Department; land trusts; land conservation entities; State and federal environmental management agencies; and watershed management agencies.

(f) On-site Replacement.

Planting trees as a mitigation measure for Tree Removal on the property where the Tree Removal occurred, or on a contiguous parcel under the same ownership as the property where the Tree Removal occurred.

(g) Off-site Replacement.

Planting trees as a mitigation measure for Tree Removal on property that is not considered On-Site Replacement.

(h) Project Reductions or Modifications.

Project Reductions or Modifications refer to modifications in the scope, scale, design, and extent of a project such that Tree Removal of Protected Trees is avoided. Project Reductions or Modifications include altering the following project parameters below the maximum that is otherwise allowable based on the applicable standards and regulations in the City's Code of Ordinances to avoid Tree Removal:

- 1) Decrease square feet of lot coverage, as defined in Sec. 27-201, if the project proposes to develop at 75% or more of the maximum allowable lot coverage on the property.
- 2) Decrease square feet of impervious surface area, as defined in Sec. 27-201, if the project proposes to develop at 75% or more of the maximum allowable impervious surface area on the property.
- 3) Decrease the area within the project's disturbance area, which includes the area of work as well as areas disturbed due to construction staging and operations.

- 4) Decrease the number of dwelling units, as well as associated improvements such parking spaces, to decrease density or net residential density, as defined in Sec. 27-201, if the project proposes to develop at 75% or more of the maximum allowable density or net residential density on the property.
- 5) Decrease the number of proposed parking spaces if the project is proposing more parking than is required by this Chapter.
- 6) Modify the location of streets and access ways to avoid Tree Removal. This Project Reduction or Modification shall be measured in terms of linear feet of roadway (but the locations must still be in compliance with all applicable ordinances, including, without limitation, Chapter 23 (Streets and Sidewalks) and Chapter 24 (Subdivisions)).
- 7) Modify linear feet of lot frontage and/or lot area dimensions in projects that propose new lots (but frontage and lot area still be in compliance with applicable space and bulk requirements).

(i) Protected Trees.

The following are Protected Trees in the City:

- 1) **Significant Trees.** Significant Trees are trees in the City that meet one of the following criteria:
 - (a) The tree has a 10 inches DBH or greater or 30 inches cumulative DBH for a multi-stemmed tree and the tree is not listed on the State of Maine Invasive Species list; or
 - (b) The tree is located within the Shoreland Area Overlay District, Shoreland Resource Protection Overlay District, or Stream Protection Overlay Districts.
- 2) **Heritage Trees.** Trees protected due to their age and size. Any tree that meets at least one of the following criterion is a Heritage Tree:
 - (a) The tree is listed on the Register of Big Trees promulgated by the Maine Department of Agriculture, Conservation & Forestry (the "Big Tree List");
 - (b) The tree is 90 years or older as determined by a Qualified Tree Professional or scientist qualified in determining the age of trees, such as a botanist; or
 - (c) The tree has a DBH of 60 inches or greater.
- 3) **Historic or Cultural Trees.** Trees protected for their historic or cultural importance in the community as evidenced by their inclusion by the City Council on the South Portland Inventory of Archaeological and Historic Resources due to historical or cultural significance.
- 4) **Program Trees.** Trees that require long-term preservation because of an agreement or contract approved by the City Council, such as an agreement or contract to receive grant funding that obligates the City to plant and preserve trees. Program Trees must be designated as such by City Council order.

(j) Qualified Tree Professional (QTP).

A Qualified Tree Professional is an individual with relevant education and training in arboriculture or urban forestry who has at least one of the following credentials:

- 1) International Society of Arboriculture (ISA) Certified Arborist;
- 2) Tree Risk Assessor Qualification (TRAW);
- 3) American Society of Consulting Arborists (ASCA) registered Consulting Arborist;
- 4) Society of American Foresters (SAF) Certified Forester for Forest Management Plans;
- 5) Arborist License in the State of Maine; or
- 6) A botany degree from an accredited university, with a specialty in dendrology.

(k) Replacement Trees.

A tree that is proposed for planting to mitigate for proposed Tree Removal in accordance with Sec. 27-2104. Replacement Trees must be at least 24 inch-box sizing at planting, or 1-3 inch caliper and 6-10 feet in height.

(l) Review Authority.

The City official or body responsible for review of and action on Tree Protection Approval applications.

(m) Tree Pruning and Maintenance

Any voluntary change to a Protected Tree that is completed consistent with a recommendation from a Qualified Tree Professional (QTP), which recommended change is intended to ensure that the long term health and structure of the tree will be maintained. In addition, the following activities shall be considered Tree Pruning and Maintenance but do not require a recommendation from a QTP:

- 1) Removing dangerous branches of 10 inch caliper or less to reduce risk of failure.
- 2) Removing dead, dying or diseased branches.
- 3) Lifting lower branches of 3 inch caliper or less.
- 4) Providing clearance for pedestrian mobility; removing branches obstructing view to traffic; or removing branches rubbing on a structure or other branches.
- 5) Thinning overgrowth.

(n) Tree Removal.

Any voluntary act involving a Protected Tree that, within two years of the act, results in the death of the Protected Tree, or the necessary removal of the Protected Tree to preserve safety and protect against property damage that may be caused by the tree due to diminished health caused by such act. This includes, but is not limited to the following:

- (1) The improper use of machinery on the tree;
- (2) The storage of materials in or around the tree;
- (3) Soil compaction;

- (4) Altering the natural grade to expose the roots or to cover the tree's root system with more than four inches of soil;
- (5) Pruning that does not meet the definition of "Tree Pruning and Maintenance" as defined in this Article;
- (6) Paving with concrete, asphalt, or other impervious surface within such proximity as to be harmful to the tree or its root system;
- (7) Application of poisons, herbicides or defoliates; and
- (8) Voluntary tree cutting and removal.

Sec. 27-2103. Applicability.

(a) Tree Protection Approval Not Required.

A Tree Protection Approval shall not be required for the following activities:

- 1) Tree Removal not involving Protected Trees.
- 2) Tree Removal that is necessary to, or becomes necessary in the course of providing emergency services or in emergency situations.
- 3) Tree Removal that is conducted pursuant to 35-A M.R.S. § 2522, as may be amended, for maintenance of utility facilities.
- 4) Tree Removal conducted by a State or federal Agency on State or federally controlled property, or Tree Removal that conducted pursuant to a State or federal law that preempts this Article.
- 5) Tree Removal conducted for maintaining safe clearance for aircraft as required by federal law or the establishment of facilities exclusively dedicated to aviation operations by the City of Portland for the Portland International Jetport.
- 6) **Tree Pruning and Maintenance**, provided further that for any voluntary change to a Protected Tree that is completed consistent with a recommendation from a QTP, the report prepared by a QTP must be retained and available on site at the request of the Code Enforcement Office to verify that the Tree Removal is associated with a recommendation from a QTP.
- 7) **Pest Management**. Tree Removal of a Protected Tree conducted to manage pests and disease affecting the health of trees in the area. A report prepared by a QTP must be retained and available on site at the request of the Code Enforcement Office to verify that the Tree Removal is associated with Pest Management.
- 8) **Compromised Health or Structure**. Tree Removal of a Protected Tree that is a Hazard Tree, Storm-Damaged Tree, or Dead Tree as defined in Sec. 27-201. A report prepared by a Qualified Tree Professional documenting the Protected Tree's qualification as a Hazard Tree, Storm-Damaged Tree, or Dead Tree must be retained and available on site at the request of the Code Enforcement Office to verify that the Tree Removal is associated with trees that have compromised health or structure.
- 9) **Environmental Projects**. Tree Removal of a Protected Tree for ecological restoration, ecological rehabilitation, parks and open space management, or other natural area management practices, including invasive species management projects. Environmental

Projects must be conducted by Environmental Management Organizations.

10) Structural Preservation. Tree Removal of a Protected Tree that is required to avoid or remediate damage to an existing structure or to infrastructure, such as utilities, associated with an existing structure. This does not include Tree Removal to prevent potential damage to new structures or expansions and additions to existing structures. A report prepared by a contractor qualified to assess the structural risk must be retained and available on site at the request of the Code Enforcement Office to verify that the Tree Removal is associated with structural preservation.

11) Infrastructure Projects. Tree Removal of a Protected Tree involving any of the following infrastructure projects:

- (a) Creation or maintenance of public streets by the City;
- (b) Creation or maintenance of water, sewer, stormwater or other utility work conducted by or on behalf of the City;
- (c) Creation or maintenance of water, sewer, stormwater, telecommunication, gas, electric power or other similar service conducted by or on behalf of a public utility as that term is defined in 35-A M.R.S. § 102(A), as may be amended; and
- (d) Development of public schools and associated improvements.

12) Accessibility Projects. Tree Removal of a Protected Tree to create ADA access improvements to existing property.

13) Cemeteries. Tree Removal on properties, or portions of properties, containing cemeteries as of August 1, 2023, when the Tree Removal is required to maintain existing grounds for interment, create additional grounds for interment, construct structures and associated improvements for interment, or to construct structures and associated improvements to support administrative or client services associated with managing and operating a cemetery.

14) All other projects and activities involving Tree Removal not listed in Sec. 27-2103(b) below as requiring Tree Protection Approval.

(b) Tree Protection Approval Required.

The following projects shall require a Tree Protection Approval prior to conducting Tree Removal of Protected Trees:

- 1) Projects subject to Planning Board review. All projects that require Planning Board approval, other than those specifically identified in Sec. 27-2103(a) above, require Tree Protection Approval.
 - (a) If the project is a subdivision without the construction of structures, the subdivision application shall identify the proposed or future building envelopes. Any Tree Removal of Protected Trees caused by (i) the creation of the subdivision, (ii) the construction of necessary improvements for the subdivision, such as access and utilities, or (iii) the proposed building envelopes associated with the subdivision, shall be subject to review under the separate Tree Protection Approval application.

- 2) Site Clearing. Projects not subject to Planning Board review, other than those specifically identified in Sec. 27-2103(a) (1)-(5) & (13) above, that result in the Tree Removal of ten (10) or more Significant Trees, three (3) or more Heritage Trees, one (1) or more Historic or Cultural Trees, or one (1) or more Program Trees, shall require Tree Protection Approval.

Sec. 27-2104. Review Process and Standards for Tree Protection Approval Applications.

(a) Review Authority.

The Planning Board shall have the authority to review and act upon all Tree Protection Approval applications. The requirements of this Article and the associated costs shall be in addition to the requirements and costs associated with any other required Planning Board or other regulatory review.

(b) Notice of Application.

Before taking action on an application, the Planning Board shall provide notice of its public hearing on Tree Protection Approval applications in accordance with the notice requirements for a site plan application, Sec. 27-1425(a)-(c).

(c) Review Standards for Tree Protection Approval Applications.

Before granting a Tree Protection Approval, the Planning Board shall determine that the following standards are met:

- 1) **Required Reductions.** All projects that result in Tree Removal must incorporate up to a 10% modification into the project scope or design any or all of the Project Reductions or Modifications listed in Sec. 27-2102 that individually or together avoid Tree Removal of Protected Trees to the maximum extent practicable as determined by the Planning Board.
- 2) **Mitigation.** If the Tree Removal cannot be avoided after incorporating any required Project Reductions or Modifications as determined by the Planning Board, then the Tree Removal is mitigated as follows:
 - (a) **Heritage, Historic, or Program Trees.** No Tree Removal of Heritage, Historic or Culturally Significant, or Program Trees is permitted unless Replacement Trees are provided such that the cumulative DBH of the Replacement Trees is equivalent to the cumulative DBH of the removed Heritage, Historic or Culturally Significant, or Program Trees.
 - (b) On-site Replacement, at a rate of 1.5 trees for each Protected Tree removed, or at a rate of 5 trees for each Protected Tree removed if the Tree Removal occurred within the Shoreland Area Overlay District, Shoreland Resource Protection Overlay District, or Stream Protection Overlay Districts.
 - (c) Off-Site Replacement, at a rate of 2 trees for each Protected Tree removed.

(d) Replacement requirements:

1. All replacement requirements shall be rounded up to the nearest whole number.
2. Mitigation with Replacement Trees must plant Protected Tree species.
3. If more than five (5) Replacement Trees are required, no species shall make up more than fifty percent (50%) of the number of trees planted.
4. All Replacement Trees shall be subject to landscaping Performance Guarantees equivalent to at least \$500 for each Replacement Tree or a greater amount as determined by the Director of Parks, Recreation, and Waterfront or other duly designated person, and in accordance with the landscape performance guarantee requirements set forth in Sec. 27-1431.

(e) **In-Lieu Payment to Tree Mitigation Fund.** An applicant may request that the Planning Board make a determination that On-site Replacement is not feasible or practicable under the specific circumstances of the project. If the Planning Board makes such a determination, the applicant shall pay an in-lieu compensation fee to the Tree Mitigation Fund established under Article VII (Tree Ordinance) of Chapter 2 of the Code of Ordinances.

1. The in-lieu fee shall be paid per Replacement Tree not provided in an amount as specified in the Schedule of License, Permit, Inspection and Application Fees established by City Council order.
2. Affordable Housing Projects are not required to request that the Planning Board make a determination that On-Site Replacement is infeasible in order to be eligible to pay an in-lieu compensation fee to the Tree Mitigation Fund as mitigation.

Sec. 27-2105. Tree Protection Approval Application Requirements.

(a) **Forms and Materials Required.**

Application for a Tree Protection Approval shall be made to the Planning Board by submission of a completed written application on forms provided for this purpose, accompanied by a fee as specified in the Schedule of License, Permit, Inspection and Application Fees established by City Council order.

(b) **Application Information.**

The application must be accompanied by the following documentation:

- 1) Evidence of right, title, or interest in the property.
- 2) An existing conditions plan in accordance with Section 27-1424(2), documenting the location of the Protected Trees proposed for Tree Removal. The plan shall delineate the Project

Disturbance Area to show the area of work as well as areas disturbed due to project staging and implementation.

- 3) A narrative, accompanied by such site plan drawings as may be necessary, explaining in detail how Project Reductions or Modifications cannot prevent Tree Removal.
- 4) A landscape plan indicating the mitigation plan for the Tree Removal. This may address On-Site and Off-Site Replacement.
- 5) If Off-Site Replacement is proposed, the applicant must submit documentation from the owner(s) of the off-site property granting approval to plant trees on the property. If Off-Site Replacement is proposed on City-owned or controlled property, a letter from the City Manager or their designee allowing planting on the property shall be included in the application.
- 6) If On-Site Replacement is not provided as mitigation, a narrative, accompanied by such site plan drawings as may be necessary and appropriate, shall be provided explaining in detail why On-Site Replacement is not feasible or practicable.

Sec. 27-2106. Effective Date; Applicability Date.

This Article XXI (Tree Protection) shall become effective pursuant to Section 225 of the City Charter. In order to allow time for residents and property owners to become familiar with the requirements of this Article, the requirements of this Article shall be phased in and not become applicable until January 1, 2024.

(Ord. No. 1-23/24, 8/15/2023 [Fiscal Note: Less than \$1000])

ARTICLE 5. BATH COMMUNITY FORESTRY ORDINANCE (Ord. 6/24/09)

Section 6-101 Purpose

The purpose of this ordinance is to promote and protect the public health, safety and general welfare by providing for the regulation of the planting, protection, maintenance, and removal of trees, shrubs, and other plants on property of the City of Bath, including city-owned rights-of-way.

Section 6-102 Administration and Enforcement

It shall be the duty of the Director of Cemeteries, Parks and Recreation and/or his designee to enforce and administer the provisions of this ordinance. Any person may appeal, in writing, any ruling or order issued by the Director of Cemeteries, Parks and Recreation and/or his designee by filing a notice of appeal with the City Manager within seven (7) days of date of the ruling or order.

Section 6-103 Bath Community Forestry Committee

A. Establishment: There is hereby established a Bath Community Forestry Committee.

B. Duties: The Committee shall have the duty and responsibility to oversee the administration and implementation of this ordinance, the purposes and activities of the Bath Community Forestry Trust, the Bath Community Forestry Management Plan and such other activities as affect the Bath community forest.

C. Ex Officio Members: The Director of Cemeteries, Parks and Recreation and the City Arborist serve the Committee as non-voting ex officio members.

D. Compensation: All members of the Committee shall serve without compensation.

Section 6-104 Applicability

The terms and provisions of this ordinance shall apply to all public trees located on public property, including city rights-of-way.

Section 6-105 Definitions

For purposes of this Article, the following terms shall have the meaning indicated. Terms not defined shall have their usual and customary meaning unless otherwise indicated by their use and context. Where the word "shall" is used, it is considered mandatory and not merely directory.

Abutter is one whose property touches or adjoins along a boundary or with a projecting part of the property of another.

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Forestry Division is the designated agency of the municipality of Bath under whose jurisdiction the public trees fall. This is a Division of the Cemeteries, Parks and Recreation Department.

Person is any individual, firm, partnership, association, corporation, company, organization, or legally organized entity of any kind.

Property Owner shall mean the person owning such property as shown by the City of Bath tax assessor's records, or the most recent transferee(s) as reflected in the indices or records of the Sagadahoc Country Registry of Deeds.

Public Hazard is a condition of any public tree or any other non-public tree, shrub or plant or any portion of a public tree or any other non-public tree, shrub or other plant which constitutes a hazard to natural persons or property or harbors insects or disease which constitutes a potential threat to other public trees or any other non-public trees, shrubs, or plants within the City.

Public Property shall include all property owned, leased, or occupied by the City of Bath.

Public Tree shall include all trees, shrubs and other plants on public property, including City rights-of-way.

Skeletal Soils are defined as a soil matrix mixture of gap-graded gravels composed of: crushed stone narrowly graded from $\frac{3}{4}$ - 1 $\frac{1}{2}$ ", highly angular and with no fines; clay loam based on USDA soil classification system, with organic matter ranging between 2% and 5%; and a hydrogel added in a small amount to act as a tackifier, preventing the separation of the stone and soil during mixing and installation. The mixture ratio shall be 4:1.4 of stone:clay loam. The mixture shall be installed and compacted to achieve a compaction density to within 95% Proctor density.

Street or Highway is the entire width of every public way or right-of-way when all or any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular or pedestrian traffic.

Topping is the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

Tree Sizes:

Large Trees are designated as those tree species that habitually attain a mature height of forty-five feet (45') or more.

Medium Trees are designated as those tree species that habitually attain a mature height of thirty (30) to forty-five feet (45').

Small Trees are designated as those tree species that habitually attain a mature height of
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thirty feet (30') or less.

Section 6-106 Permits

A. Permit Required: Any person engaged in the business or occupation of pruning, planting, transplanting, treating, or removing public trees shall be required to secure a permit in advance of any such activity, said permit to be issued by the Director of Cemeteries, Parks and Recreation and/or his designee.

B. Permit Requirements:

(1) Each applicant shall possess and show proof of a current Maine Arborist License, and be a Certified Nurseryman, Tree Care Industry Association (TCIA) accredited, or International Society of Arboriculture (ISA) certified.

(2) Each applicant shall carry insurance furnishing benefits in accordance with the State of Maine General Laws or such other worker's compensation requirement as may pertain. The applicant shall also carry insurance coverage for employer's liability, general liability, including broad form coverage, and automobile liability, in an amount of not less than One Million Dollars (\$1,000,000.00), as well as insurance covering property damage in an amount not less than One Hundred Thousand Dollars (\$100,000.00) indemnifying the City or any person injured or damaged resulting from the pursuit of such endeavor as herein described.

(3) Any permit issued pursuant to this Section shall be revoked if the applicant's licensure identified in Section 6-106(B)(1) above is suspended or otherwise terminated, or if the applicant's required insurance coverage identified in Section 6-106(B)(2) above expires or lapses.

(4) Any permit issued shall run for a period of no longer than one (1) year from the date of issue, unless otherwise specified or terminated pursuant to Section 6-106(B)(3) above.

C. Notice Requirement: Prior to initiating any activity, the permittee shall notify the

Director of Cemeteries, Parks and Recreation and/or his designee as to the location of work on any public tree no less than forty-eight (48) hours prior to the commencement of the work.

D. Exception: Pruning, planting, removing or any other tree work done on public trees by volunteers or City employees under the supervision and operation of the Director of Cemeteries, Parks and Recreation and/or his designee, shall not require a permit under this section. Work on public trees by an electric utility company shall not require a City permit.

Section 6-107 Contract Supervision and Inspection

It shall be the duty of the Director of Cemeteries, Parks and Recreation and/or his designee to supervise and enforce all provisions of any contracts executed by or on behalf of the City concerning work within the scope of this ordinance.

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Section 6-108 Landscaping

Landscape plans and landscaping on Public Property and landscape plans and landscaping submitted for approval by the Bath Planning Board shall be reviewed by the Director of Cemeteries, Parks and Recreation and/or his designee with the assistance of the Bath Community Forestry Committee. Any landscaping plans submitted for approval by the Bath Planning Board shall include a Tree Preservation Plan reviewed and approved by the Director of Cemeteries, Parks and Recreation and/or his designee. Tree Preservation Plans submitted shall follow the City's Tree Preservation Guidelines.

Section 6-109 Specifications and Standards

American National Standards Institute (ANSI) Contract Specifications or any amendments or substitutes therefore shall be followed and enforced as a minimum standard for planting. All pruning shall meet, as a minimum standard, the Pruning Standards for Shade Trees published by the National Arborist Association or similar national organization. The Forestry Division may establish policies, procedures, or regulations which shall also be followed. Copies of these materials will be available to the general public at the Office of the Director of Cemeteries, Parks and Recreation.

Section 6-110 Tree Planting, Maintenance, and Removal

A. Authority to Plant or Remove Trees on Public Property

Trees planted on public property by abutting property owners or other persons shall be selected and located in accordance with Tree Planting, Section 6-110(B-G) of this ordinance and in accordance with Forestry Division policy. Notification shall be made to the Director of Cemeteries, Parks and Recreation and/or his designee and approval given, prior to any planting. In addition, Dig Safe, the Bath Public Works Department and the Bath Water District shall be consulted before any planting.

B. Tree Species To Be Planted On Public Property

The Recommended Tree Species List published by the Maine Urban & Community Forestry Council or its successor shall be used. This list shall be made available to the general public at the Office of the Director of Cemeteries, Parks and Recreation, and its use shall be encouraged for private planting. At the discretion of the Director of Cemeteries, Parks and Recreation and/or his designee resources identifying trees in similar hardiness zones may be relied upon.

C. Spacing and Minimum Area/Volume For Planting On Public Property

(1) Except in special plantings designed or approved by the Director of Cemeteries, Parks and Recreation and/or his designee, the spacing of City-owned trees shall be in accordance with the species sizes listed under Definitions, Section 6-105, of this ordinance, and no trees may

be planted closer together than the following:

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Species Size No less than: tree spacing

Small Trees 20 ft.

Medium Trees 30 ft

Large Trees 40 ft.

(2) Except in special plantings designed or approved by the Director of Cemeteries, Parks and Recreation and/or his designee, any tree planted must have an area of unrestricted soil surface open to air and water as follows:

Species Size No less than: area

Small Trees 36 sq. ft.

Medium Trees 48 sq. ft.

Large Trees 60 sq. ft.

(3) Except in special plantings designed or approved by the Director of Cemeteries, Parks and Recreation and/or his designee, any tree planted within a City right of way or adjacent to a sidewalk, shall have an adequate soil volume in relation to the tree's mature size as follows:

Species Size No less than: soil volume

Small Trees 36 cu. ft.

Medium Trees 48 cu. ft.

Large Trees 60 cu. ft.

These soil volumes can be achieved by using skeletal soils, as defined in 6-105, in the engineering of sidewalk design or renovation. All such designs shall be submitted to the Director of Cemeteries, Parks and Recreation and/or his designee for approval prior to any plantings.

D. Distance from Curb, Sidewalk, Street Corner, Driveway and Building on Public Property

The distance trees may be planted from curbs or curb-lines, sidewalks, street corners, driveways, buildings and sidewalks shall be in accordance with the species sizes listed in Definitions, Section 6-105, of this ordinance. No trees may be planted closer to any curb, sidewalk, driveway, building or street corner than the following:

Species Size Distance to Curb or

Sidewalk

Distance to

Driveway or

Building

Distance to

Street Corner

Small Tree 2 ft. 10 ft. 20 ft.

Medium Tree 3 ft. 10 ft. 20 ft.

Large Tree 4 ft. 10 ft. 20 ft.

E. Utilities and Hydrants

No public tree shall be planted within ten feet (10') of any hydrant or any underground utilities. Only small trees may be planted under or within 10 feet (10') of any overhead utility

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wire.

F. Public Tree Care

- (1) The Forestry Division shall have the right to prune, spray, maintain, and remove public trees as may be necessary to ensure public safety or to preserve or enhance the beauty of public places. Spraying shall be undertaken in accordance with State laws. Notice of intent to remove, extensively prune or spray any public tree in a City-owned right-of-way shall be made in writing to abutters of that right-of-way. Any objecting person shall be allowed seven (7) days from the date of notice to request in writing a public hearing concerning the proposed work. Upon receipt of written request from any such abutter, the Director of Cemeteries, Parks and Recreation and/or his designee shall hold a public hearing concerning the proposed work within 14 days of the date of said request. Said work shall not occur until after said public hearing.
- (2) The Forestry Division shall have the right to prune any public tree if, in the opinion of the Director of Cemeteries, Parks and Recreation and/or his designee, it interferes with visibility of any traffic control device or intersection, or interferes with pedestrian or vehicular traffic. A clearance of fourteen feet (14') above street surface or eight feet (8') above the sidewalk surface shall be maintained. If such obstructing public tree is on private property, the Director of Cemeteries, Parks and Recreation and/or his designee shall notify the property owner of the intent to prune. The property owner shall have a right to object in writing in accordance with the requirements of Section 6-110(F)(1) above, and a public hearing shall be held in accordance with the terms thereof.
- (3) The Forestry Division may remove any public tree or part thereof which by reason of its nature damages or otherwise impairs sewers, electric power lines, gas lines, water lines, or other services, or is affected by an injurious fungus, disease, insect, or other pest. In each case, the abutters will be notified twenty-four (24) hours in advance. The abutters shall have a right to object in writing in accordance with the requirements of section 6-110(F)(1) above and a public hearing shall be held in accordance with the terms thereof.
- (4) In case of an emergency as determined by the Director of Cemeteries, Parks and Recreation and/or his designee, work may be performed without written notification.

G. Tree Topping

It shall be unlawful for any person or the City to top any public tree. Trees severely damaged by storms or other causes may be exempted from this prohibition at the determination of the Director of Cemeteries, Parks and Recreation and/or his designee. In lieu of topping, public trees under utility wires or other obstructions where other pruning practices are impractical or not considered aboriculturally sound may be removed by the Director of Cemeteries, Parks and Recreation and/or his designee.

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Section 6-111 Protection of Trees on Public Property

A. During Excavation or Construction

All trees near any excavation or construction of any building, structure, or street work, shall be guarded with a substantial fence, frame, or box centered around the tree not less than four feet (4') high and enclosing an area of sixty-four square feet (64 sq. ft.), or at a distance in feet from the tree equal to the diameter of the trunk in diameter breast height (D.B.H.), whichever is greater, and all building material, dirt, or other debris shall be kept outside the barrier.

No person shall excavate any ditches, tunnels, trenches, or lay any drive within the radius of ten feet (10') from any city-owned tree without first obtaining a written permit from Director of Cemeteries, Parks and Recreation and/or his designee.

B. Placing Materials on Public Property

No person shall deposit, place, store, or maintain upon any public property anything which may impede the free passage of water, air or fertilizer to the roots of any tree growing therein, except by written permit of the Director of Cemeteries, Parks and Recreation and/or his designee.

C. Abuse or Mutilation of Trees On Public Property

Under no circumstance shall any person cut, carve, transplant, or remove any public tree; attach any rope, wire, nails, advertising posters, or other contrivance to any public tree; allow any gaseous, liquid or solid substance which is harmful to trees to come in contact with any public tree; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any public tree.

D. Destruction of Trees on Public Property

Any public tree deemed a public hazard or destroyed as a consequence of negligence, gross negligence, or intentional acts shall be valued by the Director of Cemeteries, Parks and Recreation and/or his designee as the sum of any removal and disposal costs, plus the replacement costs of a minimum two inch (2") caliper tree, its installation, care and maintenance, including watering, for the first three (3) years after planting. If the location of the destroyed tree does not meet the planting requirements of 6-110, the Director of Cemeteries, Parks and Recreation and/or his designee may replace the public tree at another location of his choosing.

Section 6-112 Interference With Forestry Division Employees

It shall be unlawful for any person to prevent, delay, or interfere with any Forestry Division employee, volunteer, or contractor hired by the Forestry Division, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any public tree, as authorized in this ordinance Section 6-110.

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Section 6-113 Violations

Any failure to comply with the terms, conditions, provisions, or any notice issued pursuant to this ordinance, shall constitute a violation.

Section 6-114 Penalties

Any person who violates any provision of this ordinance shall be subject to a fine payable to the City of Bath of up to \$100.00 each day of the violation. No penalty shall be assessed for failure to act during any notice period, unless remediation ordered by any notice is not accomplished within the designated timeframe.

In addition, if, as a result of the violation of any provision of this ordinance, the injury, mutilation, or death of a public tree occurs, the penalty shall include the replacement value of the public tree as calculated in accordance with Section 6-111(D) hereof.

Section 6-115 Severability

Should any section, clause, or provision of this ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the ordinance as a whole, or parts thereof, other than the part so declared to be invalid.

REFERENCES:

Buchanan, Tim, City Forester, City Forestry Standards and Specification. 1986. Municipal Code Fort Collins, Colorado.

1919 Code of the City of Bath, Maine re: City Forester.

Memo from Bath, Maine City Manager, Larry D. Cilley, to Therriault & Golin, City Solicitors, dated 5/9/78, re: Clarification of City Forester's Responsibilities and Authorities.

Memo from City Manager, Duncan Ballantyne, to Denis Hebert, dated 6/27/93, re: Transfer of Forestry Division to Cemeteries and Parks Department, Bath, Maine.

Municipal Tree Ordinance Manual. Revised Edition 1990. International Society of Arboriculture in cooperation with the Municipal Arborist and Forester Society, Savoy, IL.

Sample Municipal Tree Ordinance designed for mid-western communities. (General)

Sample Municipal Tree Ordinance for Stevens Point, Wisconsin.

South Portland, Maine, Tree Ordinance. 1975.

Maine State Law Title 30-A, Sections 3101, 3252-3264, 3282-3291; Title 12, Sections 8101-8305; Title 23, Sections 2702 and 2952.

Tree City USA Bulletin, No. 9, How to Write a Municipal Tree Ordinance. 1993. The National Arbor Day Foundation, Nebraska City, Nebraska.

Waterville, Maine, Tree Ordinance. 1990.

Westbrook, Maine, Tree Ordinance. 1972.

Tree Preservation Guidelines, 2006, and any amendments thereto

ARTICLE VII. - TREE CARE ORDINANCE

Sec. 14-201. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abutter is one whose property touches or adjoins along a boundary or with a projecting part of the property of another.

Person is any individual, firm, partnership, association, corporation, company, organization, or legally organized entity of any kind.

Property owner shall mean the person owning such property as shown by the Town of Brunswick tax assessor's records, unless proof to contrary is available and presented.

Public hazard is a condition of any public tree or any other non-public tree, shrub or plant or any portion of a public tree or any other non-public tree, shrub or other plant which constitutes a hazard to natural persons or property or harbors insects or disease which constitutes a potential threat to other public trees or any other non-public trees, shrubs, or plants within the town.

Public property shall include all property owned, leased, or occupied by the Town of Brunswick.

Public trees shall include all shade and ornamental trees or shrubs now or hereafter growing on public property, including town rights-of-way.

Street or highway is the entire width of every public way or right-of-way when all or any part thereof is open to the use of the public, as a matter of right.

Topping is the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

Town arborist is the designated official of the town assigned to carry out the enforcement of this article.

Tree sizes are defined as follows:

Large trees are designated as those tree species that habitually attain a mature height of forty-five (45) feet or more.

Medium trees are designated as those tree species that habitually attain a mature height of thirty (30) to forty-five (45) feet.

Small trees are designated as those tree species that habitually attain a mature height of thirty (30) feet or less.

(Ord. of 12-19-16(2))

Sec. 14-202. - Creation and establishment of a tree committee.

There is hereby created a tree committee consisting of five (5) public members who must be residents of the Town of Brunswick. The town arborist and a town council member shall serve as ex officio non-voting members of the tree committee.

(a) *Membership, terms and appointments.*

- (1) A member of the tree committee, other than the ex officio member(s), shall serve a term of three (3) years, except as provided in this subsection. Appointments shall be made by the town council. The five (5) voting members of the tree committee shall appoint from their membership a chairperson to serve for a one-year term. In the case of a vacancy, the town council shall fill said vacancy for the remaining term of the member who created the vacancy. All voting members of the tree committee shall serve until their successors are duly appointed and qualified.
- (2) The town council shall appoint the first five (5) voting members appointed after the effective date of this section to one-, two- or three-year terms so that, upon the completion of those initial five (5) appointments, only a portion of the terms of the members expire each year.

(b) *Duties.* The tree committee shall:

- (1) Assist the town and its citizens in the dissemination of news and information regarding the selection, planting, and maintenance of trees and shrubs;
- (2) Study and determine, with input from the town arborist, the needs of the town in connection with its public tree care program;
- (3) Plan, coordinate, and administer an annual Arbor Day celebration.
- (4) *Compensation.* All members of the tree committee shall serve without compensation.

(Ord. of 12-19-16(2))

Sec. 14-203. - Town arborist.

(a) *Qualifications.*

- (1) The town arborist shall be a person skilled and trained in the arts and sciences of municipal arboriculture. In Maine where there is a state arborist examining board, the town arborist shall have passed the state examination and shall hold a current regular arborist's license from the State of Maine.

(b) *Authority.*

- (1)

The town arborist shall have the authority to enforce the rules and regulations of the arboricultural specifications and standards of practice governing the planting, maintenance, removal, fertilization, pruning, and bracing of trees on the streets or other public property and shall direct, regulate, and control the planting, maintenance, and removal of all trees growing now or hereafter in any public area of the town. He or she shall cause the provision of this article to be enforced. In his or her absence these duties shall be the responsibility of a qualified alternate designated by the director of the parks and recreation department.

- (2) Prior to the maintenance or removal of any public tree, an initial determination of whether the tree is located on public or private property will be made by the town arborist. In the event that the tree is located on a property line, the town arborist shall determine the amount, if any, of cost-sharing between the town and the private property owner for the proposed work.
- (3) The town arborist shall have the authority to order the trimming, spraying, preservation or removal of trees or plants upon private property when he or she shall find such action necessary to ensure public safety, protect public assets, or to prevent the spread of disease or insects to public trees and places.

(c) *General duties.*

- (1) The town arborist shall carry out the arboricultural specifications and standards of practice governing the planting, maintenance, removal, fertilization, pruning, and bracing of trees on the streets or other public sites in the municipality and shall direct, regulate, and control the planting, maintenance, and removal of all trees growing now or hereafter on public property in the Town of Brunswick.

(Ord. of 12-19-16(2))

Sec. 14-204. - Specifications and standards.

American National Standards Institute (ANSI) standards, or any amendments or substitutes therefore, shall be followed and enforced as a minimum standard for the care and maintenance of trees. The town arborist may also establish additional policies and procedures, as necessary, which shall be followed.

(Ord. of 12-19-16(2))

Sec. 14-205. - Tree planting, maintenance, and removal.

- (a) *Authority to plant, maintain, or remove trees on public property.* No person shall plant, fertilize, preserve, prune, spray, cut above ground, remove, or otherwise disturb any tree on public property without written permission from the town arborist or, in his or her absence, the director of the parks and recreation department. The person receiving permission shall abide by the arboricultural specifications and standards of practice set forth in this section.

Notification shall be made to the town arborist and written approval given prior to any tree planting, maintenance, or removal.

The town arborist shall issue permission if, in his judgement, the proposed work is desirable and the proposed method and workmanship thereof are of a satisfactory nature.

Requests for pruning and removal of trees on public property will be reviewed based upon tree health, public safety, threat to public and/or private property, preservation or enhancement of scenic beauty, or other reasonable considerations as determined by the town arborist or, in his or her absence, the director of the parks and recreation department.

- (b) *Tree species to be planted on public property.* The following is the recommended tree species list for plantings on public property in the Town of Brunswick. The trees on this list have been specifically chosen for their ability to adapt to a wide range of conditions found in an urban environment. Special preference shall be given to native species. No species, other than those included here, may be planted without written permission from the town arborist, or, in his or her absence, the director of the parks and recreation department. Under no circumstances shall a tree species considered invasive by the Maine Natural Areas Program, or its successor program, be planted on public property.

SMALL TREES	MEDIUM TREES	LARGE TREES
Cherry, <i>Prunus</i>	River Birch, <i>Betula nigra</i>	Red Maple, <i>Acer rubrum</i>
Flowering Crabapple, <i>Malus x varieties</i>	American or European Hornbeam, <i>Carpinus caroliniana</i> and <i>Carpinus betulus</i>	Catalpa, <i>Catalpa</i>
Dogwood, <i>Cornus kousa</i>	Katsuratree, <i>Cercidiphyllum</i>	Beech, <i>Fagus</i>
Hawthorns, <i>Crataegus</i>	American Yellowwood, <i>Cladrastis</i>	Ginkgo, <i>Ginkgo biloba</i>
American Hophornbeam, <i>Ostrya virginiana</i>	Turkish Filbert, <i>Corylus colurna</i>	Tuliptree, <i>Liriodendron</i>

Tree Lilac, <i>Syringa reticulata</i>	Honeylocust, <i>Gleditsia</i>	Cucumber Magnolia, <i>Magnolia acuminata</i>
Hedge Maple, <i>Acer campestre</i>	Tupelo, <i>Nyssa sylvatica</i>	Oak, <i>Quercus</i>
Paperbark Maple, <i>Acer griseum</i>	Korean Mountainash, <i>Sorbus alnifolia</i>	Elm, <i>Ulmus</i>
Korean Maple, <i>Acer sidboldianum</i>		Zelkova
"Three-flowered" Maple, <i>Acer triflorum</i>		Pine, <i>Pinus</i>
Magnolias		Spruce, <i>Picea</i>
Shadbush, <i>Amelanchier—tree form</i>		Fir, <i>Abie</i>
Sourwood, <i>Oxydendrum arboretum</i>		
Stewartia, <i>Stewartia pseudocamellia and koreana</i>		
White Fringe Tree, <i>Chionanthus</i>		

- (c) *Spacing for planting on public property.* Except in special plantings designed or approved by the town arborist or, in his or her absence, the director of the parks and recreation department, the spacing of town-owned trees shall be in accordance with the species sizes listed under Section 14-201 of this article, and no trees may be planted closer together than the following:

SPECIES SIZE	SPACING (Not less than)
Small trees	20 ft.
Medium trees	30 ft.
Large trees	40 ft.

(d) *Utilities and hydrants.* No public tree shall be planted within ten (10) feet of any hydrant or any underground utilities. Only small trees may be planted under or within ten (10) feet of any overhead utility wire.

(e) *Public tree care.*

- (1) The town arborist shall have the right to prune, spray, maintain, and remove public trees as may be necessary to ensure public safety or to preserve or enhance the beauty of public places. Spraying shall be undertaken in accordance with town and state laws. Notice of intent to remove, extensively prune, or spray any public shall be made in writing to abutters.
- (2) The town arborist shall have the right to prune any public tree if, in the opinion of the town arborist and/or his designee, it interferes with visibility of any traffic control device or intersection, or interferes with pedestrian or vehicular traffic. A clearance of fourteen (14) feet above street surface or eight (8) feet above the sidewalk surface shall be maintained. If such obstructing public tree is on private property, the town arborist shall notify the property owner of the intent to prune.
- (3) The town arborist may remove any public tree or part thereof which by reason of its nature damages or otherwise impairs sewers, electric power lines, gas lines, water lines, or other services, or is affected by an injurious fungus, disease, insect, or other pest. In each case, the abutters will be notified twenty-four (24) hours in advance.
- (4) In case of an emergency as determined by the town arborist or, in his or her absence, the director of the parks and recreation department, work may be performed without written notification.

(f) *Tree topping.* It shall be unlawful for any person or the town to top any tree on public property. Trees severely damaged by storms or other causes may be exempted from this prohibition at the determination of the town arborist or, in his or her absence, the director of the parks and

recreation department. In lieu of topping, public trees under utility wires or other obstructions where other pruning practices are impractical or not considered arboriculturally sound may be removed by the town arborist and/or his designee.

(Ord. of 12-19-16(2))

Sec. 14-206. - Protection of trees on public property.

- (a) *During excavation or construction.* All trees near any excavation or construction of any building, structure, or street work shall be guarded with a substantial fence, frame, or box centered around the tree not less than four (4) feet high and enclosing an area of sixty-four (64) square feet, or at a distance in feet from the tree equal to the diameter of the trunk in diameter breast height (D.B.H.), whichever is greater, and all building material, dirt, or other debris shall be kept outside the barrier.

No person shall excavate any ditches, tunnels, trenches, or lay any drive within the radius of ten (10) feet from any town-owned tree except with written permission from the town arborist.

- (b) *Placing materials on public property.* No person shall deposit, place, store, or maintain upon any public property anything which may impede the free passage of water, air or fertilizer to the roots of any tree growing therein, except with written permission from the town arborist.
- (c) *Abuse or mutilation of trees on public property.* Under no circumstance shall any person cut, carve, transplant, or remove any public tree; attach any rope, wire, nails, advertising posters, or other contrivance to any public tree; allow any gaseous, liquid or solid substance which is harmful to trees to come in contact with any public tree; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any public tree.
- (d) *Destruction of trees on public property.* Any public tree deemed a public hazard or destroyed as a consequence of a person's negligence, gross negligence, or intentional acts shall be valued by the town arborist as the sum of any removal and disposal costs, plus the replacement costs of a minimum two-inch caliper tree, its installation, care and maintenance, including watering, for the first three (3) years after planting. If the location of the destroyed tree does not meet the planting requirements of Section 14-205, the town arborist may replace the public tree at another location of his or her choosing.

(Ord. of 12-19-16(2))

Sec. 14-207. - Interference with the town arborist.

No person shall hinder, prevent, delay, or interfere with the town arborist or any other town staff while engaged in carrying out the execution or enforcement of this article; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the town.

(Ord. of 12-19-16(2))

Sec. 14-208. - Violations.

Any failure to comply with the terms, conditions, provisions, or any notice issued pursuant to this article, shall constitute a violation.

(Ord. of 12-19-16(2))

Sec. 14-209. - Penalties.

Any person who violates this article shall forfeit a civil penalty in accordance with the Master Schedule of Revenues, Charges, Fees and Fines, Appendix B to this Municipal Code of Ordinances for the first and second offenses and for subsequent offenses.

(Ord. of 12-19-16(2))

Sec. 14-210. - Severability.

Should any section, clause, or provision of this article be declared by the courts to be invalid, the same shall not affect the validity of the ordinance as a whole, or parts thereof, other than the part so declared to be invalid.

(Ord. of 12-19-16(2))

Secs. 14-211—14-220. - Reserved.



Chapter 11.50 Trees in Development Situations

City Code Chapter

11.50.010 Purpose.

The regulations of this Chapter support and complement other City development requirements, with a focus on achieving baseline tree preservation and total tree capacity on a site, considering the anticipated use and level of development. This Chapter regulates the removal, protection and planting of trees through the development process to encourage development, where practicable, to incorporate existing trees, particularly high quality or larger trees and groves, into the site design, to retain sufficient space to plant new trees, and to ensure suitable tree replacement when trees are removed. It is the intent of these provisions to lessen the impact of tree removal and to ensure mitigation when tree preservation standards are not met.

11.50.020 When a Tree Plan is Required.

(Amended by Ordinances [188816](#) and [191988](#), effective January 3, 2025.)

A tree plan is required in conjunction with all development permits, unless there are no private trees 12 inches or more in diameter, no City trees six inches or more in diameter, and/or no street trees three inches or more in diameter, and the site or activity is exempt from Section 11.50.050 On-Site Tree Density Standards; and Section 11.50.060 Street Tree Planting Standards. If multiple development permits are required for a development proposal, including demolitions and subsequent construction, the same Tree Plan must be included with each permit. For tree removal when no development permit is required, following completion of the development permit, or when tree preservation does not apply per Subsection 11.50.040 A.1., see Chapter 11.40.

11.50.030 Development Impact Area Option For Large Sites and Streets.

(Amended by Ordinances [188278](#) and [191988](#), effective January 3, 2025.)

Where development is proposed on a site larger than one acre or where work is occurring in the street and is not associated with an adjacent development site, the applicant may choose to establish a development impact area. For sites using the development impact area option, tree preservation requirements must be based on the trees within the development impact area and tree density will be based on meeting Option A as applied only to the area within the development impact area. Trees may be planted to meet tree density requirement elsewhere on the site.

11.50.040 Tree Preservation Standards.

(Amended by Ordinances [187675](#), [188278](#), [188816](#), [188959](#), [189078](#), [189795](#), [190200](#), [191030](#), [191736](#), [191975](#), and [191988](#), effective January 3, 2025.)

A. Where these regulations apply.

1. This Section applies to trees within the City and trees on sites within the County Urban Pocket Areas in the following situations. On sites where these regulations do not apply, tree removal is subject to the requirements of Chapter 11.40, Tree Permit Requirements.

a. On sites. Development activities with any ground disturbance or a construction staging area greater than 100 square feet on unpaved portions of the site within the root protection zone, as defined in Subsection 11.60.030 C.1.a., of one or more private trees 12 or more inches in diameter and/or one or more City Trees six or more inches in diameter.

b. In streets. Development activities with any ground disturbance or construction staging not limited to existing paved surfaces where there are one or more street trees three or more inches in diameter.

2. Any Heritage Trees and trees required to be preserved through a land use condition of approval or tree preservation plan cannot be removed using the provisions in this Chapter, but may be counted toward the tree preservation requirements of this Section.

B. Exemptions. The following are exempt from the tree preservation standards of this Section:

1. Private trees on portions of sites located within an IH zone.

2. Private trees on sites that are less than 5,000 square feet in area.

3. Private trees on sites that have existing or proposed building coverage of 85 percent or more.

4. Trees that are dead, dying, dangerous, or a nuisance species, as documented in a Tree Plan per Subsection 11.50.070 B. These are subtracted from the total number of trees to be addressed by the standards.

5. Private trees exempted from this standard by a land use decision.

6. Tree preservation requirements approved in a land division or planned development review under Title 33, Planning and Zoning and the requirements of that review are still in effect.

7. Repair and replacement of existing fences and decks that are not changing in footprint or length when no trees are to be removed as a part of the project.

C. Tree preservation requirement. Any trees preserved must be protected in accordance with the specifications in Section 11.60.030.

1. Private trees.

a. General tree preservation.

(1) Retention. An applicant must preserve and protect at least 1/3 of the nonexempt trees 12 inches and larger in diameter located completely or partially on the development site, unless mitigation occurs per Subsection 11.50.040 C.1.a.(2) below. Any fractional result will be rounded up to the next whole number. Retaining trees at least six and less than 12 inches in diameter that are documented in a report prepared by an arborist or landscape professional to be Garry Oak (*Quercus garryana*), Pacific Madrone (*Arbutus menziesii*), Pacific Yew (*Taxus brevifolia*), Ponderosa Pine (*Pinus ponderosa*), Western Redcedar (*Thuja plicata*), or Western Flowering Dogwood (*Cornus nuttallii*) species are not included in the total count of trees on the site but may be used toward meeting the preservation standard.

(2) Mitigation. For each tree not preserved and protected below the 1/3 requirement, payment to the Tree Planting and Preservation Fund is required as shown in Table 50-1. For trees not preserved and protected at least 12 inches and less than 20 inches in diameter the mitigation fee is the cost of (2) two-inch diameter replacement trees. For trees not preserved

and protected at least 20 inches in diameter or greater the mitigation fee is the cost per diameter inch of tree not preserved and protected. The fee is calculated using the per-inch restoration fee for tree removal in the adopted fee schedule for Title 11. In cases where more than one tree is not preserved and protected in excess of that allowed by Subsection 11.50.040 C.1.a.(1), the mitigation payment required to meet the 1/3 retention standard is based on the largest tree or trees proposed for removal.

(3) Removal. Each tree not preserved and protected may be removed. Any trees removed must be removed in accordance with the specifications in Section 11.60.050.

Table 50-1

Required Mitigation

Size of Tree Removed (inches in diameter)	Required Mitigation
At least 12 and less than 20	The cost of (2) two-inch diameter replacement trees
At least 20 or more	The cost per inch of tree removed

b. Preservation of trees 20 inches or greater.

(1) Retention. An applicant must preserve and protect all nonexempt trees 20 inches in diameter or greater located completely or partially on the development site, unless mitigation and notice occurs per Subsections 11.50.040 C.1.b.(2) and 11.50.040 C.1.c., below. Retention or mitigation of these trees may also be used to meet the standards for general tree preservation in Subsection 11.50.040 C.1.a. above.

(2) Mitigation. For each tree 20 or more inches in diameter not preserved and protected, payment to the Tree Planting and Preservation Fund is required as shown in Table 50-1. The fee is calculated using the per-inch Planting and Establishment Fee in Lieu for development in the adopted fee schedule for Title 11.

(3) Removal. Each tree not preserved and protected may be removed. Any trees removed must be removed in accordance with the specifications in Section 11.60.050.

c. Notice for trees 36 inches or greater not preserved and protected. If a tree 36 inches or greater in diameter is not preserved and protected as allowed by Subsection 11.50.040 C.1.b.(2) above, the property owner or the property owner's representative must post a notice on the site and send a notice to the recognized Neighborhood Association and District Coalition in which the site is located. The notices are for notification purposes only. The notices do not provide for public comment on the proposal or for appeal of the proposal. The property owner or the property owner's representative must provide a signed certification to Portland Permitting & Development that a notice was posted on the site and a notice was sent to the Neighborhood Association and District Coalition. The development permit may not be issued until the business day following the day the notification period is completed.

(1) The posted notice must:

- (a)** Be posted on the site for at least 45 calendar days prior to development permit issuance;
- (b)** Be posted within 10 feet of the street lot line nearest the tree or trees to be removed;
- (c)** Include the date of posting and the date of the end of the notification period;
- (d)** Include a site plan at least 8.5 x 11 inches in size showing the location and description of the trees(s) to be removed including diameter inch size(s); and
- (e)** Include contact information for the property owner or the property owner's representative.

(2) The notices to the Neighborhood Association and District Coalition must:

- (a)** Be e-mailed or mailed to the Neighborhood Association and District Coalition using the contact information maintained by the Office of Community & Civic Life. If mailed, the notice must be sent via certified or registered mail. The date of the e-mail or the mailing must be at least 45 calendar days prior to development permit issuance;
- (b)** Include a description of the trees(s) to be removed including diameter inch size(s); and
- (c)** Include contact information for the property owner or the property owner's representative.

d. Exemption of tree preservation mitigation payments for affordable housing developments. Projects are exempt from the mitigation requirements in Subsection 11.50.040 C.1.b.(2) if the development will be an affordable housing development approved for system development charge exemptions under Section 30.01.095. The amount of the mitigation exemption must be pro-rated to a percentage equal to the percentage of dwelling units on the development site that are approved for the systems development charge exemption in Section 30.01.095. The City Administrator may adopt administrative rules for the administration of Subsection 11.50.040 C.1.d.

e. Exception for capital improvement projects. Trees on private property that are part of a capital improvement project and within the development impact area are regulated as City and street trees.

2. City and street trees.

a. General tree preservation.

(1) Retention. The City Forester will identify potential impacts and opportunities to preserve and protect existing trees, as well as any measures required to protect trees on site, on adjacent sites, or in the street. Any work on any street tree or City tree must be approved by the City Administrator.

(2) Mitigation. Any required mitigation specified below must occur on the site, in the street planter strip, elsewhere on City property or in the street, or as a payment into the Tree Planting and Preservation Fund. The City Administrator may reduce or waive the following mitigation requirements.

(a) Approved street tree removal in conjunction with improvements to partially or fully unimproved streets. Each tree at least 12 inches in diameter that is allowed to be removed must be replaced with at least one tree. Trees planted to meet street tree planting standards will be credited toward meeting this requirement.

(b) Any other street tree or City tree allowed to be removed that is six or more inches in diameter must be replaced with at least one tree in addition to trees required to meet required tree density or street tree planting standards.

(3) Removal. Any trees approved to be removed by the City Administrator may be removed. Any trees removed must be removed in accordance with the specifications in Section 11.60.050.

11.50.050 On-Site Tree Density Standards.

(Amended by Ordinances [187675](#), [188278](#), [188959](#), [190200](#), [191030](#), and [191988](#), effective January 3, 2025.)

A. Where these regulations apply. This Section applies to sites within the City and the County Urban Pocket Areas. Unless exempted in Subsection 11.50.050 B., the following are subject to the On-Site Tree Density Standards:

- 1.** New development;
- 2.** Exterior alterations to existing development with a project valuation that is more than the threshold stated in Subsection 33.258.070 D.2.a.

B. Exemptions.

- 1.** The following development activities are exempt from the on-site tree density standards:
 - a.** A specific condition of land use review approval exempts the site from these density standards;
 - b.** The site is within the Portland International Airport Plan District or Cascade Station/Portland International Center Plan District and is subject to the Airport Landscape Standards; see Title 33, Planning and Zoning.
 - c.** Private trees on portions of sites located within an IH zone.
 - d.** Work conducted under demolition, site development, septic, plumbing or zoning permits.
- 2.** Sites with the following primary uses are exempt from the on-site tree density standards:
 - a.** Railroad yards;
 - b.** Waste related;
 - c.** Agriculture;
 - d.** Aviation and surface passenger terminals;
 - e.** Detention facilities;
 - f.** Mining;
 - g.** Radio frequency transmission facilities; or
 - h.** Rail lines and utility corridors;

C. New development must meet City specifications and standards in Chapter 11.60 and the on-site tree density requirements in Subsection D., below. Exterior alterations must meet City specifications and standards in Chapter 11.60 and the on-site tree density requirements in Subsection D., below, but are only required to spend 10 percent of project value on the requirements in Subsection D. and the nonconforming upgrades required by Portland City Code Chapter 33.258, Nonconforming Situations.

D. On-site tree density requirements.

1. Required tree area. The required tree area is based on the size of the site and the type and size of proposed and existing development as shown in Table 50-2. Applicants may choose Option A or Option B for calculating required tree area except only Option A may be used to apply standards to a "Development Impact Area".

Table 50-2

Determining Required Tree Area

Development Type	Option A	Option B
One to Four Family Residential	40 percent of site or development impact area	Site area minus building coverage of existing and proposed development
Multi Dwelling Residential	20 percent of site or development impact area	
Commercial/Office/Retail/Mixed Use	15 percent of site or development impact area	
Industrial	10 percent of site or development impact area	
Institutional	25 percent of site or development impact area	
Other	25 percent of site or development impact area	

2. Required tree density. The required tree area must be planted with some combination of large, medium or small canopy trees at the following rates:

Table 50-3

Number of Required Trees and Minimum Planting Area

Canopy size category (at maturity)	Number of trees required per size of tree area	Min. required planting area per tree (min. dimension)
Large	1 per 1,000 s.f.	150 s.f. (10' x 10')
Medium	1 per 500 s.f.	75 s.f. (5' x 5')
Small	1 per 300 s.f.	50 s.f. (3' x 3')

Refer to Chapter 11.60, Technical Specifications, to calculate tree canopy size categories. When the canopy size category of the tree species is not or cannot be determined, the tree will be considered a small canopy tree.

3. Tree density credits

- a.** Trees planted on site to meet any required stormwater or other landscaping requirement may be counted toward the On-site tree density requirements.
- b.** Trees that are retained and protected, including trees preserved per Section 11.50.040, may be credited as follows:
 - (1)** Trees between 1.5 and less than six inches in diameter count as one small canopy size tree.
 - (2)** Trees six or more inches in diameter count as one medium canopy size tree for each full increment of six diameter inches.
 - (3)** Trees straddling a private property line count as one medium canopy size tree for each full increment of six diameter inches on the property where development is occurring.
- c.** Payment in lieu of planting. The applicant may pay a fee to the Tree Planting and Preservation Fund per Section 11.15.010 equivalent to the cost of planting and establishing one 1.5-inch caliper tree. The fee per tree will be credited at a rate of one medium canopy size tree.
- d.** On sites less than or equal to 3,000 square feet, healthy non-nuisance species trees planted or retained in the street planting strip may be credited as described in this Subsection.

11.50.060 Street Tree Planting Standards.

(Amended by Ordinances [191030](#) and [191988](#), effective January 3, 2025.)

A. Where these regulations apply.

- 1.** This Section applies to projects within or fronting on any City-owned or -managed streets.
- 2.** For alterations where the project value is more than \$25,000, the cost of required street tree improvements is limited to 10 percent of the value of the proposed development.

B. Exemptions. The following are exempt from the street tree planting standards of this Section:

1. Development activities associated with the following:

- a.** Additions, alterations, repair or new construction where the project value is less than \$25,000;
- b.** Activity that is limited to the street, and does not modify or create sidewalks, tree wells, or existing or potential tree planting areas; or
- c.** Demolition permits.

2. Where physical constraints preclude meeting the street tree planting requirement because:

- a.** Existing driveways, trees, and above or below grade utilities prevent planting street trees; or
- b.** The design of the street will not accommodate street tree planting because the planting strip is less than three feet wide, there is not a planting strip, or there is insufficient space to add tree wells.

C. Street tree planting requirement. Any proposed change in width in a public street right-of-way or any other proposed street improvement, including the development of new public streets, must include areas for tree and landscape planting where practical. Utility connections and specifications for planting such areas must be integrated into the site plan. Specific locations and species will be determined by the City Administrator. Planting in public streets must meet the specifications in Chapter 11.60 and the following:

- 1.** One street tree must be planted or retained for each full increment of 25 linear feet per side of street frontage. When the required number of trees cannot be planted, a fee in lieu of planting may be required. For City projects, required trees that cannot be planted within the improvement area may be planted elsewhere on City property or in the street, instead of paying a fee in lieu of planting.
- 2.** When new streets are being created in association with a land division, street tree planting may be deferred until the completion of the building permit on each new lot, subject to City Administrator approval.

11.50.070 Tree Plan Submittal Requirements.

(Amended by Ordinances [188278](#), [188816](#), [191030](#), and [191988](#), effective January 3, 2025.)

A tree plan submittal must include the following information. The tree plan information may be combined with other relevant plan sheets. The submittal must include:

A. Site plan requirements. The site plan must include the following information with sufficient detail to show that the proposal complies with this Title. See the definition for site in Title 33.

- 1.** Existing improvements;
- 2.** Any construction staging areas on site;
- 3.** Proposed alterations including structures, impervious area, grading, and utilities;
- 4.** Existing trees:

a. Trees on the site. Indicate the location and the diameter size of:

(1) Any Heritage Trees and trees required to be preserved as part of a condition of land use approval. These must be clearly labeled.

(2) All private trees at least 12 inches in diameter and all City Trees at least six inches in diameter located completely or partially on the site. On City-owned or -managed sites, the City Administrator may require smaller size trees be shown.

(3) Trees smaller than six inches in diameter must be shown when proposed to be retained for tree density credit.

Applicants using the development impact area option as described in Section 11.50.030, need only identify the trees on the site inside and 25 feet beyond the edge of the development impact area. For all trees shown to be retained on the tree plan (including those beyond the development impact area), tree protection methods detailed in Subsection 11.60.030 C. must be implemented. Protection may be achieved using the prescriptive path or performance path.

b. Trees in the street. For the street area adjacent to the development site or development impact area, indicate the location and the diameter size of:

(1) Any Heritage Trees and trees required to be preserved as part of a condition of land use approval

(2) All trees within the adjacent street that are at least three inches in diameter.

Applicants using the development impact area option within the street when not associated with development of an adjacent site as described in Section 11.50.030 must identify trees three or more inches in diameter inside and 15 feet beyond the edge of the development impact area.

When the 15-foot distance extends onto property outside the street, provide estimates of tree size and location for trees six or more inches in diameter on these properties. For City projects, the City Forester or project arborist may determine which trees on adjacent properties must be identified per this Subsection.

5. Proposed tree activity:

- a. Indicate trees to be retained and proposed tree protection measures meeting the specifications in Chapter 11.60. Trees that are retained but are not protected in accordance with the protection requirements in Chapter 11.60 may not be used to meet preservation or density standards.
- b. Indicate trees to be removed. It is the applicant's responsibility to obtain the appropriate consent from the adjacent property owner for tree removal when the tree is only partially on the site.
- c. Show location, species, planting size and number of trees proposed to be planted. Trees to be planted must meet the specifications in Chapter 11.60.

B. Narrative requirements.

- 1. If alternative tree protection measures are proposed, documentation addressing the requirements in Section 11.60.030, Tree Protection Specifications, must be included.
- 2. If a tree is to be exempted from tree preservation standards based on poor tree health or condition, supporting documentation from an arborist must be included.
- 3. If a tree is to be exempted from tree preservation standards based on it being listed on the Nuisance Plants List, supporting documentation from a landscape professional or an arborist must be included.

11.50.080 Changes to Approved Tree Plans and Emergency Tree Removal.

(Amended by Ordinances [191736](#) and [191988](#), effective January 3, 2025.)

A. When changes are necessary to an approved Tree Plan and the changes will not affect compliance with any applicable conditions of a land use review, the change may be reviewed as a revision to the approved development permit. Any proposed revisions to the Tree Plan will be approved upon demonstrating the applicable tree preservation and density standards are met. When development activity has already commenced on the site and the applicant is proposing to retain alternate trees not previously shown to be protected, an arborist report will be required that documents the alternate tree is healthy and has not been injured by the development activity.

B. Emergency tree pruning or removal. Emergency pruning or removal of trees is regulated by this Chapter as follows:

- 1. If an emergency exists because the condition or location of a tree presents such a clear and present danger to structures or the public that there is insufficient time to obtain a tree permit, the hazardous portion of the tree may be removed without first obtaining a revision to an approved tree plan.

2. Any person who removes a tree under the provisions of this Section must, within seven days of such action, apply for a revision to the approved tree plan. The application must include photographs or other documentation to prove that an emergency existed. The City Administrator will evaluate the information to determine whether an emergency existed. Failure to submit an application or provide information documenting the emergency nature of the event may be pursued as a violation per Chapter 11.70.

11.50.090 Administrative Review.

(Added by Ordinance [188816](#); amended by Ordinances [191736](#) and [191988](#), effective January 3, 2025.)

A. Whenever a decision has been made under this Chapter, the property owner of the development site or that property owner's representative may request that the decision be reviewed by the City Administrator. The owner or owner's representative must submit a written request to the City within 180 days of the date of the decision. Such review will be conducted by the City Administrator. The owner or owner's representative requesting such review will be given the opportunity to present evidence. Following the review, the City Administrator will issue a written determination.

B. Nothing in this Section limits the authority of the City Administrator to initiate a proceeding in accordance with Portland City Code Chapter 3.30 Portland Permitting & Development, Title 11 Trees, and Title 22 Hearings Officer.

11.50.095 Appeals.

(Added by Ordinance [188816](#); amended by Ordinance [191988](#), effective January 3, 2025.)

A determination issued as stated in Section 11.50.090 may be appealed by the property owner of the development site or that property owner's representative to the Code Hearings Officer, as provided for in Portland City Code Chapter 22.10. All appeals from the Code Hearings Officer's determination in accordance with this Section will be by writ of review as authorized by Section 22.04.010 and ORS 34.010-34.100.

Upcoming and Recent Changes

Ordinance Number 190200

Effective Date: December 12, 2020

[View all changes](#)

Sec. 14-202. - Creation and establishment of a tree committee.

There is hereby created a tree committee consisting of five (5) public members who must be residents of the Town of Brunswick. The town arborist and a town council member shall serve as ex officio non-voting members of the tree committee.

(a) *Membership, terms and appointments.*

- (1) A member of the tree committee, other than the ex officio member(s), shall serve a term of three (3) years, except as provided in this subsection. Appointments shall be made by the town council. The five (5) voting members of the tree committee shall appoint from their membership a chairperson to serve for a one-year term. In the case of a vacancy, the town council shall fill said vacancy for the remaining term of the member who created the vacancy. All voting members of the tree committee shall serve until their successors are duly appointed and qualified.
- (2) The town council shall appoint the first five (5) voting members appointed after the effective date of this section to one-, two- or three-year terms so that, upon the completion of those initial five (5) appointments, only a portion of the terms of the members expire each year.

(b) *Duties.* The tree committee shall:

- (1) Assist the town and its citizens in the dissemination of news and information regarding the selection, planting, and maintenance of trees and shrubs;
- (2) Study and determine, with input from the town arborist, the needs of the town in connection with its public tree care program;
- (3) Plan, coordinate, and administer an annual Arbor Day celebration.
- (4) *Compensation.* All members of the tree committee shall serve without compensation.

(Ord. of 12-19-16(2))