

Section 18
TREE BY-LAW

FOR THE TOWN OF FOXBORO, MASSACHUSETTS
JANUARY, 2003

Be it ordained by the Board of Selectmen in the Town of Foxboro, Massachusetts the following set of By-Laws have been established for the protection and preservation of trees on public land and town parks:

A. CREATION AND ESTABLISHMENT OF TREE COMMITTEE

There is hereby created and established a Tree Committee for the Town of Foxboro, Massachusetts which shall consist of a minimum of five (5) members including the Tree Warden and Highway Superintendent. Residents of this Town who shall be appointed by the Board of Selectmen will fill the remaining vacancies. It is the goal of this committee to not only protect and maintain town trees but to continue replacing deteriorated trees by replanting for the benefit of future generations in Foxboro. You may want to add language requiring any or all of the following a conservation commission/planning board member, a green industry member, someone certified as a arboris.

B. TERM OF OFFICE

The term of those persons appointed to the Committee by the Selectmen shall be renewed annually. You may want stagger this. When you initially appoint, have them be 1, 2, or 3 year terms, so you don't lose everyone at once.

C. DEFINITIONS

Street Trees: "Street Trees" are herein defined as trees, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or ways within the Town.

Park Trees: "Park Trees" are herein defined as trees, shrubs bushes and all other woody vegetation in public parks having individual names, and all areas owned by the Town to which the public has free access as a park.

Municipal Trees: All trees and vegetation on all municipal and school properties.

D. COMPENSATION

Members of the Board shall serve without compensation.

E. DUTIES AND RESPONSIBILITIES

It shall be the responsibility of the Committee to aid the Tree Warden to study, investigate, counsel and develop and/or update monthly, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. The Committee, when requested by the Town, shall consider, investigate, make finding, report and recommend upon any special matter of question coming within the scope of its work.

F. OPERATION

The Committee shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.

G. STREET TREE SPECIES TO BE PLANTED

The following list constitutes the official Street Tree species for Foxboro, Massachusetts. No species other than those included in this list may be planted as Street or Park Trees without written permission of the Tree Committee.

Small Trees

Cherry – don't recommend
 Kwanzan, ~~Kwanzan~~
 Crabapple, Flowering
 Dogwood, Kousa
 Golden Rain Tree - medium
 Hawthorne
 Hornbeam - medium
 Lilac, Japanese Tree
 Maple, Hedge
 Redbud
 Serviceberry

Medium Trees

Ash, Green

Birch, River – parks only
 Hackberry
 Honeylocust, (thornless) - large
 Linden or Basswood
 Maple, Red - large
 Maple, Columnar – is columnar Norway maple ok? – any maple can be columnar
 Mulberry, Red
 Oak, English,
 Oak, Red - large
 Pagoda Tree, Japanese - large
 Persimmon
 Sourwood

Large Trees

Coffeetree, Kentucky (north of its zone)
 Gingko
 London Planetree
 Maple, Sugar – not for street trees
 Oak, Pin
 Oak, Swamp White
 Sycamore
 Tulip Tree
 Elms. Resistant

H. SPACING

The spacing of Street Trees will be in accordance with the three species size classes listed in Section G of this By-Law, and no trees may be planted closer together than the following: Small trees – 25 feet, Medium Trees - 35 feet, and Large Trees - 45 feet except in special plantings designed or approved by a landscape architect. Careful, this can be very limiting, be flexible here

I. DISTANCE FROM CURB AND SIDEWALK

The distance trees may be planted from curbs or curb lines and sidewalks will be in accordance with the three species size classes listed in Section G of this By-Law, and no trees may be planted closer to any curb or sidewalk than the following: Small Trees - 2 feet; Medium Trees – 2.5 feet; and Large Trees - 4 feet. In essence this means you cannot plant anything larger than a small tree in any sidewalk pit – so this would remove all shade trees. You may want to refocus this section to distance from lights, signs, etc. And leave the size of tree to be dependant on location – sidewalk or back of sidewalk.

J. UTILITIES

No Street Trees other than those species listed as Small Trees in Section G of this By-Law may be planted under or within 20 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. No tree shall be planted without prior notification of Dig Safe.

K. PUBLIC TREE CARE

The Town shall have the right to plant, prune, maintain and remove trees, plants and shrubs (defined in Section C), as may be necessary to insure public safety or to observe or enhance the symmetry and beauty of such public grounds. The Tree Committee may remove or cause or order to be removed, any tree or part

thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest (this is redundant with MGL Ch. 87, the state's shade tree law). This Section does not prohibit the planting of trees (defined in Section C) by adjacent property owners (on public property) providing that the selection and location of said trees is in accordance with Sections G through J of this By-Law.

L. PRIVATE TREES

The Tree Warden 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. A *public nuisance* is defined as any 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. Property owners will be notified in writing of the apparent problem and its need for remedy or complete removal. If the homeowner does not take prompt action, the Tree Warden will inform the Highway's Tree and Park Division to proceed with the appropriate action.

M. LANDMARK TREE PROTECTION "heritage tree" would be more in keeping with other pending legislation for the protection of such trees.

The Tree Warden shall have as one of his/her duties the location, selection and identification of any trees which qualify as "Landmark Trees." A tree may be designated as a Landmark Tree if it meets one or more of the following criteria: species rarity, old age, association with a historical event or person, abnormality, or scenic enhancement. With regard to trees located on private property: they shall be located within the front, rear, or side yard set back areas as included in the Zoning By-Laws. A penalty for the violator(s) will be to pay a fine assessed in the amount of the tree's appraised value. (see Section Q.

ENFORCEMENT). Those monies will be designated solely for the planting of more trees.

You may want to look at Springfield's ordinance for heritage trees. You may run into some conflict with such trees on private property – may raise a red flag when the Attorney General reviews this.

N. TREE TOPPING

It shall be unlawful as a normal practice for any person, firm, or town department to top any tree (defined in Section C) on public property. Topping is defined as 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. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this By-Law at the determination of the Tree Committee.

O. INTERFERENCE WITH THE TREE COMMITTEE

It shall be unlawful for any person to prevent, delay or interfere with the Tree Committee or any of its agents, while engaging in and about the planting, cultivating mulching, pruning, spraying, or removing of any trees (defined in Section C) on private grounds, as authorized in this By-Law.

P. REVIEW BY SELECTMEN

The Board of Selectmen shall have the right to review the conduct, acts and decisions of the Tree Committee. Any person may appeal any decision to the Selectmen.

Q. ENFORCEMENT

Violations: some of this is redundant with MGL Ch. 87. The Tree Warden shall have the power to 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 town. The Tree Warden can enforce an in kind replacement of street tree in a location designated by the Committee. Any person who violates any provision of this By-Law or who fails to comply with any notice issued pursuant to provision of the By-Law, upon being found guilty of violation, shall be subject to a fine for each separate offense. Each day during which any violation of the provisions of this By-Law shall occur or continue shall be a separate offense. If, as the result of the violation of any provision of this By-law, the injury, mutilation, or death of a tree, shrub, or other plant located on town-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 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.

Assessment of Claim: In the event that the nuisance is not abated by the date specified in the notice, the Tree Warden 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: See Appeals Process for the Town of Foxboro, Massachusetts.

Submitted for review January 30, 2003