

## ARTICLE 33

### SHADE TREE

#### SECTION 1. Intent and Purpose.

a. It is the intent of this by-law to sustain environmental health, enhance the economic well-being and maintain the quality of life for the citizens of the Town of Grafton. Shade trees make an important contribution to the character and heritage of Grafton's neighborhoods. This by-law established policy and guidelines for ensuring the health and longevity of the Town's community forest.

b. It is the policy of the Town of Grafton to encourage new tree plantings on public as well as private property and to cultivate a healthy flourishing community forest.

c. It is also the intent of this by-law to mandate the creation and implementation of a community forest plan as part of the open space and recreation plan of the Town's Master Plan. A goal of this community forest plan will be to obtain and maintain eligibility for annual recertification as a recognized "Tree City, USA."

**SECTION 2. Definitions.** Whenever the following words or terms are used in this by-law, they shall be construed to have the following meanings:

"Shade Tree" - All trees within a public way or on the boundaries thereof shall be public shade trees; and when in any proceeding in which the ownership or rights in a tree are material to the issue, that, from length of time or otherwise, the boundaries of the highway cannot be made certain by records or monuments, and that for that reason it is doubtful whether the tree is within the highway, it shall be taken to be within the highway and to be public property until contrary is shown. Public shade trees shall also include those planted with public funds in public ways or, if deemed expedient by the Tree Warden, upon adjoining land at a distance not exceeding 20 feet in accordance with MGL Chapter 87, Section 7.

"**Person**" - Any person, firm, association or corporation.

"**Town**" - The Town of Grafton and any of its departments and/or employees.

"**Tree Warden**" - The specific individual appointed by the Board of Selectmen to fill this position. Such person shall be qualified in accordance with MGL Chapter 87.

"**Heritage Tree**" - A public shade tree specifically designated by the Department of Environmental Management, Urban Forestry Program, upon recommendation by the Town Tree Warden to be a heritage tree. Heritage trees may qualify for state funds for maintenance under this program. A tree may qualify as a heritage tree if it meets one or more of the following criteria:

- a. Old Age - 100 years or greater; Size - 32 inches diameter or greater;
- b. Species rarity;
- c. Association with specific historical event or person;

- d. Healthy abnormality; e.g., shape, etc.;
- e. Scenic enhancement; e.g., trees around Grafton Common;
- f. Wildlife value.

**"Public Areas"** and **"Public Property"** - Includes all public parks and other lands owned, controlled, or leased by the Town except Conservation property.

**"Public Nuisance"** - Any tree or shrub or part thereof which by reason of its condition prohibits the use of any public areas, is infected with a plant disease, is infested with injurious insects or pests, significantly threatens existing public improvements, or immediately endangers the life, health, safety, or welfare of persons or property.

**"Shrubs"** - Any woody plant, normally having multiple stems and bearing foliage from the ground up.

**"Tree"** - Any woody plant greater than or equal to 1-1/2" diameter 12" from the ground.

**"Topping"** - The practice of cutting back large diameter branches of a mature tree to stubs. Topping is prohibited.

**"Community Forest"** - The sum total of all trees and other vegetation growing within the boundaries of a community.

**"Community Forest Master Plan"** - A document that describes the goals and objectives related to the management of a community forest.

**"Green Industry"** - Any and all businesses associated with landscaping, arboriculture, etc.

**"ANSI"** - American National Standards Institute.

**"Major Alterations"** - The following terms describe major alterations requiring a permit:

- Crown cleaning is the selective removal of one or more of the following items: dead, dying, or diseased branches, weak branches and waterspouts.
- Crown thinning is selective removal of branches to increase light penetration and air movement or reduce weight.
- Crown raising is the removal of the lower branches of a tree to provide clearance.
- Crown reduction, also called crown shaping, decreases the height and/or spread of a tree.
- Vista pruning is selective trimming of framework limbs or specific areas of the crown to allow a view of an object from a predetermined point.
- Crown restoration pruning should improve the structure, form and appearance of trees which have been severely topped, vandalized, or storm damaged.

**SECTION 3. Authorization and Establishment of the Public Shade Tree Management Advisory Board.**

- a. There is hereby created a Public Shade Tree Management Advisory Board which shall serve in an advisory capacity to the Tree Warden on all matters pertaining to tree and landscape planning and maintenance of shade and other public trees in the Town of Grafton. The Board shall review the Annual Work plan for tree maintenance, planting, and removal prior to its implementation. The Board shall consist of six members, appointed by the Board of Selectmen, to be composed of the following: the Tree Warden who shall be an ex-officio non-voting member, one member of the historical commission, two members of the "green industry"; i.e., landscaping, arborists, etc., and two members at large. Board members will serve 3-year terms with appointments to be staggered to ensure board continuity. Board actions shall be governed by Article 7, Section 7-9 of Town Charter.
- b. Board members will be responsible for establishing rules and regulations required for the implementation of this by-law. The board shall meet on a periodic basis as determined by its membership.
- c. The Tree Warden is hereby tasked to develop an Annual Work Plan for tree maintenance and replacement and removal for each fiscal year. The plan shall include locations of work, designated work to be accomplished, and resources including funds required. Such plan will be reviewed by the Advisory Board. Any public hearings required for implementation of the Annual Work Plan will be conducted in accordance with MGL Chapter 87 (Shade Tree) and Chapter 40 (Scenic Road). The Annual Work Plan shall be submitted in time for the submission of the Annual Operating Budget and Capital Budget of the Town.
- d. The Advisory Board shall also be responsible for fostering educational programs regarding continued care of Shade Trees and their importance to the Town's Character, shall publicize and foster participation in grants and tree planting programs of the State and/or private corporations/foundations.
- e. The Advisory Board shall support and help stimulate interest in Arbor Day and Arbor Week programs in schools, conservation organizations, and private companies and families within the Town of Grafton.

**SECTION 4. Authorization of the Tree Warden.** The Tree Warden and the Public Shade Tree Management Board shall carry out the provisions of this by-law. As per Massachusetts Law Chapter 87 and Chapter 41, the Town of Grafton must appoint a Tree Warden. This individual shall be qualified by demonstrated training and experience in the field of arboriculture. It is recommended that this person be a Massachusetts certified arborist and possess a Massachusetts pesticide license. The Tree Warden shall be appointed by the Town Administrator with the approval of the Board of Selectmen as per Town Charter.

**SECTION 5. Responsibilities and Authority of the Tree Warden.**

- a. The Tree Warden and the Shade Tree Management Advisory Board shall be responsible for the creation and implementation of a Community Forest Plan to be incorporated into the Town Open Space and Recreation Plan.

- b. The Tree Warden shall be responsible for the periodic inspection of public shade trees to ensure they are free from disease or other conditions that may endanger tree health, or are a clear and immediate safety hazard to the public. The Tree Warden shall make every effort to repair and maintain shade trees prior to their removal in accordance with ANSI Standard A300 most current edition.
- c. The Tree Warden is responsible for conducting public shade tree hearings in accordance MGL Chapter 87, Section 3. He shall conduct joint hearings with the Planning Board when required under the Scenic Roads Law, MGL Chapter 40, Section 15c.
- d. The Tree Warden shall be responsible for the location, selection, and identification of any trees which may qualify as "heritage trees" and shall promptly forward such recommendation to the Department of Environmental Management, Urban Forestry Program for consideration for future preservation. Any person may submit a petition recommending a tree which they believe qualifies as a heritage tree. Upon receipt of the petition, the Tree Warden will hold a duly advertised public hearing to acquire public input on the tree so recommended. Upon completion of the public hearing, the Tree Warden may, at his discretion, submit the tree to the Department of Environmental Management for recognition as a heritage tree. Heritage trees so designated shall be marked by the Tree Warden and located on engineering plans used by the Town.
- e. The Tree Warden shall be responsible for the marking of all public shade trees on scenic roads prior to the issuance of any driveway permit or building permit to prevent the inadvertent removal or damage to public shade trees on these roads. He shall mark any public shade tree so requested by any citizen.
- f. The Tree Warden shall review all proposed subdivision plans for tree locations and measures taken to protect existing trees during construction and shall recommend to the Planning Board conditions required as part of their approval process.
- g. The Tree Warden shall review all proposed subdivision plans and topography to ascertain location of any recommended heritage trees. Location of same shall be furnished to the Planning Board. The Planning Board is encouraged to grant waivers of current regulations for preservation of any identified heritage trees towards required street trees on an inch-for-inch basis.
- h. The Tree Warden shall keep complete and accurate records on the condition of all public shade trees and all work completed on public shade trees to include all attempts at restoration or treatment of same prior to their removal.
- i. The Tree Warden, in accordance with MGL Chapter 87, is hereby given authority, control, and supervision of all trees which now or which may hereafter exist upon any public property, except Conservation Commission property, street or highway belonging to the Town of Grafton, and over all trees which exist upon any private property in the Town of Grafton, when such trees are in such a hazardous condition as to immediately endanger the public health, safety, and welfare. This power includes, but is not limited to, the power to enforce the 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, park, or other public place in the Town in accordance with this by-law and MGL Chapter 87. In

- addition, pursuant to MGL Chapter 87, Section 2, the Tree Warden has the additional right to make regulations for the care and preservation of public shade trees and establish fines and forfeitures of not more than that specified in MGL Chapter 87, Section 2 in any one case for violation thereof; which, when posted in one or more public places, and, in towns, when approved by the selectmen, shall have the effect of town by-laws.
- k. The Tree Warden has the authority to supervise all work done by permit as described in this by-law, and to affix reasonable conditions to the granting of permits.

#### **SECTION 6. Permit for Maintenance and Removal of Trees and Shrubs.**

- a. **Permit Required** - No person, except on order of the Tree Warden, shall remove or do major alterations specified herein and as determined by the Tree Warden on a tree or shrub in the public right of way, park areas, and other town owned lands, or cause such act to be done by others without a permit for such work from the Tree Warden as herein provided. This includes all persons engaged in the business of cutting or removing trees or shrubs. Any person may apply for and obtain a permit, but all work must be accomplished or supervised by a certified arborist. The hearing and notice process required by MGL Chapter 87, Section 3 must be complied with.
- b. **Permit Required and Conditions** - When a permit is requested, the Tree Warden must decide that the proposed work is necessary and in accord with the purposes of this chapter. The Tree Warden must take into account safety, health, and welfare, location of utilities, public sidewalks, driveways, and street lights.
- c. **Exemption** - In cases of emergency situations such as hurricanes, snow/ice storms, or other acts of God where immediate removal is required of downed trees or limbs, work necessary to restore safe conditions is allowed. No permit shall be required to cultivate, fertilize, or water trees and shrubs on Town property.
- d. **Permit Form, Expiration, Inspection** - Permits shall be logged by the Tree Warden on a standard form and include a description of the work to be done and shall specify the location. Any work done under such permit must be performed in strict accordance with this chapter and ANSI Standard A300 (most current edition). Permits issued under this section shall expire three months after date of issuance. There is no charge for permits.
- e. The applicant shall be required to pay any advertising fees for public hearings.

#### **SECTION 7. Permits for Planting Trees and Shrubs.**

- a. Planting - All trees and shrubs planted on all public property within the Town of Grafton become the property of the Town of Grafton.
- (1) The planting of the following species is prohibited on any Town of Grafton's property, except with the express written approval of the Tree Warden:
- (a) Ailanthus species (Tree of Heaven)
  - (b) Populus species (Poplar)

- (c) Salix species (Willows)
  - (d) Catalpa species (Catalpa)
  - (e) Acer negundo (Boxelder)
  - (f) Acer saccharinum (Silver Maple)
  - (g) Robinia pseudoacacia (Black Locust)
  - (h) Acer paltanoides (Norway Maple)
- (2) There is no charge for the permit. The applicant shall be required to pay any advertising fees for public hearings. The permit will be on a standard form. Permits logged under this section shall expire 6 months after date of issuance.
- (3) No person shall plant any tree, shrub, or other vegetation in the public right-of-way, park areas, and other town owned lands without first obtaining a permit for such work from the Tree Warden. The request for such permit shall specify the size, species and variety of tree, shrub, or other vegetation to be planted shall be submitted to the Town Tree Warden for approval before planting. Approved tree and shrub lists as well as guidance on planting procedures are available at the Tree Warden office.
- (4) Planting locations and minimum distances will be based on the mature size and landscape variables of the plants. Proper distances and planting locations shall be determined by the Tree Warden based on the recommendation contained in the Community Forest Plan.
- b. No person shall plant on any public or private premises situated at the intersection of two or more streets or alleys in the Town, any hedge, tree, shrub, or other vegetation device that may obstruct the view of the operator of any motor vehicle or pedestrian approaching such intersection.
- c. Only small maturing trees or shrubs are authorized for planting under any overhead utility wires or cables. No trees should be planted over underground utility systems unless approved by the Tree Warden.
- d. In new subdivisions or when the development of commercial property occurs, the Tree Warden shall review landscaping plans and may suggest locations of street trees to be planted in any of the streets, and other public places henceforth developed. Tree species and sizes are to be recommended by the Tree Warden. Landscaping shall conform to the Grafton subdivision regulations unless otherwise waived by the Planning Board.

**SECTION 8. Licensing.** All work performed on town owned trees is to be done by or supervised by a Massachusetts certified arborist or ISA certified arborist.

**SECTION 9. Trimming.**

- a. To ensure high quality shade trees, shaped for maximum aesthetic appreciation and to prevent interference with traffic and utility wires, all newly planted trees in public lands shall be trimmed and shaped as necessary for five years after planting.

- b. Trimming (pruning) of all trees in public areas shall be done according to current technical specifications of the American National Standard for Tree, Shrub, and other Woody Plant Maintenance-Standard Practices (ANSI A300). The current safety specifications of the American National Standard for Tree Care operations (ANSI Z133) apply. All specifications and procedures are available from the Tree Warden.
- c. Trimming of trees or bushes upon private property may be accomplished, upon order of the Board of Selectmen, where the same obstructs, endangers, hinders or incommodes persons traveling on streets or sidewalks.
- d. Trees shall not be topped.

**SECTION 10. Removal of Trees and Stumps.**

- a. **Dangerous, Obstructive, and Infected Trees** - Any dead public tree or part thereof that the Tree Warden shall find to be infected, immediately hazardous so as to endanger the public or other trees, plants, shrubs grown in the Town, or to be significantly injurious to sewers, sidewalks, or other public improvements may be removed by the Town in accordance with the procedures set forth in MGL Chapter 87. All wood must be removed from the street prior to the end of each working day, and all holes shall be filled to normal grade level with topsoil as soon as practical.
- b. Any public shade tree that has been removed, except those removed as a visibility hazard, shall be replaced with one or more trees at a location to be determined by the Tree Warden. Size and species shall also be determined by the Tree Warden.

**SECTION 11. Obstructions.**

- a. Trees and shrubs standing in or upon any Town land or upon any private premises adjacent to any public right of way or public areas shall be kept trimmed so that the lowest branches projecting over the public street provide a clearance of not less than sixteen feet. The Tree Warden may waive the provision of this section for newly planted trees if determined that they do not interfere with public travel or endanger public safety. The Town shall have the right to trim any tree or shrub in the Town when it interferes with the safe use of streets or sidewalks or with visibility of any traffic control and it is so ordered by the Board of Selectmen.
- b. Clearance from sidewalk to lower branches shall not be less than ten feet. All trees standing upon private property in the Town, the branches of which extend over the line of the street shall be trimmed (pruned) so that no branches shall grow or hang over the line of the sidewalk lower than ten feet above the level of the sidewalk.

**SECTION 12. Prohibited Acts.**

- a. **Damage to Public Trees** - No person shall, without the consent of the owners in the case of a private tree or shrub or without written permits from the Tree Warden in case of Town owned trees, do or cause to be done by others any of the following acts:

- (1) Secure, fasten, or run any rope, wire, sign, unprotected electrical installation, or other devices or material to, around, or through a tree or shrub except to secure leaning or newly planted trees.
  - (2) Break, injure, mutilate deface, kill or destroy any tree or shrub.
  - (3) Remove any guard, stake, or other device or material intended for the protection of a public tree or shrub, or close or obstruct any open space above the base of a public tree or shrub designed to permit access of air, water, and fertilizer.
  - (4) Attach any sign, poster, notice, or other object on any tree, or fasten any guy wire, cable, rope, nails, screws, or other devices to any tree, except that the Town may authorize tying temporary signs to trees when necessary.
  - (5) Cause or encourage any fire or burning near or around any public tree.
- b. **Excavation** - All trees on any Town owned land near excavation or construction of any building, structure, or street or utility work, shall be sufficiently guarded and protected by those responsible for such work as to prevent injury to said trees. No person shall excavate any ditches, tunnels, or trenches, or install pavement within a radius of ten feet from any public tree without a permit from the Tree Warden.

**SECTION 13. Requirements and Penalties.**

- a. Any person who violates any provision of this by-law or who fails to comply with notices issued pursuant to provisions of this by-law, shall be subject to fines of up to \$300 for each separate offense. Any builder, contractor, or agent who intentionally assisted in the commission of any such violation shall be liable for each separate violation. All such violations which are of a continuing nature shall constitute a separate offense for each day of such continuance, and each tree removed shall constitute a separate offense. Any tree removed in violation of this by-law shall also be replaced by the violator on an inch-for-inch basis.
- b. **Fines** shall be assessed and collected under MGL Chapter 21D adopted as a part of this by-law. The Tree Warden shall have the requisite police power established under MGL Chapter 21D.
- c. **Appeal** - Any person who receives any order under this by-law from the Tree Warden and objects to all or any part thereof shall have the right to appeal such order. The Board of Selectmen shall hear such appeal within 30 days of receipt of written notice of the appeal. The Board of Selectmen shall by letter notify the party appealing the order of its decision within ten days after the hearing closes and file written decision with the Town Clerk.

**SECTION 14. Evaluation and Future Update of By-Law.** A successful implemented management strategy must be monitored to ensure that progress is being made and standards are being met. Evaluation provides the feedback necessary to determine whether the management strategy is working. Periodic evaluation also provides an opportunity to reassess the needs and goals of the community. The management strategy may need to be adjusted to reflect new or altered goals. By providing for regular evaluation as part of the management process, the need for change can be



identified before a crisis develops. Evaluation methods include surveys and record keeping as well as public opinion heard through polls or hearings.

The Tree Warden and the Shade Tree Management Advisory Committee shall conduct periodic evaluations of this by-law and implementing instructions and policies.

**SECTION 15. Severability.** Should any part or provision of this by-law be determined by a court of law to be invalid, the same shall not affect the validity of the by-law as a whole nor any part thereof other than the part found invalid.

(ATM 10/16/00)