

SHADE TREE REGULATIONS
FOR THE TOWN OF MARBLEHEAD

Section I: Purpose

1. The Town recognizes that trees are an asset to the community, as they provide a more healthful and beautiful environment. Trees and other vegetation provide oxygen; shade; protection from wind, glare and noise; view barriers; wildlife habitats; aesthetics; and a priceless psychological counterpoint to the man-made urban setting.
2. The Town further recognizes that landscaping is economically beneficial in attracting new residents, visitors and industry. When grown in the proper place and of proper varieties, landscaping enhances the value and marketability of property and promotes the stability of desirable neighborhoods and commercial areas.
3. It is the Town's intent that the Shade Tree Regulations shall govern the alteration, removal and replanting of any non-hazardous public shade trees by an individual, utility organization, corporation or agency other than the Town. Removals and replantings shall only be performed by a qualified tree removal contractor, insured and approved by the Town.

Section II: Definitions

As used herein, the following words and phrases shall be construed as follows:

The *Commission* is the Recreation, Parks and Forestry Commission for the Town of Marblehead.

A *person* is any individual, utility organization, corporation or agency.

Public property includes public parks and other lands owned, controlled or leased by the Town, except conservation lands.

A *public shade tree* is any tree existing, whether volunteer or planted, within a public way or on the boundaries thereof. When the ownership or rights in a tree are unknown and the boundaries of the public way cannot be made certain by records or monuments, said tree shall be taken to be public property unless otherwise shown. Public shade trees shall include those planted with public funds in public ways or, if deemed appropriate by the Tree Warden, upon adjoining land at a distance of not more than 20 feet as per Mass. Gen. L. Ch. 87, § 7.

A *shrub* is any woody plant, normally having multiple stems and bearing foliage from the ground up.

The *Town* is the Town of Marblehead and its departments and/or employees.

A *tree* is any woody plant greater than or equal to 1-1/2" diameter, measured 4 and 1/2' from the ground.

A *tree removal contractor* is any individual, firm, association or other organization qualified in the removal of trees and approved by the Tree Warden as to qualifications, experience and equipment. Said contractors shall provide certificates of insurance in the following amounts: \$100,000 workmen's compensation, as required by law; between \$1,000,000 and \$3,000,000 bodily injury; and between \$1,000,000 and \$3,000,000 property damage.

The *Tree Warden* is the individual appointed by the Board of Selectmen as such, qualified in accordance with Mass. Gen. L. Ch. 87. To the extent appropriate and where delegated, the responsibilities and powers of the Tree Warden shall extend to the Deputy Tree Warden.

Section 3: Qualifications, Responsibilities and Authority of the Tree Warden

1. *Qualifications.* As per Mass. Gen. L. Ch. 41 and 87, the Town of Marblehead is required to appoint a Tree Warden. The Tree Warden shall carry out the provisions hereof. He/she shall be qualified by demonstrating training, experience and/or expertise in the field of arboriculture. Appointment of the Tree Warden is by the Town Administrator with the approval of the Board of Selectmen.

2. *Responsibilities.* The Tree Warden shall be responsible for the periodic inspection of public shade trees to ensure that (a) they are free from disease and/or other conditions that may endanger tree health and (b) they do not present 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.

The Tree Warden shall further be responsible for the marking of all public shade trees on scenic roads prior to the issuance of any driveway and/or building permit to prevent the inadvertent removal or damage to public shade trees on said roads. He/she shall mark any public shade tree if requested by any citizen.

The Tree Warden shall review all proposed subdivision plans and applications for Site Plan Review for tree locations and measures taken to protect existing trees throughout construction. He/she shall recommend any necessary conditions to the Planning Board as part of its approval process.

The Tree Warden shall issue permits in accordance with Section 4 hereof. He/she shall keep complete and accurate records on the condition of all public shade trees and all work completed on them, including all attempts at restoration or treatment of same prior to their removal.

3. *Authority.* Pursuant to Mass. Gen. L. Ch. 87, the Tree Warden is hereby given authority, control and supervision of all trees which now or which may hereafter exist upon any public property (except conservation land), street or highway belonging to the Town, and all trees which exist upon any private property in the Town if in such a hazardous condition as to immediately endanger the public health, safety and welfare. Said power includes, but is not limited to, the power to supervise, condition and/or prohibit the alteration, removal and planting of trees and shrubs upon the right of way of any street, alley, sidewalk, park or other public place in accordance herewith and with Mass. Gen. L. Ch. 87.

The Tree Warden has the authority to supervise all work done by permit as described herein, and to affix reasonable conditions to the granting of any such permit.

Section 4: Permits for Maintenance, Removal and Planting

1. *Application.* Except on order of the Tree Warden, no person shall alter, remove or plant a tree or shrub in the public right of way, park areas or other public property, or cause such an act to be done by others, without a permit for said work from the Tree Warden. Said requirement applies to all persons, including those engaged in the business of cutting, removing or planting trees or shrubs. Any person may apply for and obtain a permit, but all work must be accomplished or supervised by a tree removal contractor.

An application for a permit shall consist of a letter to the Tree Warden, and specifying the size, species and variety of tree or shrub to be altered, removed or planted. Following a request for a permit, the Tree Warden shall decide if the proposed work is necessary and in accord with the purposes hereof. The Tree Warden shall take into account the public safety, health, and welfare and the location of utilities, public sidewalks, driveways and street lights. With respect to planting of trees or shrubs, the Tree Warden shall determine proper location(s) and distance(s) based on the mature size of the tree(s) or shrub(s) and other landscape variables. Following his/her determination, the Tree Warden shall make a recommendation to the Commission.

2. *Public hearing.*

A. For All Public Shade Trees Not Located on Land Under the Control of the Recreation, Parks and Forestry Commission:

The Board of Selectmen and the Tree Warden are jointly responsible for conducting public shade tree hearings in accordance with Mass. Gen. L. Ch. 87, § 3. Upon receipt of a recommendation by the Tree Warden, the Board of Selectmen shall schedule and post notice of said hearing. Said notice shall be posted in two (2) or more public places in the Town and on the tree itself, if applicable, within seven (7) days of the hearing, and published in a newspaper of general circulation for two (2) successive weeks, the first publication to occur no fewer than seven (7) days prior to the hearing. Said notice shall identify the size, type and location of the tree.

B. For All Public Shade Trees Located on Land Under the Control of the Recreation, Parks and Forestry Commission:

The Recreation, Parks and Forestry Commission (“Commission”) and the Tree Warden are jointly responsible for conducting public shade tree hearings for all trees located upon the land under the control of the Commission in accordance with Mass. Gen. L. Ch. 45, § 5. Upon receipt of a recommendation by the Tree Warden, the Commission shall schedule and post notice of said hearing. Said notice shall be posted in two (2) or more public places in the Town and on the tree itself, if applicable, within seven (7) days of the hearing, and published in a newspaper of general circulation for two (2) successive weeks, the first publication to occur no fewer than seven (7) days prior to the hearing. Said notice shall identify the size, type and location of the tree.

3. *Expenses.* Where applicable, an applicant is responsible for the following expenses: (a) legal advertising; (b) the cost of cutting down the tree and grinding the stump 6” below grade, including the hauling away of debris and the filling of the hole with 6” of screened loan or seeding; (c) compensation for the planting of replacement trees as described in Section 6 hereof; (d) the cost of police traffic details, repairs to the street surface and road shoulder(s) and protection and/or

restoration of utility structure(s); and (e) all other related costs.

4. *Issuance.* Following a determination by the Board of Selectmen or the Commission as the case may be, upon the Tree Warden's recommendation, that a permit should issue, the Warden shall request (a) proof of insurance as required by Section 2 hereof and (b) any necessary bond for the work to be performed. The Marblehead Police Department shall be provided with a copy of the permit.

5. *Emergency alteration or removal.* In the event of an emergency, including but not limited to a hurricane, snow/ice storm or other act of God, where immediate removal of downed trees or limbs is required, work necessary to restore safe conditions is allowed without a permit.

6. *Dangerous, obstructive and/or infected trees.* Any 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 or shrubs or significantly injurious to sewers, sidewalks or other public improvements, may be removed by the Town in accordance with the procedures set forth in Mass. Gen. L. Ch. 87. Any public shade tree that has been removed, except those removed as visibility hazards, shall be replaced with one or more trees at a location and of a size and species to be determined by the Tree Warden

7. *Records, expiration and fee.* All permits shall be logged by the Tree Warden on a standard form and include the location and description of the work to be done. Permits issued hereunder shall expire six (6) months after the date of issuance. There is no charge for permits.

Section 5: Prohibited Acts

1. *Damage.* 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 a tree or shrub on public property, do or cause to be done by others any of the following acts:

- secure, fasten or run any rope, wire, sign, unprotected electrical installation or other device or material to, around or through a tree or shrub, except to secure leaning or newly planted trees;
- break, injure, mutilate deface, kill or destroy any tree or shrub;
- 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;
- attach any sign, poster, notice or other object on any tree, or fasten any guy wire, cable, rope, nails, screws or other device to any tree, except that the Town may authorize tying temporary signs to trees if necessary; or
- cause or encourage any fire or burning near or around any public tree.

2. *Excavation.* All trees on any public property near the excavation or construction of any building, structure or street, or in the vicinity of utility work, shall be sufficiently guarded and protected by those responsible for such work so as to prevent injury to said trees. No person shall

excavate any ditches, tunnels or trenches, or install pavement within a radius of ten (10) feet from, any public tree without a permit from the Tree Warden.

Section 6: Penalties

1. *Fines.* Any person found in violation of any provision hereof, or who fails to comply with notices issued pursuant to provisions hereof, shall be subject to fines of up to \$300 for each separate offense. Any builder, contractor or agent who intentionally assists in the commission of any such violation shall also be liable for each separate violation in addition to the liability hereunder of any other individual or entity. All 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. Determinations as to the length of continuing violations and the number of trees affected thereby shall be made by the Tree Warden. No violation shall be deemed to have ceased unless and until there is a public hearing in the same manner as set forth in Section 4(2) hereof and a determination or resolution of the offense is issued thereafter.

2. *Replacement.* Any tree removed for a private purpose, without compensation to the Town and/or in violation hereof, shall be replaced by the violator on an inch-by-inch basis. All replacement trees shall be at least 2" in diameter and of nursery-grown stock. Replacement trees shall be of a size and species specified by the Tree Warden, and shall be planted on public property, along rights of way or within easements as permitted by Mass. Gen. L. Ch. 87, § 7, and determined by the Tree Warden. The violator shall also be responsible for properly preparing the area for replanting, then planting as well as maintaining the replacement tree(s) for two (2) years from the date upon which it is planted. At the end of the two (2) year period the violator shall be responsible for providing the Tree Warden with a certification from a licensed and certified arborist that the replacement tree is healthy and in good condition. Should the replanted tree die or become sick within the two (2) year period, the violator shall be responsible for planting another tree acceptable to the Tree Warden, and again for maintaining it for a period of two (2) years after it is planted and for providing an arborist certification to the Tree Warden at the end of the two (2) year period and so forth and so on until a replacement tree has been certified by an arborist after a two (2) year period at which time it will become the responsibility of the Town.

Alternatively, the violator may pay a replacement fee equal to \$500 per 2" in diameter of the removed or to-be-removed tree.

3. *Legal advertising.* In addition to fines and/or replacement costs or fees, any person found in violation hereof shall be responsible for the cost of advertising any public hearing required by Section 4 hereof.

4. *Appeal.* Any person who receives an order from the Tree Warden hereunder and objects to all or any part thereof shall have the right to appeal such order. For Public Shade Trees located on Land Under the Control of the Recreation, Parks and Forestry Commission then to the Recreation, Parks and Forestry Commission and for all other Public Shade Trees to the Board of Selectmen. The Board of Selectmen or the Recreation, Parks and Forestry Commission, as the case may be, shall hear such appeal within 30 days of receipt of written notice thereof. The Board of Selectmen or Recreation, Parks and Forestry Commission, as the case may be, shall notify the party appealing the order of its decision by mail within ten (10) days after the hearing closes. A copy of said decision shall be filed with the Town Clerk.

Section 7: Severability

Should any part hereof or provision herein be determined by a court of law to be invalid, the same shall not affect the validity hereof as a whole or any part other than that found invalid.