An Ordinance Relative To The Protection Of Public Trees

Be it ordained by the city council of the city of Worcester, as follows:

Section 1. Chapter 12 of the Revised Ordinances of 2008 is hereby amended by inserting after Section 27 thereof the following new Section 28, as follows:

§ 28.   Protection of Public Trees

(a) *Purpose*. The city council recognizes the importance of an urban forest and that, in the city's ecosystem, trees contribute to air quality, reduce noise and visual pollution, help to moderate climatic extremes and conserve energy. The city's public trees enhance the visual and aesthetic attributes of streets, parks and other public places for residents, businesses and visitors. The city council recognizes the role of trees in enhancing property values and the overall quality of life. The city council further recognizes that the city has suffered severe tree loss due to efforts to eradicate the Asian Longhorn Beetle infestation and the severe ice storm of December 2008. It is the purpose of this section to promote and protect the public health, safety and general welfare by providing for the regulation of the planting, maintenance and removal of public trees in Worcester, Massachusetts.

(b) *Definitions.* The following words and phrases, when used in this section, shall have the following meanings:

> *Park Trees* - means any trees, shrubs, bushes and all woody vegetation on land lying within public parks having names and in all other areas owned by the city of Worcester and to which the public has access.

> *Public Shade Tree* - shall have the meaning set forth in G.L. c. 87, §§ 1 through 8.

> *Topping* - means the severe cutting back of limbs to stubs within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

(c) *Public Shade Trees.* No Public Shade Tree shall be cut, trimmed, or removed, in whole or in part, without the prior written approval of the tree warden, or his/her designee, in accordance with the requirements of G.L. c. 87, §§ 1 through 8.

(1) The person requesting the cutting, trimming or removal of any Public Shade Tree shall pay the costs of advertising and notification of the hearing required by G.L. c. 87. If the cutting, trimming or removal of a healthy Public Shade Tree is approved by the tree warden, then the person requesting the same, as a condition of such approval, shall pay a fee reflecting the city's full costs related thereto.

(A) Notwithstanding subsection (c)(1) above, in light of the city's priority to establish off street parking, the fee for cutting, trimming or removal of a healthy public shade tree shall be reduced by fifty (50%) percent if such cutting, trimming or removal is deemed necessary by the tree warden to allow for the construction of a driveway and the person requesting such removal has first obtained a permit for a curb cut from the city, in compliance with the department of public works & parks permit manual.

(2) In addition to the cost of cutting, trimming or removal set forth in subsection (c)(1), if cutting, trimming or removal of a healthy Public Shade Tree is approved by the tree warden, the person requesting cutting, trimming or removal also shall pay a fee reflecting the cost of the replacement of the tree, as a condition of removal. The fee shall be established annually by the commissioner of the department of public works & parks. The cost of purchase and planting shall be determined by the diameter in inches at breast height (DBH) of the tree removed.

(3) If a healthy public shade tree is damaged, destroyed or for any reason removed without the consent of the tree warden, the individual or other entity responsible shall pay the full removal fee and the full cost of replacement, as set forth in subsections (c)(1) and (2) above, in addition to any and all applicable fine(s).

(d) *Park Trees*. No person shall plant, cut, trim, remove, or otherwise disturb any Park Tree unless that person has first obtained written permission from the tree warden. The person making such request shall be required to pay any and all costs related to the allowed activity, including the fee for the replacement tree in accordance with the subsection (c) above, as applicable.

(e) *Planting Trees.* No person shall plant any tree within the public way or the boundaries thereof, or within any city park, without the prior written permission of the tree warden. The department of public works & parks shall maintain a list of species of trees that are suitable trees for planting along streets. All trees shall be planted in compliance with the tree warden's instructions, including but not limited to the minimum distance from any curb, sidewalk, street, structure or other tree.

(1) *Planting Trees Abutting the Layout.* The tree warden, if he or she deems it expedient, may plant shade trees on land adjoining the public way at a distance of not more than twenty feet from the layout of the public way for the purpose of improving, protecting, shading or ornamenting the same; provided, however, that the written consent of the owner of such adjoining land shall first be obtained.

(f) *Authorization to Plant, Cut, Trim, Remove, Spray or Otherwise Treat Public Shade Trees.* Except as set forth expressly herein, only the tree warden, his/her designee or a contractor retained by the city, may cut, trim or remove any Public Shade Tree. The tree warden may authorize an individual or entity to cut, trim or remove a Public Shade Tree or Park Tree if said individual or entity is an International Society of Arboriculture (ISA) certified arborist and provides evidence of insurance acceptable to the city.

(1) *Topping.* Except as set forth in this subsection, no Public Shade Tree or Park Tree shall be topped. Trees damaged by storms or other causes, or particular trees under utility wires or other obstructions where other pruning practices are impractical may be topped with the prior written approval of the tree warden.

(g) *Utilities*. In compliance with the applicable franchise agreements with the city and other applicable law, the electric utility company may cut or trim tree limbs or remove trees that interfere with high voltage electrical conductors, provided said electric utility company first notifies the tree warden in writing and submits a plan for such cutting, trimming or removal acceptable to the tree warden. The electric utility company shall further submit a utility tree trimming policy that shall be reviewed by a designated representative of the electric utility

company and the tree warden, or his/her designee prior to the commencement of any cutting, trimming or removal by any electric utility company.

(h) *Shade Tree Protection During Construction, Repairs, Utility Work.* Public Shade Trees and Park Trees shall be protected to the full extent feasible from damage during construction, street and sidewalk repair, utilities work above and below ground, and other similar activities. The area of protection shall include the ground beneath the canopy of the tree. Prior to commencing construction, Contractors shall obtain a permit from the tree warden including a plan acceptable to the tree warden showing how the relevant Public Shade Trees and/or Park Trees will be protected.

(i) *Removal of Diseased, Infested Trees.* As set forth in G.L. c. 132, § 13, the tree warden shall be designated as the Superintendent of Shade Tree Management and Pest Control.

(j) *Provide Support and Information to Planning Board.* In new subdivisions or when the development of commercial property occurs, the tree warden will review landscaping plans and may recommend that Public Shade Trees or Park Trees be planted in any of the streets, parking lots, parks and other public places abutting lands to be developed and/or subdivided.

(k) *Rulemaking Authority.* The commissioner of the department of public works & parks shall have the authority to make rules and regulations necessary to implement and enforce this section.

(l) *Enforcement.* The commissioner of the department of public works & parks shall have the power to enforce this section.

(m) *Violations.* Any person who violates any provision of this section or who fails to comply with any notice issued pursuant to provisions of this section, upon being found guilty of violation, shall be subject to a fine not more than three hundred ($300.00) dollars for each separate offense. Each day during which any violation of the provisions of this section shall occur or continue shall be a separate offense.

If, as a result of the violation of any provision of this section, a Public Shade Tree, Park Tree or other plant covered by this section located on city-owned property is damaged or dies, the cost of repair or replacement of such Public Shade Tree, Park Tree or other plant covered by this section shall be borne by the party in violation. The replacement value of trees shall be as set forth above, and the value of other plants shall be determined in accordance with the then latest revision of *A Guide to the Professional Evaluation of landscape Trees, Specimen Shrubs, and Evergreens,* as published by the International Society of Arboriculture.

(n) *Applicability.* To the extent permitted by law, if any provision of these sections imposes greater restrictions or obligations than those imposed by any other general law, special law, regulation, rule, ordinance, order, or policy, then the provisions of these sections shall control.

Section 2. Chapter 15, Section 2(b), of the Revised Ordinances of the city of Worcester (2008) is hereby amended by inserting the following new subsection 28 at the conclusion thereof as follows:

(28) Protection of Public Trees

        Enforcing Persons: Commissioner of Public Works & Parks

        Penalty: $300.00

Section 3.   When inserting the foregoing sections into the Revised Ordinances of the city, the city clerk, in consultation with the city solicitor, shall have authority to revise the numbering or formatting of any section, article, chapter or similar reference to be consistent with the numbering and format of the Revised Ordinances of the city.

Section 4. These sections shall take effect on passage.