

## Trees

ORDINANCE NO. 1340

CITY OF WESTFIELD

IN CITY COUNCIL October 3, 2002

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF WESTFIELD, ADOPTED JUNE 17, 1993.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WESTFIELD AS FOLLOWS:

That Chapter 16 of the Code of Ordinances be and is hereby amended by adding Article IV. And new sections to be numbered 16-150 through 16-154 as follows:

Article IV. Trees

### **Sec. 16 - 150. Title, Purpose and Authority.**

(a) This article shall be known as the City of Westfield Tree Ordinance.

(b) Public shade trees and plantings on public grounds constitute an important public asset of the City of Westfield, enhancing the beauty and environmental health of the City and promoting the general and economic well being of the City. This public resource may best be improved and protected by a program of comprehensive management and regulation of planting, maintenance and removal. The condition of trees located on private property may, in certain circumstances, endanger the well being of public shade trees and plantings on public grounds and may otherwise endanger the health and safety of the inhabitants of the city, thus requiring city intervention for the public good.

(c) This article is adopted in accordance with the authority granted, inter alia, by Amendment Article 89 to Article II of the Massachusetts Constitution, Chapter 294 of the Acts of Massachusetts 1920, as amended, and the powers granted to cities in the Massachusetts General Laws.

### **Sec. 16-151. Definitions.**

For the purpose of this Article the following terms, phrases and their derivations shall

have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

City – City of Westfield

City Property – All real property which is owned by the City or which is maintained by it. This includes interests of less than a fee simple interest but, if less than a fee simple interest is held, the City must also have the duty or right of maintenance.

Director of Lands and Natural Resources – That person who holds the position of City of Westfield Director of Lands and Natural Resources as specified in Chapter 13, Section 13-231 of this Code of Ordinances. Also known as “the director.”

Person – An individual but including corporations, societies, associations and partnerships.

Planting Plan – A scaled drawing depicting all plant materials, specifications and any other information required by the director of lands and natural resources.

Property Owner – That person shown as the owner of a parcel of real estate as listed in the current Westfield Board of Assessors’ records.

Public Trees – All trees, shrubs, bushes or other woody vegetation now or hereafter growing on City property. The term includes public shade trees as defined, below.

Public Shade Trees – All trees, shrubs, bushes or other woody vegetation now or hereafter growing within a public way or adjacent thereto but within the boundaries of the public right of way.

Public Way – Streets or roads, by whatever term so-called, laid out as public ways by order of the City or, within the boundaries of the City, the County, over which the public has the right of travel, but excluding state highways and Massachusetts Turnpike Authority property.

Public Right of Way – The boundaries of the public right of way as set forth in an order of the City or of the County laying out a public way. The public right of way may include not only the traveled surface of the public way but lands adjacent thereto including sidewalks and treebelt.

**Sec. 16-152. Public Shade Trees.**

(a) General.

(1) No person other than the director of lands and natural resources or his/her designee shall plant, spray, prune, trim, cut above the ground, remove, or conduct any excavation within the drip line of, a public shade tree without first filing an application and procuring a written permit from the director of lands and natural resources. The director may issue the permit, may deny the permit or may issue the permit with conditions. Failure to comply with the conditions of a previously issued permit shall be grounds for denial.

(2) Applications for permits must be made at the office of the Department of Public Works not less than three business days in advance of the time the work is to commence with the exception that if the work consists of cutting down or removal of a public shade tree, the application shall be made no less than thirty days in advance. At the time that the application is submitted applicants who seek a permit to cut down or remove a public shade tree shall pay a non-refundable fee of one hundred dollars. For all other permits, the fee to be paid is five dollars. City departments must apply for permits but are exempt from payment of a fee. The director shall waive the permit fee for those applicants who are planting public shade trees in accordance with a planting plan previously approved by the director. In cases of emergency an applicant may seek and receive oral permission from the director or his designee to trim or excavate within the drip line of a public shade tree without first submitting a written permit application. An emergency is defined as an unforeseen occurrence which requires immediate action to avoid or reduce significant injury or damage to persons or property. Within three (3) business days after oral permission is granted, the applicant must submit a written application for the permit and the permit fee to the director who shall note the permit pre-approved due to emergency.

(3) Upon completion of the work the permit holder shall promptly notify the director of lands and natural resources of the need to inspect the work. Within five business days after said notification, the director or his/her designee shall inspect the work and either approve it or reject it. If rejected, the director shall provide written notice stating the basis of the rejection and setting a reasonable date for reinspection. Failure on reinspection shall be grounds for issuance of a fine as set forth below.

(4) The director of lands and natural resources may issue a citation of twenty dollars to any person who violates the terms of this section 16-152, said citation to be disposed of by non-criminal disposition under Chapter 1, Section 1-9.1 of this Code of Ordinances. The penalty allowed hereunder is in addition to and not exclusive of any other penalty allowed by law.

(b) Removal.

(1) Except as specified in this section 16-152, no public shade tree shall be cut down or removed by any person without a public hearing with notice thereof provided as required by this section. No less than seven days prior to the public hearing on a proposal to cut down or remove a public shade tree, the director of lands and natural resources shall cause notice of public hearing, specifying the size, type and location of the tree to be cut down or removed and the date, time and location of the public hearing to be posted in two or more public places within the City and upon the tree. The director shall also cause to be placed in a newspaper of general circulation in the city once in each of two successive weeks, the first said publication not to be less than seven days prior to the date of the public hearing, a copy of the notice as posted. At the conclusion of the hearing the director shall issue written decision either approving or rejecting the cutting down or removal of the tree. The director shall not approve the cutting down or removal of a tree if written objection is made at or before the public hearing unless such cutting or removal is approved by the Mayor. Hearings and notices of hearings involving more than one tree may be consolidated.

(2) The requirements for notice, public hearing and, if written objection, mayoral approval as set forth, above, shall not apply to trees to be trimmed, cut or removed by the director of natural resources, or his/her designee, in the following circumstances:

(A) The tree to be cut down or removed is less than one and one half inches in diameter one foot from the ground; (B) The tree to be cut down or removed is deemed to obstruct, endanger, hinder or incommode persons traveling on the public way, or the lawful moving of buildings on the public way, and the work is ordered by the Mayor; (C) The tree must be cut down or removed by order of the Board of Public Works for the purpose of widening or alteration of the public right of way.

(3) Removal of a public shade tree shall include either:

(A) Excavation and removal of the rootball, or (B) Grinding of the stump to below ground level.

Upon removal, the area shall be leveled. Within 120 days after removal, the area shall be restored with either appropriate loam and seeding or sod.

(c) Planting.

The director of lands and natural resources shall approve for planting only such species in such minimum size as listed on the list of approved public shade trees and plantings included in a City Council approved urban forestry plan.

**Sec. 16-153. Other Public Trees.**

(a) The director of lands and natural resources shall undertake the care and control of such public trees as located in City parks as delegated to him in writing by the City Park and Recreation Commission and the care and control of such other public trees, other than the public shade trees for which he/she has primary responsibility, as required in a City Council approved urban forestry plan.

(b) It shall be unlawful for any person, other than as authorized by the City, to cut down, remove, deface, injure or post signs on any public tree. Violators shall be punished as authorized by Chapter 1, Section 1-9 of this Code of Ordinances.

**Sec. 16-154. Private Property.**

(a) The maintenance of any tree which is so diseased, decayed or infested with insects as to render the tree a hazard to the health and safety of any person or to public trees is declared to be a nuisance which may be abated as set forth herein. (b) The director of lands and natural resources shall have the right to enter upon any lands upon receipt of a written complaint to determine the condition of any tree located thereon. In the event that the director shall determine that maintenance of the tree or trees shall constitute a hazard to the health and safety of any person or is in such condition as to constitute a threat to other trees within the city, he or she may issue a written order to the property owner to remove said tree or trees. The order shall specify the reason the tree or trees are to be removed and a time for compliance which shall not be less than 14 days from the date of issuance of the order. If within 14 days of the date of issuance of the order, the property owner files a written request for a hearing with the director of lands and natural resources, the director shall set a time and place for hearing to determine whether or not the removal order shall be sustained. The director shall issue a written decision upon completion of the hearing which decision shall be final. In the event that the property owner does not, within 14 days of issuance of the order to remove the tree or trees or within 14 days of the issuance of a decision sustaining an initial order, whichever comes later, remove the tree or trees, the City may do so and may charge the reasonable costs incurred in such removal to the property owner to be recovered in an action at law instituted on the City's behalf by the director.

That Chapter 1, Section 1-9.1 of the Code of Ordinances be amended by adding the

following at Section 1-9.1:

**Section Enforcing Persons Penalty**

16-152 Public Shade Trees Director of Natural Resources \$20.00 permit required to trim, remove.

Presented to the Mayor Approved by the Mayor For approval November 25, 2002  
November 25, 2002 Karen M. Fanion, City Clerk Richard K. Sullivan, Jr., Mayor