

TOWN OF UPTON

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TEXT OF WARRANT ARTICLES

10 & 11

**ANNUAL TOWN MEETING
MAY 5, 2016**

ARTICLE 10: TREE BYLAW

SECTION 1. Intent and Purpose.

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 Upton. This by-law establishes policy and guidelines for ensuring the health and longevity of the Town's public shade trees and other Town-owned trees.

SECTION 2. Definitions.

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

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

"Public Nuisance Plant" - 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.

"Public Shade Tree" - All trees within a public way or on the boundaries thereof including trees planted in accordance with G.L. c. 87, §7, shall be public shade trees; and when it appears in any proceeding in which the ownership of 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 the contrary is shown.

"Public Tree" - A tree on public property.

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

"Public Way" - A way, including a footway, established as public in the manner prescribed by law, including layout and acceptance by public authority, adverse use of the public as a matter of right as determined by a court of competent jurisdiction, and dedication prior to 1846.

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

SECTION 3. Authorization of Tree Warden.

The Tree Warden shall carry out the provisions of this by-law and applicable provisions of state law. As per G.L. c. 87, c. 41, and the Town Manager Act, the Town Manager shall appoint a Tree Warden.

SECTION 4. Responsibilities and Authority of the Tree Warden.

- a. The Tree Warden, in accordance with G.L. c. 87, is hereby given authority, control, and supervision of all trees which now or which may hereafter exist upon any public property, street or highway belonging to the Town of Upton, and over all trees which exist upon any private property in the Town of Upton, when such trees are in such a hazardous condition as to immediately endanger the public health, safety, and welfare.
- 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.
- c. The Tree Warden shall be responsible for conducting public shade tree hearings in accordance G.L. c. 87, §3. .
- d. The Tree Warden shall review all proposed subdivision plans for tree locations and measures taken to protect existing public shade trees during construction and shall recommend to the Planning Board conditions required as part of its approval process as such conditions pertain to the protection of existing public shade trees or the planting of those which may exist as a result of subdivision construction and landscaping.
- e. The Tree Warden shall have 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 5. 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 public shade tree or any other tree or shrub in the public right of way or located on other public property, or cause such act to be done by others without a permit for such work from the Tree Warden as herein provided. This section is applicable to all persons, including but not limited to those 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.
- b. Tree Hearing - A permit is required for any person other than the Tree Warden seeking to remove a healthy tree located within the Public Way. The Tree Warden shall determine whether the proposed work is necessary and in accordance with the purposes of G.L. c. 87, as it may be applicable. The Tree Warden shall consider all relevant facts, including but not limited to public safety, health, and welfare, location of utilities, public sidewalks, driveways, and street lights. Tree Hearings shall be conducted as may be required by state and local law and a decision shall be issued approving, with or without conditions, or denying such application. If the permit is approved, any costs for removal and replacement shall be at the expense of applicant.

Exemption - In cases of situations meeting the requirements of G.L. c.87, §5, no hearing shall be required for the Tree Warden, or a person so authorized by the Tree Warden, to undertake work as may be necessary thereunder and in compliance therewith.

- c. Permit Form, Expiration, Inspection - Any work performed pursuant to a permit issued hereunder must be in strict accordance with G.L. c. 87. Permits issued under this section shall expire three

months after date of issuance. The permit fee for a requested tree hearing shall be established by the Tree Warden and approved by the Board of Selectmen.

SECTION 6. Planting Trees and Shrubs.

The Tree Warden shall approve the planting of any trees or shrubs on public property by a private entity.

The Planning Board shall consult with the Tree Warden as to any tree species and sizes to be utilized in any new subdivisions or when the development of commercial property occurs subject to site plan review or special permit.

SECTION 7. Licensing.

All work performed on public shade trees is to be done by or supervised by a Massachusetts certified arborist or ISA certified arborist.

SECTION 8. 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, or 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 M.G.L. c. 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. Dangerous, Obstructive, and Infected Trees on Private Property – As determined by the Tree Warden, any tree(s) located on private property that pose an immediate threat or danger to the public shall be subject to removal at the expense of the property owner.
- c. Healthy Tree Removal within the Public Way – All request for healthy tree removal within the Public Way that do not pose an immediate threat to the public require a permit as specified in section 5 of this Bylaw.
- d. Any public shade tree removed without the approval of the Tree Warden shall be replaced with one or more trees of such size and species and at such location as shall be determined by the Tree Warden, at the expense of the party causing said removal.

SECTION 9. 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 as 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 10. 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 a written permit from the Tree Warden in case of trees on public property, 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, or otherwise in accordance with G.L. c.87, , §14.

SECTION 11. Requirements and Penalties.

a. This bylaw and any regulations promulgated hereunder may be enforced in any means in law or in equity, including the provisions of G.L. c.87, §§2 and 6 and non-criminal disposition in accordance with G.L. c.40, §21D and Chapter 19 of the Town Bylaws. When enforced through non-criminal disposition, fines shall be set at \$150 for the first offense, \$225 for the second offense, and \$300 for the third and any subsequent offense; such fines shall be assessed against any party responsible for the violation, including the property owner, resident, and/or builder, contractor or other agent causing such violation. All such violations which are of a continuing nature shall constitute a separate offense for each day on which they exist and each tree removed shall constitute a separate offense. The Tree Warden and any police officer of the Tow shall constitute the enforcing authority for purposes of this bylaw.

ARTICLE 11: WATER IN A PUBLIC WAY BYLAW

SECTION 1. Discharge on Public Ways Prohibited.

No person shall discharge or cause to be discharged ground or surface water collected by mechanical pump within a building or any surface water collected on private property in a manner that would create a hazardous condition or cause damage to a public way or sidewalk. No person shall allow a discharge of water into a public way or sidewalk after being so notified by a police officer, Director of Public Works or Town Manager.

SECTION 2. Enforcement.

Violation of this bylaw shall be subject to a penalty of a written warning for the first violation, \$50.00 for the second violation, and \$200.00 for the third and subsequent violations. Each day a violation exists after notice has been so provided shall constitute a separate violation. For purposes of this bylaw, the term “enforcing person” shall include any police officer of the Town and the Director of the Department of Public Works.