

## Ordinances of 2023 - Chapter 14

### **ORDINANCE ESTABLISHING PROTECTIONS FOR THE CITY OF BOSTON TREE CANOPY**

WHEREAS: In September 2022, the City of Boston released the Urban Forest Plan to establish a blueprint for the preservation, cultivation, and expansion of our urban forest over the next two decades; and

WHEREAS: Trees are critical City infrastructure and protecting and expanding urban tree canopy is an important way to mitigate detrimental environmental effects and can reduce heat island effects, help address local flooding, and mitigate other adverse impacts of climate change and extreme weather; and

WHEREAS: Protecting and expanding Boston's tree canopy can support public health, preserve and expand wildlife habitat and local ecosystems, expand green infrastructure, address long-standing disparate environmental outcomes across Boston's neighborhoods, and promote the health, safety, and wellbeing of all residents; and

WHEREAS: Urban tree canopy includes individual trees, stands of multiple trees and urban woodlands, which are an essential part of the City's overall urban forest and are natural ecosystems whose benefits cannot be replaced quickly or easily if lost; and

WHEREAS: Preserving existing tree canopy and planting new trees in areas where tree canopy is low or has been removed are the most effective ways to protect future tree canopy and build climate and environmental resiliency; and

WHEREAS: The urban forest is vulnerable to threats from climate change, development, disease, pests, lack of care, limited space, and growing conditions; and

WHEREAS: The City of Boston experienced two heat waves in 2021, including a record high temperature of 100 degrees on June 30th, making it the hottest June in Boston's history; and

WHEREAS: In the City of Boston, neighborhoods that have high concentrations of Black Latinx, Asian, Indigenous, immigrant, and low-income communities are disproportionately impacted by negative environmental effects that affect their health and quality of life; and

WHEREAS: Residents in the City of Boston deserve to have a public, accessible, and transparent way to learn about changes to tree canopy in their neighborhoods; and

WHEREAS: Community input to the Urban Forest Plan characterized a successful process as one in which equity guides action, trees are proactively cared for and protected, the community is involved in decisions made about their neighborhood, and trees are prioritized and valued for their true and full role in the various benefits and values they provide to Boston and its residents; and

WHEREAS: In September 2022, the City of Boston released the Urban Forest Plan to establish a blueprint for the preservation, cultivation, and expansion of our urban forest over the next two decades; and

WHEREAS: The City of Boston convened an equity council to center voices from historically excluded and marginalized communities throughout the development of the Urban Forest Plan, which recommended that a public representation body be created to provide guidance to tree efforts in Boston;

NOW, THEREFORE be it ordained by the City Council of Boston as follows:

SECTION 1

That the City of Boston Code, Ordinances be amended in Chapter VII by replacing 7-4.7 in its entirety with the following:

7-4.7: ESTABLISHING PROTECTIONS FOR THE CITY OF BOSTON TREE CANOPY

A. PURPOSE: This subsection is intended to protect existing tree canopy and replace lost tree canopy in the City of Boston, especially in environmental justice communities where tree canopy is limited in the City of Boston.

B. APPLICABILITY: The terms and provisions of this subsection shall apply to Public Shade Trees and City Property Trees.

C. DEFINITIONS:

*Caliper* means a measurement of the tree trunk diameter at twelve inches (12”) above the ground.

*Capital Improvement Project* means a project funded through a non-recurring expenditure that generally meets all of the following criteria: applicability of M.G.L. c. 44, sec. 7 and sec. 8 whereby the City may issue bonds to finance the expenditure, the expenditure is for a

facility or object or asset costing \$50,000 or more, and the facility will have a projected useful life of ten years or more.

*Certified Arborist* means an arborist certified by the Massachusetts Arborists' Association (MAA) or the International Society of Arboriculture (ISA), or any successor of either organization.

*City Property Tree* means a tree located on property owned by the City of Boston, including trees in City parks, trees on land under the ownership or jurisdiction of the Boston Water and Sewer Commission, the Boston Housing Authority, Boston Public Schools, or the Boston Redevelopment Authority d/b/a the Boston Planning and Development Agency and any of their successors, and trees on the grounds of other City buildings. City Property Trees do not include Public Shade Trees as defined by M.G.L. c. 87 sec. 1, which are governed under M.G.L. c. 87, trees that are located on City-owned properties subject to a ground lease held by a non-City entity other than the Boston Housing Authority, or trees on the grounds of buildings leased by the City over which the City has authority under the terms of the lease.

*Commission* means the Parks and Recreation Commission.

*Commissioner* means the Commissioner of the Parks and Recreation Department.

*Critical Root Zone (CRZ)* means an area equal to 1-foot radius from the base of the tree's trunk for each 1 inch of the tree's diameter at 4.5 feet above grade.

*Diameter at Breast Height (DBH)* means the diameter of a tree trunk measured in inches at a height of four and a half (4.5) feet above the ground. For multiple trunk trees, DBH is the aggregate diameter of the trunks.

*Department* means the Parks and Recreation Department.

*Invasive Plant* means a plant that is both non-native and able to establish on many sites, grow quickly, and spread to the point of disrupting plant communities or ecosystems, including but not limited to the trees listed on the Massachusetts Prohibited Plant List.

*Public Shade Tree* means a tree located in the public way as defined in Massachusetts General Laws (M.G.L.) c. 87, sec. 1.

*Removal* means the intentional cutting down of any tree, including all other acts which cause actual or effective removal through damaging, poisoning, or other direct or indirect

actions that result in the death of the tree. This includes, but is not limited to, excessive pruning and damage to a tree's root system.

*Urban Forest Plan* means the plan published in September 2022 by the Parks and Recreation Department for the purpose of preserving and growing Boston's urban tree canopy or any successor plan.

D. **AUTHORITY OF THE COMMISSIONER:** The Commissioner of Parks and Recreation shall have the care and superintendence of all trees, plants and shrubs belonging to the City; shall trim all shade trees standing in the street so that they shall not interfere with public travel; shall carry out all orders of the Commissioner of Public Works made after public notice and hearing to remove trees standing in the street; shall, upon request of the officer having charge of the public lamps, trim in such manner as said officer may require any tree which interferes with the proper lighting of a street; shall cause all statutes and ordinances for the protection of trees, shrubs and flowers in the public grounds and streets to be strictly observed. The Commissioner or their designee shall be deemed to be the official having charge of shade trees within the meaning of Chapter 87, Section 13 of the General Laws and may, at their discretion, issue regulations and policies relevant to the implementation of M.G.L. c. 87.

E. **TREE WARDEN:** The Tree Warden shall be an employee of the City, under the direction of the Department and designated by the Commissioner.

1. The Tree Warden shall be qualified for the role as defined in M.G.L. c. 41 sec. 106, and shall be a Certified Arborist in possession of the ISA Tree Risk Assessment Qualification (ISA TRAQ) and a Massachusetts Pesticide License, or any successor of either certification or licensing program.
2. Notwithstanding anything to the contrary in this subsection, the Commissioner may designate the Tree Warden as the official having charge of Public Shade Trees within the meaning of M.G.L. c.87. In addition to the powers prescribed in M.G.L. c. 87, the duties and responsibilities of the Tree Warden as designated by the Commissioner shall include, but not be limited to, the following:
  - a. Posting notices and holding public hearings as needed for the Removal of City Property Trees as required by this section.
  - b. Granting, denying and/or attaching reasonable conditions to all permits and approvals required under this section.
  - c. Maintaining and publishing a quarterly record of all written requests to remove Public Shade Trees submitted to and decisions made by the Tree Warden under M.G.L. c. 87 sec. 2 and this section, and all removals carried out without a hearing being required by this section, as well as all enforcement actions. Such quarterly and annual reports shall be completed

and publicly posted not more than thirty (30) calendar days after the end of each calendar quarter and calendar year.

d. Enforcing this section.

3. The Tree Warden shall have the authority to remove trees or any part of trees that are dead, dying, diseased or posing a risk to persons and/or property, or if determined to be an invasive tree species, or for the suppression of pests in accordance with M.G.L. c. 87 sec. 5 and as designated by the Commissioner. The Tree Warden's determination to remove such trees shall be made in accordance with the ANSI A300 Standard and best management practices.

#### F. PROTECTION OF PUBLIC SHADE TREES:

No Public Shade Tree shall be cut, trimmed or removed unless the Removal is approved in accordance with M.G.L. c. 87 and this section.

1. Any person wishing to remove a Public Shade Tree shall first submit a written request in the manner prescribed by the Department and obtain written approval, from the Tree Warden in accordance with M.G.L. c. 87.
2. In reviewing any written request to cut, trim, or remove a Public Shade Tree, the Tree Warden shall consider tree health and size, current growing conditions, proposed growing conditions of replacement trees, alternative design or construction options, and viability of tree survival after any proposed construction is completed, in addition to public input pursuant to M.G.L. c. 87 and any further criteria adopted in accordance with subsection 7-XX.11. Natural ecosystem functions of trees shall generally not provide a basis for approval of a proposed Removal.
3. The Tree Warden may set conditions for any approved tree Removal such as use of a Certified Arborist or other qualified contractor, measures to prevent damage to surrounding curbs, sidewalks, and parkways, or requirements for site clean-up and restoration.
4. Any healthy Public Shade Tree removed at the request of a property owner or agent thereof and approved pursuant to M.G.L. c. 87 sec. 3 must be replaced as required by M.G.L. c. 87 and this section. Removed Public Shade Trees may be replaced with other trees or with the replacement value of the Public Shade Trees if replacement is not feasible. This section shall not apply to trees that require Removal, as determined by the Tree Warden, due to being dead, dying, diseased, or posing a risk to persons and/or property, determined to be an invasive tree species, or for the suppression of pests.
  - a. Replacement trees must be located at or near the location from which the tree was removed, and in no case shall trees planted in a different neighborhood qualify as replacements. The replacement trees must be approved by the Tree Warden in accordance with M.G.L. c. 87 sec. 7 and any

other standards for size, species, and planting as may be established by the Department. Replacement trees shall be planted on a schedule as may be stipulated in a permit for Removal and must be warrantied and maintained by the applicant for two (2) years, or a longer period if the Tree Warden deems it consistent with best management practices, before the replacement trees will be accepted in the City's street tree inventory.

- b. If replacement is not feasible based on the assessment of the Tree Warden, the applicant shall pay a replacement fee equal to \$550 per caliper inch (DBH). The Department shall review and revise as necessary the replacement fee every three (3) years to be commensurate with the current costs of street tree plantings. If replacement becomes feasible after a replacement fee has been paid, the applicant shall be reimbursed based on the diameter of the replacement tree at the time of planting. Any replacement tree shall be subject to the warranty and maintenance provisions in section 7-15.7(1). Fees shall be directed to the Fund for Parks and Recreation or any successor fund.

**G. PROTECTION OF CITY PROPERTY TREES:** This section shall apply exclusively to City Property Trees, as defined in Section 3 of this Ordinance. Nothing in this section shall be construed to apply to Public Shade Trees.

1. Except as provided in Section G(2) of this Ordinance, no person or entity, including the Tree Warden and their deputies, shall cut, trim or remove any City Property Tree without an opportunity for public comment at a duly noticed and advertised public meeting or hearing. Eligible public meetings and hearings shall include:
  - a. For City Capital Improvement Projects and non-City projects that propose Removal of City Property Trees, any project-related noticed public meeting or hearing, provided, that:
    - i. An initial tree survey was performed, including a conditions assessment performed by a Certified Arborist, and such survey and assessment are available for public review. The tree survey shall include tree size, location and species of all trees three (3) inches or greater in DBH, and shall be submitted to the Tree Warden for review. Where available, a publicly procured tree survey shall be the survey of reference for any discussion related to a Capital Improvement Project.
    - ii. All public meetings at which Removal of City Property Trees is discussed were duly noticed and advertised. Such advertisement shall include posting a notice on or around any City Property Trees proposed to be removed at least one (1) week before the public meeting.

- iii. The public was provided a reasonable opportunity to provide input at public meetings and/or beforehand in writing regarding tree(s) to be cut down or removed.
  - b. For any project that proposes Removal of City Property Trees three inches (3") or greater in DBH that is not otherwise subject to a public meeting or hearing, a public hearing shall be held by the Tree Warden. Notice will be provided in the same manner as for Public Shade Trees, in accordance with M.G.L. 87 sec. 3, and include a brief statement of the reason for the proposed action.
    - i. Abutters located within three hundred (300) feet of the parcel where a given City Property Tree is located may appeal decisions of the Tree Warden to the Commission within thirty (30) calendar days.
- 2. No public hearing shall be necessary prior to:
  - a. The Removal by the Tree Warden, or their designee, of City Property Trees measuring less than three inches (3") in DBH one foot from the ground.
  - b. The Removal of any City Property Tree or any part of any City Property Tree that (i) is dead, dying, diseased, (ii) poses a risk or hazard to persons and/or property, (iii) is determined to be an invasive tree species, or (iv) is necessary for the suppression of pests.
  - c. Any Removal pursuant to Section G(2) shall be based on the determination of the Tree Warden or of a Certified Arborist in the employ of the City in accordance with the ANSI A300 Standard and best management practices.
  - d. In the case of an emergency, such a determination shall not be required if the delay would endanger public safety, services, or property.
- 3. Any Removal of a City Property Tree shall be reported to the Department which may, at its discretion, also request copies of assessments by Certified Arborists created pursuant to Section G(2).
- 4. For projects that involve Removal of City Property Trees, a Certified Arborist shall be employed by the project contractor to review and oversee tree protection and adjacent excavation within a development area, including development of a tree protection plan. Such a plan shall be in compliance with any standards set by the Department and submitted to the Tree Warden for review. If site conditions result in the need to remove any City Property Trees in addition to any trees discussed in public meetings, the proposed removal will be brought to the Tree Warden for review and determination.

H. WORK AFFECTING CRITICAL ROOT ZONES: Regardless of whether a project undertaken by the City or a private party would result in Removal of Public Shade Trees or City Property Trees, any work within the CRZ, including but not limited to excavation and construction work, shall comply with standards developed jointly by the Department, the

Boston Public Works Department and the Boston Transportation Department and issued by the Department. and/or Tree Warden. Such standards shall be designed to safeguard CRZs so as to protect the long-term health and safety of Public Shade Trees, City Property Trees, and the public and surrounding buildings. Except in an emergency, such standards shall apply to any City work in a CRZ and compliance with such standards shall be a condition in permits issued by the City for excavation, construction or other work in a CRZ. Such standards may consider complete or partial exemptions for limited work such as milling of roadways and sidewalk maintenance.

I. OPEN SPACES MANAGED FOR BOTANICAL, ARBORETUM OR CONSERVATION PURPOSES: The Arnold Arboretum shall remain exempt from all provisions of this Ordinance during such times as the December 20, 1883 Indenture remains in force between the City of Boston and the President and Fellows of Harvard College concerning the use of the Arnold Arboretum as a public park. The Boston Public Garden and properties maintained for natural conservation purposes, such as urban wilds, shall also remain exempt from all provisions of this Ordinance.

J. POLICIES AND REGULATIONS: The Department may adopt policies and standards as necessary to implement this subsection and make recommendations for regulations as may be further necessary to implement this subsection to the Commission, pursuant to City of Boston Code Section 7-4.8.

K. URBAN FORESTRY ADVISORY COMMITTEE: The Commissioner shall convene an Urban Forestry Advisory Committee solely for the purpose of advising the Commissioner with regards to implementation of the Urban Forest Plan. The Advisory Committee's purview shall be limited to implementation of the Urban Forest Plan and exclude matters related to specific Removals or implementation of M.G.L. c. 87. The Advisory Committee shall have at least seven (7) members. All members of the advisory committee shall be appointed by the Commissioner. The Advisory Committee shall be staffed by the Department. The Commissioner shall prioritize participation from residents from historically marginalized or under-canopied neighborhoods and invite participation from residents between the ages of fourteen (14) and seventeen (17). The Commissioner may establish subcommittees, working groups, or any other forms of subordinate organization of the advisory committee as may be necessary and useful to carry out its advisory functions. The Advisory Committee shall be convened within the first six (6) months following the adoption of this subsection and shall present an annual report of its activities to the Commission.

## SECTION 2



SEVERABILITY: If any provision of this ordinance is held invalid by a court of competent jurisdiction, then such provision should be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

SECTION 3

EFFECTIVE DATE: The provisions of this ordinance shall take effect ninety (90) calendar days after passage. Nothing in this Ordinance shall be construed to apply to Capital Improvement Projects that are in design or construction at the time that this ordinance takes effect.

SECTION 4

That the City of Boston Code, Ordinances be further amended in Chapter VII by adding the following statement at the end of 7-4.8:

“Upon recommendation of the Department, pursuant to the authority granted to it in Section 5 of Chapter 45 of the General Laws, the Commission may adopt regulations as may be necessary to implement City of Boston Code Section 7-4.7 following a thirty (30) calendar day public comment period.”

In City Council December 13, 2023. Passed.  
Approved by the Mayor December 29, 2023.

Attest:



Alex Geourntas  
City Clerk