

ORDINANCE 2024-05

AN ORDINANCE TO AMEND the Code of the City of Lebanon, to add Chapter 164, Trees, to establish regulations for trees in public spaces.

Be it ordained by the Council of the City of Lebanon as follows:

Section 1.

The Code of the City of Lebanon is hereby amended by adding §164, Trees.

§ 164-1. PURPOSE/INTENT

To enhance the quality of life and the present and future health, safety, and welfare of all residents, and to ensure proper planting and care of trees on public property and within City rights-of-way, the City Council pursuant to RSA 31:51 and RSA 47:1 herein delegates the authority and responsibility for managing public trees.

§ 164-2. DEFINITIONS

Damages- Damages as referred to in RSA 231:154 relating to tree rights shall mean the taking of ownership rights to trees that are located within the City's rights of way or areas where the City has or acquires an easement. Damages equate to the dollar amount that is paid to the owner for the value of the trees taken and/or the property where the trees are planted.

Ornamental Tree- a tree planted or valued chiefly for its aesthetic value.

Public Tree- Trees located on land owned by the City.

Shade Tree- a tree planted or valued chiefly for its shade from sunlight.

Shrub- Shrub and bush shall have the same meaning. A woody plant that is smaller than a tree and typically has multiple stems or branches growing from a base. Unlike trees, which generally have a single trunk, bushes or shrubs usually have a more rounded and bushy appearance.

Street Tree- Trees located within the City's rights of way or provided by separate easement.

Right of Way- Shall mean the area of land which constitutes a public way under the provisions of RSA 229:1, Highways are only such as are laid out in the mode prescribed therefor by statute, or roads which have been constructed for or are currently used for motor vehicle, bicycle, or pedestrian public travel over land which has been conveyed to a city or town or to the state by deed of a fee or easement interest, or roads which have been dedicated to the public use and accepted by the city or town in which such roads are located, or roads which have been used as such for public travel, other than travel to and from a toll bridge or ferry, for 20 years prior to January 1, 1968, and shall include the bridges thereon. Highway does not include any bridge, trail, or path intended for use by off highway recreational vehicles, as defined in RSA 215-A:1, or snowmobiles, as defined in RSA 215-C:1.

Tree - a woody perennial plant having a single usually elongated main stem generally with few or no branches on its lower part.

Tree Advisory Board - The City Manager established a Tree Advisory Board in 2021 to facilitate the goals of educating the public and working in an advisory capacity to DPW, the City Manager and the other boards/committees/commissions of the City.

Tree Warden - The City Manager may appoint a Tree Warden to manage trees in the City's rights of way and City properties. The Tree Warden position is established pursuant to RSA 231:139, I. The duties of the Tree Warden are detailed in the job description created for the position by the City Manager. In the absence of a Tree Warden the duties of this position shall fall to the Public Works Director.

Tree Rights- relative to RSA 231:154 refers to owner of trees whether they are located in the City's ROW or on private property.

Urban Compact- As defined by RSA 229:5, IV and V. Class IV highways shall consist of all highways within the compact sections of cities and towns listed in RSA 229:5, V. The compact section of any such city or town shall be the territory within such city or town where the frontage on any highway, in the opinion of the commissioner of transportation, is mainly occupied by dwellings or buildings in which people live or business is conducted, throughout the year and not for a season only.

§ 164-3. AUTHORITY AND RESPONSIBILITIES

- A.** The Public Works Director is responsible for planting, care and maintenance of trees located within the City's public rights of way as well as other City-owned properties under the management of the Department of Public Works. All other trees located on City property or to be planted on City property shall be the responsibility of the director of the department which manages the property the tree is located on, except subject to provisions regarding the removal of trees as detailed in § 164-5, A, unless otherwise proscribed in the Code of the City of Lebanon or applicable State law.
- B.** The City shall have control of all shade trees, ornamental trees and shrubs situated within the limits of the City's public ways, state highways within the urban compact, village commons, parks, cemeteries, and other public grounds, which have been or may be acquired by gift or purchase, or planting by or with the advice of the Public Works Director, or by condemnation by the Public Works Director as provided in RSA 231:140.
- C.** Trees located within the City's right-of-way but located on private property are controlled by the property owner not the City other than the exceptions discussed below and as interpreted by the Courtsⁱ

§ 164-4. PLANTING OF TREES

- A. Taking Tree Rights.** – In accordance with the provisions of RSA 231:154, when any highway shall be laid out damages may be assessed to the abutting owners to provide for the maintenance or planting, from time to time, within the limits of such highway, of such shade and ornamental trees as may be necessary for the preservation and improvement of such highway. Damages may be assessed to abutting owners on any existing highway upon petition therefor, and such proceedings had as in the laying out of highways by the City Council to provide for the maintenance and planting from time to time, of such trees within the limits of such highways as may be necessary for the preservation and

improvement of the same. When such damage shall be assessed and paid there shall be, in addition to the right of travel over such highway, a public easement to protect, preserve and renew the growth thereon for the purposes aforesaid.

- B. **Public Ownership.** – in accordance with RSA 231:149, Any young shade or ornamental tree planted within the limits of a public highway by the tree wardens or by any other person or persons, with the approval of the City Manager, or any young seedling tree or sprout left within the limits of the highway as specified in RSA 231:150 and designated by the tree warden to be preserved for its future value as a shade tree, shall become the property of the municipality; provided, that the abutting landowner, having been notified of the intention of the municipality to take and preserve such young tree, shall make no written objection to the tree warden within 30 days from the date of such notification

§ 164-5. REMOVAL OF TREES

- A. **Shade and Ornamental Trees-** Whoever desires the cutting and removal in whole or in part of any public shade or ornamental tree owned by the City may apply to the Public Works Director, who shall give a public hearing at least 10 days prior to the cutting or removal of the trees, upon the application, at some suitable time and place, after publishing and posting notices of the hearing in 2 or more public places and also upon the tree or trees which it is desired to cut and removed. No tree shall be cut, except to trim it, or removed by the City staff, without such hearing. The decision of the Public Works Director shall be subject to review by the City Manager.
- B. **Hazardous Trees-** Notwithstanding the provisions of other sections of this Chapter and subject to the provisions of RSA 231:157 and RSA 231:158, the Public Works Director on class IV, V, and VI highways and City maintained portions of class II highways may declare any tree, either alive or dead, situated within the limits of City property, highways, roads, or streets to be a public nuisance by reason of danger to the general or traveling public, spread of tree disease, or the reliability of equipment installed at or upon utility facilities authorized under RSA 231:160 or RSA 231:160-a. After such declaration by the Public Works Director and notice to the abutting landowner on whose property such tree is located the said authority shall within a reasonable time remove the same without compensation or cost to the abutter. However, no such declaration and notice shall be required when the delay entailed by such declaration and notice would pose an imminent threat to safety or property, including electric transmission and distribution lines. Nothing in this subdivision shall be construed to relieve the public utility companies of their accepted responsibility of tree trimming and tree removal for the protection of their lines, or for the construction of new lines, or to alter the provisions of RSA 231:150-182 in any manner. The Public Works Director may require of the public utilities owning lines which pass through or near a tree or trees which are condemned for removal as a public nuisance to assist in their removal at their expense by either the temporary removal of their lines or by causing to be removed at their expense the top portion of said tree or trees from a point below their lines.
- C. **Notice-** as detailed in RSA 231:146, notice to the abutting landowner of a tree declared a public nuisance shall be given by delivery at their place of residence or by sending by registered mail to their last known address and it shall clearly state the intention of removal of such tree. The landowner may appeal to the superior court as to the validity of such declaration within 30 days of delivery or mailing of said notice, and shall be entitled to a

speedy hearing. The final judgment upon every appeal shall be a decree dismissing the appeal, or vacating the declaration complained of in whole or in part, as the case may be; but in case such declaration is wholly or partly vacated the court may also, at its discretion, remand the matter to the City for such further proceedings, not inconsistent with the decree, as justice may require. Following expiration of the aforesaid 30-day period of appeal, or following waiver of said right of appeal, the abutting landowner is relieved of any liability or responsibility in connection with the tree or trees declared a public nuisance and similarly is relieved of any liability or responsibility in connection with any stump or stumps left remaining.

- D. **Clearing Highways** – In accordance with the provisions of RSA 231:150, the Public Works Director shall annually, and at other times when advisable, cause to be cut and disposed of, from within the limits of City maintained highways, all trees and bushes that may cause damage or pose a safety hazard to such highways or to the traveling public; provided however that no tree which has a circumference of 15 inches or more at a point 4 feet from the ground shall be removed in the absence of notice to the abutter in the same manner as provided above, except when the delay entailed by such notice would pose an imminent threat to safety or property. Shade and fruit trees that have been set out or marked by the abutting landowners or by the Public Works Director, and young trees standing at a proper distance from the highway and from each other, shall be preserved, as well as banks and hedges of bushes that serve as a protection of the highway, or that add to the beauty of the roadside.

- E. **Scenic Roads**- The management of trees along scenic roads shall be conducted in accordance with the provisions of RSA 231:158 and Lebanon City Code Chapter 134, excepting the removal of trees or portions of trees which have been declared a public nuisance pursuant to RSA 231:145 and 231:146, when such trees or portions of such trees pose an imminent threat to safety or property. Such exceptions must be preceded by authorization of the Public Works Director. Further, that a public utility when involved in the emergency restoration of service, may without such hearing or permission of the Public Works Director, perform such work as is necessary for the prompt restoration of utility service which has been interrupted by facility damage and when requested, shall thereafter inform the Public Works Director of the nature of the emergency and the work performed, in such manner as the Public Works Director may require.

§ 164-6. ROLE OF THE TREE ADVISORY BOARD AND TREE WARDEN

- A. The Tree Advisory Board in accordance with the provisions of its charge may provide guidance to the Public Works Director regarding the planting, care, maintenance and removal of trees on public property or within public rights of way. Notices of public hearings shall be provided to the Tree Advisory Board on or before the time of posting under section § 164-5, or in the case of Section § 164-5, B and C, on or before the time of notice. The Public Works Director shall take into consideration recommendations made by the Tree Advisory Board relative to the tree(s) that are under consideration for cutting or removal.

- B. The Tree Warden shall provide guidance and recommendations to the Public Works Director relative to the planting, care, maintenance and removal of trees on public property including rights of way and where the City has easements.

§ 164-7 INJURY OR DEFACEMENT OF TREES

As detailed in the provisions of RSA 231:147, It shall be unlawful to cut, destroy, injure, deface, or break any public shade or ornamental tree; or to affix to any such tree a play bill, picture, announcement, notice, advertisement, political or otherwise, or other device or thing, or to paint or mark such tree, except for the purpose of protecting it and under a written permit from the Public Works Director. Additionally, persons responsible for the injury or defacement of trees shall make restitution for the replacement and/or mitigation of trees injured or defaced.

§ 164-8. SEVERABILITY

The provisions of this ordinance are declared to be severable, and if any section, subsection, sentence, clause, or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdictions, such decision shall not affect the validity of any remaining sections, subsections, sentences, clauses, or part of this ordinance.

§ 164-9. EFFECTIVE DATE

This ordinance shall become effective April 1, 2024.

ⁱ *Graves vs. Shattuck*, 35 N.H. 257 (1857); *Laconia vs. Morin*, 92 N.H. 314 (1943)