



# Town of Chatham

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I, Julie Smith, duly appointed Town Clerk of the Town of Chatham, hereby certify the following Article was adopted at the May 13, 2024 Annual Town Meeting:

## Article 43 – General Bylaw Amendment; NEW; Tree Protection Bylaw

~~Strikethrough~~ indicates language proposed for deletion.

Underline indicates language proposed for inclusion.

To see if the Town will vote to amend its General Bylaws to include a new chapter Tree Protection Bylaw as follows:

### TOWN OF CHATHAM TREE PROTECTION BYLAW

#### **1. Preamble and Purpose**

The purpose of this bylaw is to minimize ambiguities and to clarify and amplify the provisions of Massachusetts General Law Chapter 87, Shade Tree Law (M.G.L. c.87), and to provide standards for the proper care of Chatham's trees. Section 15 of this bylaw addresses special provisions that apply to Town-owned trees which are not protected by the Shade Tree Law.

**This bylaw does not apply to trees on private property.**

Trees are recognized for their ability to improve air quality, protect from glare, heat, and noise, aid in the stabilization of soil, provide natural flood and drainage control, create wildlife habitats, enhance aesthetics and property values, contribute to the distinct character of neighborhoods, provide natural privacy from neighbors, and reduce ambient carbon in the atmosphere. Therefore, in order to preserve Chatham's tree canopy and street trees, when trees are lost, they should be replaced so future generations can benefit from their presence.

#### **2. Definitions**

**Certified Arborist** is a tree professional who is certified by the ISA (International Society of Arboriculture).

**DBH (Diameter at Breast Height)** means the diameter of the trunk of a tree 4 ½ feet above the existing grade at the base of the tree.

**Drip line** means a vertical line running through the outermost portion of the crown (i.e., the outer branch tips) of a tree and extending to the ground.

Public right-of-way means the strip of land controlled or owned by the Town within which a public street or road lies. Typically, the public right-of-way is wider than the road surface and often includes curbs, sidewalks, utilities, Public Shade Trees, and grass strips.

Public Shade Tree means any tree on or within the boundaries of a public right-of-way except for a state highway in accordance with the provisions of M.G.L c.87.

Town means any employee or official of the Town of Chatham, consultant or contractor acting on behalf of the Town.

Tree Fund means a fund established as a revolving fund pursuant to M.G.L. c. 44, §53E1/2 for use by the Town for the purchase, planting, protection and care of Chatham's Trees.

Tree removal means the cutting down of any Public Shade Tree or Town-owned tree and any other act that will cause such a tree to die within a three-year period, including but not limited to improper or excessive pruning and construction, demolition, and excavation activities.

### **3. Applicability and Jurisdiction**

#### **3-1. Applicability**

This bylaw applies to all Public Shade Trees and Town-owned Trees. This bylaw is intended to supplement Chapter 87 of the Massachusetts General Laws, known as the Shade Tree Act. It extends certain protection to trees growing on town-owned lands as specified in Section 15 Special Provisions for Town-Owned Trees of this bylaw. This bylaw does not apply to trees on private property.

#### **3-2. Tree Warden**

The Tree Warden shall have jurisdiction over all trees to which this bylaw applies.

#### **3-3. Coordination With Other Town Regulators**

If any Public Shade Tree may be impacted by construction, demolition, or excavation activities under the jurisdiction of the Town's Building Department, Planning Board, Zoning Board of Appeals, or other Town Department or Board, such regulatory agency shall, to the extent permitted by law, require the owner of the affected property and any person engaging in such activities to comply with the provisions of this bylaw and notify the Tree Warden of such activities.

#### **3-4. Planning Board**

The Planning Board shall forward Site Plan Review and Special Permit applications to the Tree Warden for review and comment where the activities proposed therein could potentially impact trees protected by this Bylaw.

#### **4. Activities Requiring a Permit**

4-1. A Public Shade Tree may not be trimmed, pruned, or removed by any person other than the Tree Warden until and unless the Tree Warden issues a written permit pursuant to this bylaw. The following activities require a permit:

- a. Planting a Public Shade Tree
- b. Removal of a Public Shade Tree
- c. Pruning of a Public Shade Tree, including root pruning or disturbance
- d. Construction activities within the Drip Line of a Public Shade Tree or that may be damaging to the tree.
- e. Engaging in excavation activities that may disturb a Public Shade Tree, including but not limited to the installation of utility lines.

#### **5. Prohibited Activities**

It shall be unlawful for any person to engage in any of the following activities relating to Public Shade Trees:

- a. Carving
- b. Breaking of limbs
- c. Poisoning tree roots
- d. Girdling tree trunks or nailing
- e. Posting of signs (other than those posted by the Tree Warden regarding a public hearing)
- f. Topping, stubbing or otherwise damaging tree branches
- g. Injuring or otherwise putting public trees at risk

#### **6. Permit Application Procedures**

6-1. A person who wishes to initiate any activity affecting a tree for which a permit is required under this bylaw shall submit an application to the Tree Warden in accordance with application requirements established by the Tree Warden. Application forms shall be available at the office of the Town Clerk and the office of the Tree Warden. There shall be no fee for filing an application.

6-2. The permit issued by the Tree Warden may specify schedules, terms, and conditions as deemed appropriate by the Tree Warden. A permit shall be valid for one hundred twenty (120) days from issuance unless the permit specifies otherwise.

#### **7. Public Hearing**

7-1. Except as may be provided in M.G.L. c. 87, the Tree Warden shall not remove a Public Shade Tree or grant an application to any person for the removal of a Public Shade Tree without first conducting a public hearing. Where a public hearing is required, the Tree Warden shall issue a notice of the time and place of the hearing. The Tree Warden shall post the notice in two or more public places in Chatham and in public view upon the tree at least fourteen (14) days before such hearing and shall publish it in a newspaper of general

circulation in Chatham. The costs of notice, posting and publication shall be borne by the applicant.

7-2. When a public hearing must be held under the provisions of this bylaw and also under M.G.L. c. 40, §15C regarding Scenic Roads, such hearings shall be consolidated into a single public hearing before the Tree Warden and the Planning Board.

7-3. When the Public Shade Tree to be removed is on conservation lands managed by, or resource areas under the jurisdiction of, the Chatham Conservation Commission, the public hearing required under the provisions of this bylaw shall be consolidated into a single public hearing before the Tree Warden and the Conservation Commission.

7-4. For activities which require a permit hereunder, except removal of a tree, the Tree Warden shall issue or deny the permit within 14 business days of receipt of a completed application. A permit will be valid for one hundred twenty (120) days from issuance unless specified in the permit.

## **8. Approval Criteria**

The Tree Warden shall approve removal of a Public Shade Tree under the provisions of this bylaw upon a determination by the Tree Warden, or when deemed appropriate, by a Certified Arborist, that one of the following criteria is satisfied:

- a. The Public Shade Tree interferes with structures, utilities, streets, sidewalks or proposed necessary improvements and there are no alternatives to removal;
- b. The Public Shade Tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, causing disruption of public utility services, causing passage problems upon rights-of-way, or posing a threat to pedestrians, vehicles, or property damage;
- c. The removal of the Public Shade Tree is necessary for other reasons and serves a public benefit as determined by the Tree Warden.

## **9. Appeals**

Any decision of the Tree Warden under this bylaw may be appealed to the Select Board. The notice of appeal must be in writing and must be received by the Select Board within thirty (30) calendar days of the issuance of the Tree Warden's decision; or the appeal may be made at the Public Hearing if the Tree Warden issues his decision during or at the close of the Public Hearing. The Select Board shall make a final decision within thirty (30) calendar days from the date of its receipt of the notice of appeal.

## **10. Tree Planting**

The Tree Warden shall establish standards for planting Public Shade Trees for which a permit is required under Section 4 of this bylaw. Such standards shall include (1) listing of native tree species acceptable for planting, (2) site selection, (3) priorities for tree planting locations, (4) spacing of street trees, and (5) planting guidelines. See current edition of *Chatham's Tree Care Handbook*.

## **11. Tree Replacement**

Any person who removes or severely injures a Public Shade Tree, including the driver of any vehicle that knocks down or severely injures such a tree, shall be required to replace it within twelve (12) months of the date of its removal, at such person's cost and in accordance with the permit application procedures set forth in Section 6 of this bylaw, as follows:

11-1. The replacement of a Public Shade Tree shall be procured from a tree nursery professional approved by the Tree Warden. Such professional shall plant and ensure the health of the tree for one year.

11-2. The replacement tree shall be of the same or similar species, or of such other native species, as is deemed advisable by the Tree Warden and shall have the same or equivalent size, as measured in DBH inches, as that of the tree that was removed.

11-3. If a tree of equivalent size cannot be obtained or is not deemed appropriate as a replacement, the Tree Warden shall determine a suitable alternative, including planting two or more smaller replacement trees that are the largest available and appropriate for transplanting. The tree(s) shall be planted in the same location or proximate to the location of the removed tree. Only if it is not possible for trees to be planted on, or proximate to, the location of the removed tree shall the Tree Warden permit payment into the Tree Fund in lieu of the replanting. Said payment shall be in an amount equivalent to the value of the tree that was removed, as determined by a Certified Arborist based on industry standards and shall include the estimated cost of planting the tree and maintenance thereof for three years.

## **12. Emergencies**

12-1. Pruning or removal shall be allowed without a permit for any Public Shade Tree that is determined by emergency response officials to create a public hazard so as to immediately endanger public safety or cause an immediate and severe disruption of public services, including public utilities. Such officials shall prepare a written notice of their determination of such public hazard and shall submit it to the Tree Warden within fourteen (14) calendar days of such determination.

12-2. The Tree Warden may waive the provisions of this bylaw with respect to any action deemed to be an emergency response to a hurricane, windstorm, flood, or other act of nature.

## **13. Enforcement**

13-1. Any person who violates any provision of M.G.L. c. 87, s. 8 shall be subject to fines of up to \$500, or such other penalty as may be authorized therein, for each separate violation. Where any person violates a provision of this bylaw but not the provisions of Chapter 87, Section 8 the person shall be subject to a fine of \$300 for each separate violation hereof. Each act causing damage to a separate tree shall constitute a separate violation hereunder. Fines shall be



assessed and collected by noncriminal disposition pursuant to §1-7 of these bylaws and/or pursuant to any other procedure authorized by law.

13-2. These remedies shall not be in derogation of the Town's right to enforce the provisions of M.G.L. c. 242, §7 as against any person who without a permit willfully cuts down, girdles, or otherwise destroys a Public Shade Tree or a tree on Town-owned property, or the Town's right to apply or enforce any other applicable Massachusetts law or Town bylaw.

13-3. Fines, penalties and damages paid to the Town under this bylaw shall be paid into the Tree Fund.

#### **14. Severability**

If any segregable part of this bylaw is for any reason declared invalid, unenforceable or unconstitutional by any court of competent jurisdiction, every other part hereof shall remain in full force and effect.

#### **15. Special Provisions for Town-Owned Trees**

Town-owned trees that are not Shade Trees pursuant to M.G.L. c.87 shall be subject to this bylaw, with the exception of Sections 6 through 13 which shall not apply to such trees. For purposes of this bylaw, a distinction is made between Town-owned trees that grow in managed public spaces like parks or golf courses, referred to as Town Trees, and trees that grow in a woodland setting, referred to as Town Woodland Trees.

15-1a Definitions. In addition to the terms defined in Section 2 of this bylaw, the following terms shall further define Town-owned trees:

**Town Tree** is a tree other than a Public Shade Tree growing in a public park, golf course, or other land owned, managed, or controlled by the Town of Chatham.

**Town Woodland Tree** is a tree growing on Town land that is in a wild state, in an area that is undisturbed, such as woodland or forested land. For purposes of this bylaw, a Town Woodland Tree is differentiated from a Town Tree by its location.

#### **15-2. Applicability of this bylaw to Town Trees**

15-2a. Permit Application shall not be required. However, the Town is required to alert the Tree Warden to any planned Tree Removal that may involve Town Tree(s). If the Tree Warden determines the Town Tree is significant in size or has historical value, a Permit shall be required in accordance with Section 7 (Public Hearing) and determinations made in accordance with Section 8 (Approval Criteria).

15-2b. Replacement of Town Trees Lost due to Storms, Disease, or other cause. The Tree Warden shall require the Town to replace Public Shade Trees or Town Trees that come down in a storm, have died from disease or otherwise have been removed, unless replacement at the

original situs is not consistent with the purpose of an active or proposed Town project, in which case replacement shall be effectuated at another location in Chatham with the schedule, location and species of the replacement tree to be determined by the Tree Warden. The Tree Warden shall approve the replanting location, the tree size, and species. When appropriate, the Tree Warden shall notify any abutting property owner(s) of tree replacement prior to planting.

15-2c. The replacement tree shall be of the same or similar species, or such other native species as deemed advisable by the Tree Warden and shall be planted during the next growing season.

### 15-3. Applicability of this bylaw to Town Woodland Trees

15-3a. When removal of Town Woodland Trees is necessary for development of town infrastructure benefiting the citizens of Chatham (such as water treatment plants or sewer pump stations) the terms of this bylaw shall not apply, except for the following:

a. The site plan for the development of such infrastructure shall indicate the area of the woodland to be disturbed and the number of trees greater than 3" DBH that will be taken.

b. The Town or its contractor shall make every effort to minimize disturbance and to preserve the trees wherever possible. The awarded contract shall include a plan for the revegetation/rewilding of the area with native trees and other plant material after construction. The revegetation plan shall be approved by the Select Board and revegetation shall take place during the next planting season. The Tree Warden will monitor the implementation and success of the vegetation plan.

c. In an effort to preserve Chatham's tree canopy, the Town shall replant disturbed areas with native trees and make every effort to ensure their survival by providing water and care as needed and replacement if necessary.

### 16. Chatham's Tree Care Handbook

The Tree Warden shall develop and maintain a Tree Care Handbook, which shall be subject to the approval of the Select Board, for the purpose of applying best practices and standards for the proper planting and care of all Chatham Shade and Town Trees. The handbook shall be available as a helpful guide for all Chatham citizens who wish to plant and care for the trees on their properties.

### 17. Tree Fund

The Town shall establish a Tree Fund pursuant to M.G.L. c. 44, s. 53E1/2 (Revolving Fund). The purpose of the Tree Fund is to receive the penalties, fines and other payments required by this Bylaw and M.G.L. c. 87, as well as any other monies that the Town may appropriate to the Fund. The Town is authorized to expend the funds for the planting and care of Chatham's trees, as provided in the Revolving Fund Bylaw.

**APPENDIX - Tree Replacement ratio requirements**

In addition, special mitigation requirements shall apply to larger trees, where a specified number of replacement trees are required to compensate for removed trees, as follows:

- a. Trees with trunks of 1 1/2" up to 10" DBH: mitigation of at least 1:1 is required.
- b. Trees with trunks of 10" DBH up to 20" DBH: mitigation of at least 2:1 is required.
- c. Trees with trunks of 20" DBH or larger: mitigation of at least 3:1 is required.

And, further, to amend Chapter 1, §1-7 (Noncriminal disposition; penalties) by adding a reference to the Tree Protection Bylaw and a penalty of \$300 for violation thereof.

Or, to take any other action in relation thereto.

(Select Board)

**Motion: Dean Nicastro, Select Board, moved the Town vote to amend its General Bylaws to include a new chapter Tree Protection Bylaw as printed in Article 43 of the warrant.**

***Explanation:** For the last several months, Chatham Friends of Trees has worked to create a Tree protection bylaw for the Town of Chatham. This bylaw has been modeled on similar bylaws in the towns of Orleans and Provincetown. Additional tree bylaws from off-Cape communities were also reviewed while drafting this proposed bylaw. It is important to note that this bylaw does not address trees growing on private property. The sole purpose of is to provide guidance and clarity of the Shade Tree Law (MGL c. 87) for the Tree Warden and citizens; and to extend some protections to Town-owned trees, such as trees in our parks. The overriding goal is to preserve and protect Chatham's tree canopy for generations yet to come.*

**Select Board Recommendation:**                      **Approve: 5-0-0**

**Finance Committee Recommendation:**                      **Approve: 9-0-0**

**VOTE: YES: 215    NO: 85**

**Article 43 is adopted, declared the Moderator.**