

TREE POLICY

SUMMARY OF MGL CHAPTER 187 and TOWN OF NATICK POLICY AND REGULATIONS PERTAINING TO PUBLIC SHADE TREES

INTRODUCTION

The Town of Natick recognizes that roadside trees are a valuable asset to the community, providing scenic beauty, clean air, wildlife habitat, protection from the summer sun and harsh winds, and serving as important reminders of the natural world in a time of increasing urbanization. Natick's trees often stand as legacies of the town's rural past and add immeasurable to the community's unique character and appeal.

Chapter 87 of the Massachusetts General Laws, as amended, is the enabling legislation that permits Natick, through its Tree Warden, to establish rules and regulations pertaining to Public shade Trees. Under Chapter 87, decisions by the Tree Warden regarding removal and cutting down of Public Shade Trees can be appealed to the Board of Selectmen. In addition, trees located along designated scenic roads are subject to protections in the town's Scenic Road Bylaw.

SUMMARY OF MASS. GENERAL LAWS, CHAPTER 87: THE PUBLIC SHADE TREE ACT

Public Shade Trees Defined.

Section 1. All trees within a public way or on the boundaries thereof shall be Public Shade Trees and when the ownership of a tree is doubtful, it shall be taken to be within the highway and to be public property until the contrary is shown.

POWERS of the Tree Warden.

Section 2. The Tree Warden may appoint and remove Deputy Tree Wardens. He has the care and control of all Public shade Trees, shrubs, and growths in the town, except those within a state highway, and those in public parks if so requested by the park commissioners; and shall enforce all the provisions of law for the preservation of such trees, etc. He shall expend all money appropriated for the planting and maintenance of such trees, and no tree shall be planted within a public way without the approval of the Tree Warden, and until a location has been obtained from the selectmen. He may make regulations for the care and preservation of Public Shade Trees and establish fines and forfeitures for violations.

Cutting of Public Shade Trees. Hearing.

Section 3. Except as provided by section five, Public Shade Trees shall not be cut, trimmed, or removed, in whole or in part, by any person other than the Tree Warden or his deputy, even if he be the owner of

the fee in the land on which such tree is situated, except upon a permit in writing from said Tree Warden, nor shall they be cut down or removed by the Tree Warden or his deputy or other person without a public hearing. Notice of the public hearing shall identify the size, type, and location of the shade tree or trees to be cut down or removed, be posted in two or more public places in the town and upon the tree at least seven days before the hearing, and published in a newspaper once in each of two successive weeks not less than seven days before the hearing.

Approval of Board of Selectmen Required if Objection Made.

Section 4. Tree wardens shall not remove a Public Shade Tree if, at or before a public hearing, objection in writing is made, unless such cutting or removal is approved by the selectmen.

**Cutting Down Bushes and Small Trees,
Trimming Trees, etc. that Obstruct Traffic.**

Section 5. Tree wardens and their deputies may, without a hearing, trim or remove trees in the public way less than one and one half inches in diameter one foot from the ground; and, if ordered by the selectmen, shall trim or cut down trees and bushes, if they obstruct, endanger, hinder, or incommode persons traveling thereon or obstruct buildings being moved. Nothing in this chapter prevents the trimming or removal of any tree that endangers persons traveling on a highway, or the trimming or removal of trees to widen a road, if so directed, and nothing interferes with the suppression of pests declared to be a public nuisance.

Penalty.

Section 6. Violations of any provision of the three preceding sections shall be punished by fine established by law. See further discussion under Section 4, "Additional Regulations."

Planting of Shade Trees.

Section 7. Towns may appropriate money to be expended by the Tree Warden for planting shade trees in the public ways, or upon adjoining land, at a distance not exceeding twenty feet from the public way, with the consent of the owner thereof.

Trees on State Highways.

Section 8. The state Department of Public Works shall have the care and control of all trees, shrubs, and growths within state highways, and may trim or remove such trees. No such tree shall be trimmed or removed by anyone but an agent or employee of the department, even if he is the owner of the land, except with a written permit from the state DPW. Any person injured by action of the department may recover damages.

Signs and Marks on Shade Trees.

Section 9. Whoever affixes to a Public shade Tree a notice, sign, advertisement or other thing, whether in writing or otherwise, or who cuts, paints, or marks a Public Shade Tree, except with a permit for the purpose of protecting it or the public, shall be punished by a fine of not more than \$50.

Injury to Trees on State Highways.

Section 10. Whoever without authority trims or removes a tree, shrub, or growth within a state highway, or who maliciously injures, defaces, or destroys any such tree shall be punished by imprisonment or by a fine.

Injury to Trees of Another Person.

Section 11. Whoever willfully, maliciously, or wantonly cuts, destroys, or injures a tree which is not his own, shall be punished by imprisonment or by a fine.

Injury to Shrubs, Trees, and Fixtures.

Section 12. Whoever wantonly injures, defaces, or destroys a shrub, plant, or tree, or fixture of ornament or utility, in the public way or place, shall be punished by a fine, and shall be liable for all damages.

**TOWN OF NATICK REGULATIONS PERTAINING
TO PUBLIC SHADE TREES.**

1. **Work in Public Shade Trees.** No person or utility shall cut, prune, remove, injure, damage, or endanger the health of a Public shade Tree without first obtaining an approval permit from the Tree Warden. However, a utility may trim trees without a permit during a storm and for such a period of time after as may be required to restore service to customers.
2. **Work Near Public Shade Trees**
No person shall ditch, tunnel, or do potentially damaging excavation work within 10 feet of a Public Shade Tree without first obtaining and executing a contract for a Utility Excavation Permit with the Tree Warden. Permits to do work affecting Public Shade Trees shall be kept on site during the work and must be shown upon request to the Tree Warden.

Any excavation work within 10 feet of a Public shade Tree shall be performed in accordance with the following guidelines and will be subject to the approval of the Tree Warden.

- a. Hand trenching, tunneling, or removal of the tree roots will be performed at the discretion of the Tree Warden.
- b. No trenches within 10 feet of any Public Shade Tree will be allowed to remain open overnight.
- c. Pruning of roots or branches or repairs to tree trunks must comply with the best arboricultural practices.
- d. Inspections performed by the Tree Warden will be billed at a rate of \$30 per hour or the prevailing rate at the time.
- e. After the work is completed, if an inspection of the tree after the first full growing season reveals that it has been damaged by the project, the permit holder will be assessed for any remedial or corrective action that may offset damage, or—if the tree appears to be dead or dying at the end of the second full growing season—for the removal and/or replacement costs according to the formula for removal/replacement of a nonhazardous Public shade Tree (see below).

3. **Signs.** No signs shall be attached to Public Shade Trees, nor may they be cut painted, or marked. Signs found affixed to a Public Shade Tree may be removed by the Tree Warden or any other citizen under MGL c. 266, sec.126.
4. **Penalty for Violations.** Any person who illegally cuts, trims, removes, or otherwise damages a Public shade Tree shall be subject to a fine of up to \$500 (as provided by MGL c. 87 s. 6) in addition to a fine of \$20 (under provisions of MGL c. 87 s. 2) plus the value of the Tree (using the International Society of Arboriculturists formula), if applicable, and triple damages under MGL c. 242 s.7. If, in the opinion of the Tree Warden, such cutting or trimming has destroyed the shape, form, or structural integrity of the tree, the cost of removal and replacement shall be calculated and will be collectable separate from any statutory relief.
5. **Enforcement.** The Tree Warden shall enforce all laws protecting Public Shade Trees and shall seek complaints in court for violations of such laws.

AUTHORIZATION FOR TREE REMOVAL

Any tree within a public way or on the boundaries thereof, with a trunk at least 1.5 inches in diameter measured one foot above the ground, is defined by MGL c. 87 as a Public Shade Tree. If the status of a tree is doubtful, it shall be deemed a Public Shade Tree until the contrary is shown. All Public shade Trees shall be removed only by the town of Natick or its [prime tree contractor. Public Shade Trees in Natick are further defined as follows:

1. Living

Bearing or renewing less than 20 percent of the normal foliage density or growing branch structure for that species in one full growing season.

2. Dead

Bearing or renewing less than 20 percent of the normal foliage density or growing branch structure for that species in one full growing season.

3. Endangering.

Posing a threat to life, limb, or property such that, in the judgment of the town Tree Warden, removal must be accomplished within three weeks, thus precluding the usual posting-and-hearing process. The judgment will be determined based on the thorough evaluation of the tree, including the following factors:

- species and age of tree, including tree form and rooting characteristics;
- proximity to the roadway or abutting property;
- existence of basal and/or root decay;
- existence of crown decay;
- presence of dead wood;
- presence of insect damage;

--the loss of original branch structure from previous storm damage that creates dangerous imbalances in bearing weights.

The final judgment and decision for determination under items 1 through 3 above shall be made by the Tree Warden based on sound arboricultural practices.

**ADVANCE AUTHORIZATION REQUIREMENTS FOR TREE
REMOVAL, BY TREE TYPE**

**TREE TYPE (See above)
Authorization By:**

Requires Advance Authorization by:

- | | |
|---|---|
| 1. Living Public Shade Tree
1.5 inches or more diameter one foot | Tree Warden:
posting/public hearing;
Selectmen, if objections |
| 2. Living Public Shade Trees less than
1.5 inches diameter one foot above the ground. | Tree Warden |
| 3. Dead Public Shade Tree, any size
(see definition of "dead") | Tree Warden |
| 4. Public Shade Tree, any size, that endangers
people or property within the public way (see
definition of "endangers") | Tree Warden |
| 5. Public Shade Tree, any size
that obstructs, hinders, or incommodes
travel on the public way | Selectmen's order; Tree
Warden postin/public
hearing; Selectmen, if objections |
| 6. Public Shade Tree, any size
for widening of roads. | Town Administrator; Tree Warden
posting/public hearing; Selectmen
if objections |
| 7. Public shade Tree, any size,
located on Scenic Road | Tree Warden; joint hearing
with Planning board if stone
wall removal involved |
| 8. Public shade Tree, any size, to be
removed by reason of pest infestation
under Mass. Public Nuisance Law. | Tree Warden; state Div. of
Environmental Management |

PROCEDURE FOR REMOVAL OF NONHAZARDOUS PUBLIC SHADE TREES

Any person, utility, or business that wishes to have a nonhazardous Public Shade Tree removed for a new construction project, subdivision road, commercial development, or other commercial purposes is responsible for all related expenses, including the following:

- A. Cost of removal of tree and grinding of stump to a minimum of 12 inches below grade, hauling away of all debris, and proper filling of stump hole;
- B. Legal advertising for all public hearings;
- C. Planting of sufficient replacement trees as described below;
- D. Cost of traffic details, repair of street surface and road shoulder, and protection and restoration of utility structures.

Anyone wishing to remove a Public Shade Tree for noncommercial purposes (e.g., improvements or alterations to an existing owner-occupied residence) shall be exempt from item A, above (but shall still be responsible for items B and C). The value of existing shade trees is to be calculated on an inch for inch replacement basis. For example, if an eighteen-inch diameter tree, measured four and a half feet (DBH) above grade, is to be removed, the applicant must sufficiently reimburse the town to provide for the purchase of planting of nine, two-inch diameter or six, three-inch diameter trees.

Replacements shall be at least two-inch diameter, nursery grown stock but shall be of such size and species as specified by the Tree Warden. They will be planted on public property, along rights of way, and on setback easements as allowed by MGL c. 87 s. 7, in locations determined by the Tree Warden. Cost of the replacement trees are to be based on current prices from a qualified local supplier.

Prior to work beginning, the applicant will pay the town for all appropriate costs to be incurred in the tree's removal and replacement, based on a written estimate by the Tree Warden.

- A. Any person who damages a Public Shade Tree as a result of a motor vehicle accident or through construction shall be assessed for all costs for any remedial or corrective treatment and/or replacement costs based on the same inch for inch formula.
- B. Nothing contained in this policy shall prohibit the Tree Warden from refusing to permit the removal of nonhazardous trees.

The Tree Warden may refuse to remove a nonhazardous tree if, in his or her opinion, the tree is of historic or scenic value, is of a size or species not commonly found along the roadways of Natick, has significant wildlife value, or is an unusually healthy or significant specimen.

- C. Decisions made by the Tree Warden regarding the removal of nonhazardous Public shade Trees are appealable to the board of Selectmen.

TREE PLANTING POLICIES AND PROCEDURES

1. Planting of Public shade Trees shall be in the public way or upon adjoining land in accordance with MGL c. 7, s. 7.
2. As a goal, at least as many Public shade Trees shall be planted each year as are removed.
3. Town tree planting funds shall be expended for the following purposes:
 - a. A. To fulfill citizen requests for Public Shade Trees. Provided funds are available, the Tree Warden will honor within a reasonable amount of time any tree requests from residents offering, in his or her judgment, a suitable roadside site on their property.
 - b. To replace another Public shade Tree removed by the town. Replacement trees shall be planted as close to the site of the removed tree as is possible.
 - c. To fulfill the goals of the town's tree-planting master plan. (See item 4 below).
4. To encourage community participation and support for tree planting, as well as to facilitate the state grant application process, the Tree Warden, in conjunction with interested citizens, shall develop a master plan for the replanting of key roadways and neighborhoods in town. The plan shall be updated every five years and presented to the Board of Selectmen for review.
5. The Tree Warden, in conjunction with interested citizen groups, shall actively pursue annual state grants and other sources of revenue available for tree planting.
6. Any grants, town funds, or other money appropriated for the supplying and planting of Public Shade Trees shall be expended by the tree warden in keeping with item 3, above.

If any provision of these policies or rules and regulations there under is declared invalid, the remaining portions shall remain valid.