

THE PROVINCETOWN GENERAL BYLAWS

16. TREES

16-1. Purpose

Trees contribute to the health and well-being of the Town of Provincetown (the “Town”) and its residents and wildlife. Trees also help define the Town’s ambience and streetscape and enhance property values. The purpose of this bylaw is to preserve and protect public shade trees in Provincetown in accordance with the provisions of Massachusetts General Law Chapter 87, and to provide standards for the proper care of town trees.

16-2. Definitions

16-2-1. “Public shade tree” means any tree within or on the boundaries of a public right-of-way except for a state highway, including any tree planted by or on behalf of the Tree Warden on any adjoining land, upon the written consent of the owner of such land, at a distance of 20 feet or less from the layout of such public way, all in accordance with the provisions of G. L. c. 87, s. 7.

16-2-2. “Town tree” means any tree in a public park or other place owned, controlled or leased by the Town of Provincetown except trees on conservation lands managed by, or resource areas or their buffer zones under the jurisdiction of, the Provincetown Conservation Commission.

16-2-3. “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.

16-2-4. “Person” means any individual or entity as defined by Section 1-2-5 of the Provincetown General Bylaws.

16-2-5. “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.

16-2-6. “Tree removal” means the cutting down of any public shade 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.

16-2-7. “Excessive pruning” means the removal of more than one-third of the tree canopy or cutting back the limbs to a point that prevents the natural growth of the tree.

16-2-8. “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.

16-2-9. “Tree fund” means a fund to be established hereunder as a revolving fund pursuant to G.L. c. 44, s. 53E1/2, for use by the Tree Warden for the purchase, planting, protection and care of public shade trees and town trees.

16-3. Jurisdiction

16-3-1. Tree Warden

This bylaw applies to all public shade trees and town trees in the Town. The Tree Warden shall have jurisdiction over all trees to which this bylaw applies and as set forth in G.L. c. 87, s. 2.

16-3-2. Coordination With Other Town Regulators

If any public shade tree or town 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 (1) require the owner of the affected property and any person engaging in such activities to comply with the provisions of this bylaw and (2) notify the Tree Warden of such activities.

16-3-3. Planning Board

For projects that require Planning Board Site Plan Review or Special Permit, the provisions of Sections 16-4-2 and 16-5 of this bylaw shall be waived and all tree and landscape requirements shall be made part of the Planning Board Site Plan Approval or Special Permit. The Planning Department shall forward Site Plan Review and Special Permit applications to the Tree Warden for review and comment. No Site Plan Approval or Special Permit shall be issued without written comments from the Tree Warden, unless such written comments are not received by the Planning Board within 30 days of the date the application is submitted.

16-4. Activities Requiring a Permit

16-4-1. A public shade tree or town 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.

16-4-2. Such a permit shall also be required of any person for (1) planting a public shade tree or town tree, (2) engaging in construction or demolition activities within the drip line of a public shade tree or town tree, and (3) engaging in excavation activities that may disturb a public shade tree or town tree, including but not limited to the installation of utility lines.

16-5. Tree Planting

The Tree Warden shall issue standards for planting public shade trees and town trees for which a permit is required under Section 16-4-2. Such standards shall include (1) listing of trees acceptable for planting, (2) site selection, (3) priorities for tree planting locations, (4) spacing of street trees, and (5) planting guidelines.

16-6. Prohibited Activities

It shall be unlawful for any person to engage in any of the following activities relating to public shade trees or town trees: (1) topping tree branches, (2) stubbing tree branches, (3) girdling tree trunks, (4) cutting or poisoning tree roots, (5) causing any other kind of injury, and (6) pollarding the top and branches of a tree if done by any person other than a certified arborist.

16-7. Permit Application Procedures

16-7-1. 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 issued 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.

16-7-2. The permit issued by the Tree Warden may specify schedules, terms, and conditions as deemed appropriate by the Tree Warden. For activities except removal, the Tree Warden shall issue or deny the permit within fourteen (14) calendar days of receipt of a completed application. A permit shall be valid for one hundred twenty (120) days from issuance unless the permit specifies otherwise.

16-8. Public Hearing

16-8-1. Except as provided in G. L. c. 87, s. 5, 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, in accordance with the provisions of G. L. c. 87, s. 3, issue a notice of the time and place of the hearing, which notice shall identify the size, type and location of the tree to be cut down or removed. The Tree Warden shall also post the notice in two or more public places in Provincetown, including the Town's website, and in public view upon the tree at least seven (7) days before such hearing and publish it in a newspaper of general circulation in Provincetown once in each of two successive weeks, the first publication to be not less than seven (7) days before the day of the hearing, or if no such local newspaper exists then in accordance with the provisions of G. L. c. 4, s. 6. The costs of notice, posting and publication shall be borne by the applicant.

16-8-2. When a public hearing must be held under the provisions of this bylaw and also under G. L. c. 40, s. 15(c), Scenic Roads Designations, such hearings shall be consolidated into a single public hearing before the Tree Warden and the Planning Board.

16-8-3. When the public shade tree to be removed is on conservation lands managed by, or resource areas or their buffer zones under the jurisdiction of, the Provincetown 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.

16-9. Approval Criteria

The Tree Warden shall approve removal of a public shade tree or town tree under this bylaw upon a determination that one of the following criteria is satisfied:

16-9-1. The tree interferes with structures, utilities, streets, sidewalks or proposed necessary improvements for which there is no alternative;

16-9-2. The tree is dead, diseased, terminally injured, in danger of falling, dangerously close to existing structures, causing disruption of public utility service, causing drainage or passage problems upon rights-of-way, or posing a threat to pedestrian or vehicular safety; or

16-9-3. There is no alternative to removal of the tree as determined by the Tree Warden.

16-10. Mandatory Applicability of State Standard

In accordance with the provisions of G. L. c. 87, s. 4, the Tree Warden shall not remove or grant a permit for the removal of a public shade tree if, at or before the public hearing required by this bylaw, objection in writing is made by one or more persons, unless such removal is approved by the Board of Selectmen.

16-11. Appeals

Any decision of the Tree Warden under this bylaw may be appealed to the Board of Selectmen. The appeal must be in writing and must be received by the Board of Selectmen within thirty (30) calendar days of the issuance of the Tree Warden's decision. The Board of Selectmen shall make a final decision within thirty (30) calendar days from the date of receipt of the appeal request.

16-12. Tree Replacement

Any person who removes a public shade tree or a town 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 16-7, as follows:

16-12-1. The replacement tree shall be purchased from a certified tree nursery professional approved by the Tree Warden. Such professional shall plant and ensure the health of the tree for three years.

16-12-2. The replacement tree shall be of the same or similar species or such other species as 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.

16-12-3. If a tree of equivalent size cannot be obtained or is not appropriate, 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, and payment to the tree fund for the value of the tree that was removed, as determined by a certified arborist based on standards in the industry.

16-13. Emergencies

16-13-1. Pruning or removal shall be allowed without a permit for any public shade tree or town 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. Such officials shall complete a written record of any such determination and submit it to the Tree Warden within fourteen (14) calendar days of such determination.

16-13-2. The Tree Warden may waive the provisions of this bylaw as an emergency response to a hurricane, windstorm, flood or other act of nature.

16-14. Enforcement

16-14-1. Any person who violates any provision of G. L. c. 87, s. 3-5, relating to the trimming, cutting or removal of public shade trees shall be subject to fines of up to \$500 for each separate offense, as provided by G. L. c. 87, s. 6. Where any person violates any provision of this bylaw but not the provisions of G. L. c. 87, the person shall be subject to fines of up to \$300 for each separate offense. Each act causing damage to a separate tree shall constitute a separate offense. Each day that a violation continues shall constitute a separate offense. Fines shall be assessed and collected under G. L. c. 40, s. 21D process.

16-14-2. These remedies shall not be in derogation of the Town's right to enforce the provisions of G. L. c. 242, s. 7, against any person who without a permit willfully cuts down, girdles or otherwise destroys a public shade tree or town tree, or the Town's right to apply or enforce any other Massachusetts law or Town bylaw.

16-14-3. Fines and damages paid to the Town under this bylaw, G. L. c. 87, or G. L. c. 242, shall be paid into the Tree Revolving Account.

16-15. Severability

If any part of this bylaw is for any reason declared invalid or unconstitutional by any court, every other part shall continue in full force and effect.