

Chapter 120

TREES

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[HISTORY: Adopted by the Annual Town Meeting of the Town of Lexington 4-11-2001 by Art. 34. Amendments noted where applicable.]

§ 120-1. Findings.

The Town of Lexington finds that mature trees have aesthetic appeal, contribute to the distinct character of certain neighborhoods, improve air quality, provide glare and heat protection, reduce noise, aid in the stabilization of soil, provide natural flood- and climate-control, create habitats for wildlife, enhance property values and provide natural privacy to neighbors.

§ 120-2. Intent and purpose.

This bylaw is enacted for the purpose of preserving and protecting both public shade trees pursuant to General Law Chapter 87 and certain trees on portions of private property. To achieve these purposes, this bylaw establishes a Tree Committee and empowers the Committee, in conjunction with the Tree Warden, to regulate the removal and replacement of trees in certain circumstances, and to promote the planting and protection of trees throughout the Town. It is desirable that the Town plant more trees than are removed to compensate for tree losses and the length of time to maturity. The provisions of this bylaw, when pertaining to private property, apply only when there is major construction or demolition as defined below and only within setback areas.

§ 120-3. Definitions.

A. When used in this bylaw, the following definitions shall apply:

CALIPER — Diameter of a tree trunk (in inches) measured six inches above the ground for trees up to and including four-inch diameter, and 12 inches above the ground for larger trees.

DBH ("Diameter at Breast Height") — The diameter (in inches) of the trunk of a tree (or, for multiple trunk trees, the aggregate diameters of the multiple trunks) measured 4 1/2 feet from the existing grade at the base of the tree.

DEMOLITION — Any act of pulling down, destroying, removing or razing a building or commencing the work of total or substantial destruction with the intent of completing the same.

MAJOR CONSTRUCTION — Any construction of a structure on a vacant lot, or any construction of one or multiple structures or additions to structures on an existing lot, wherein there would result an increase of 50% or more in the total footprint of the new structure(s), when compared to the total footprint of the pre-existing structure(s).

PERSON — Any person, firm, partnership, association, corporation, company or organization of any kind including public or private utility and municipal department.

PROTECTED TREE — Any tree on private land, with a DBH of six inches or greater (or any multiple trunk tree with a DBH of 15 inches or greater), located in the setback area (or which, as determined by the Tree Warden, has any portion of the stem between six inches and 4 1/2 feet above grade actively growing into the setback area), provided that tree is not hazardous or undesirable as defined in the Tree Manual. **[Amended 4-4-2007 ATM by Art. 13]**

PUBLIC SHADE TREE — Any tree within the public right-of-way except for state highways that, as determined by the Tree Warden, has any portion of the stem between six inches and 4 1/2 feet above grade actively growing into the public right-of-way.

SETBACK AREA — The minimum setback area around a lot shall be measured 30 feet from the front and 15 feet from the two sides and from the rear of the lot. For the purposes of establishing the setback area in which the provisions of this bylaw shall apply, the measurement shall be from any point on any property line of the lot, to points along an imaginary line drawn representing the setback area as specified. Final judgments regarding required tree protections during construction shall be made by the Tree Warden where deviations from the setback are required. **[Amended 4-4-2007 ATM by Art. 13]**

TOWN TREE — Any tree within a public park or open space under the jurisdiction of the Selectmen acting as park commissioners, on public school grounds, or on any other Town-owned land.

TREE REMOVAL — Any act that will cause a tree to die within a three-year period.

- B. The Tree Committee may provide other such definitions or terms in rules and regulations, approved by the Selectmen, deemed useful to implement this bylaw.

§ 120-4. Applicability.

- A. Applicability. The circumstances under which the tree protection, removal and replacement regulatory process delineated in this bylaw shall apply are as follows:

- (1) Proposed cutting (trunk, limbs or roots) of existing public shade trees on public and private ways (accepted or unaccepted streets) or of Town trees on Town-owned (or leased land being used as a public facility) by any person.
 - (2) Proposed demolition of an existing residential or nonresidential structure.
 - (3) Proposed major construction on an existing residential or nonresidential lot.
- B. Non-applicability. This bylaw shall not apply in any instance where the Planning Board, the Zoning Board of Appeals or the Conservation Commission has established jurisdiction, including but not limited to the following:
- (1) The Planning Board regulates the planting, retention and/or replacement of public shade trees, by means of the Board's authority over subdivision of land and/or the administration of unaccepted streets under Chapter 175, Parts 1 - 3 (formerly Chapter 5), of the Planning Board's Development Regulations;
 - (2) The Planning Board regulates planting, retention and/or replacement of on-lot trees on private residential land, where said property is subject to a special permit under the Zoning Bylaw, or issues recommendations emanating from a preliminary site development and use plan review;
 - (3) The Zoning Board of Appeals regulates planting, retention and/or replacement of on-lot trees on private nonresidential land, where said property is subject to a special permit under the Zoning Bylaw;
 - (4) The Conservation Commission regulates the retention and/or replacement of on-lot trees, by means of administering the Wetlands Protection Act (Chapter 131 and 310 CMR) within jurisdictional areas of the property.

§ 120-5. Tree Warden.

The Public Grounds Superintendent within the Department of Public Works shall serve as the Tree Warden unless another designee is appointed by the Selectmen.

- A. The duties or responsibilities of the Tree Warden shall conform to General Law Chapter 87 and shall include, but not be limited to, the following as may be further specified in this bylaw:
- (1) Management of all trees within public rights-of-way and adjacent to public buildings and commons; care and control of trees on Town property if so requested by the Selectmen, and on Town land owned by other departments such as Schools, Recreation and Conservation, if so requested by the respective department and approved by the Selectmen;
 - (2) Expending funds, in coordination with the Tree Committee, appropriated for planting trees on Town land under the jurisdiction of the Tree Warden;
 - (3) With recommendations from the Tree Committee, granting or denying and attaching reasonable conditions to all permits required under this bylaw;

- (4) Work in conjunction with the Tree Committee to seek grants or other assistance concerning the preservation and maintenance of trees in Town;
 - (5) Development of rules, regulations, tree inventory, manuals and other data, in conjunction with the Tree Committee, to carry out the purposes and intent of this bylaw for approval and promulgation by the Selectmen;
 - (6) Enforcement of this bylaw;
 - (7) Appointment or removal of Deputy Tree Wardens.
- B. Moreover, the Selectmen may authorize the Tree Warden to undertake other responsibilities consistent with the purposes and intent of this bylaw.

§ 120-6. Tree Committee.

- A. The Town shall have a Tree Committee that consists of seven members as appointed by the Selectmen. For the first appointments, three members will serve one-year terms; two members will serve two-year terms; and two members shall serve three-year terms. All members up for renewal will then serve three-year terms.
- B. The Tree Committee shall have the following duties and responsibilities as may be further specified in this bylaw:
- (1) Development of rules, regulations, tree inventory, manuals and other data, in conjunction with the Tree Warden, to carry out the purposes and intent of this bylaw, for approval and promulgation by the Selectmen;
 - (2) Permit the removal of certain trees on private property upon appeal, by an applicant;
 - (3) Public education and coordination with other Town Committees and civic groups to promote the purposes and intent of this bylaw;
 - (4) Work in conjunction with the Tree Warden to seek grants or other assistance concerning the preservation and maintenance of trees in Town.

§ 120-7. Public shade trees and Town trees.

- A. Scope. A public shade tree or Town tree may not be cut, pruned, removed or damaged by any person or the Town until and unless the Tree Warden issues a written permit pursuant to this section.
- B. Procedures. Any person seeking to prune or remove a public shade tree or Town tree shall submit an application to the Tree Warden in accordance with any application requirements issued by the Tree Warden. The Tree Warden shall hold a public hearing on applications for removal, at the expense of the applicant, in accordance with the provisions outlined within General Law Chapter 87. The permit issued by the Tree Warden may specify schedules, terms, and conditions, including requiring the planting of replacement trees.

- C. Planting of trees on Public Land. Any person seeking to plant a tree on public land under the jurisdiction of the Tree Warden must obtain written permission from the Tree Warden. Such permission may specify schedules, terms, and conditions as deemed appropriate by the Tree Warden.

§ 120-8. Protected trees.

- A. Scope. The removal of protected trees in conjunction with demolition or major construction is prohibited unless authorized by the Tree Warden, or Tree Committee as set forth below.
- B. Procedures. When major construction or demolition is planned, the owner of the property shall submit to the Building Commissioner as part of the application for a building or demolition permit a site plan drawn and stamped by a registered land surveyor showing all existing trees on the property of six-inch DBH or greater. **[Amended 4-4-2007 ATM by Art. 13]**
- (1) If any protected trees will be removed or damaged in connection with major construction or demolition, the owner of the property shall submit a proposal for tree removal and mitigation to the Building Commissioner with the application for a building or demolition permit. Additionally, if any protected trees were removed during the 12 months preceding the application for the building or demolition permit, a tree removal and mitigation proposal regarding the protected trees already removed shall be submitted to the Building Commissioner. The proposal shall satisfy the mitigation requirements set forth below and any rules, regulations or manuals promulgated by the Selectmen. The Selectmen shall set an application fee. Such fee shall be at least \$5 per DBH inch of protected tree to be removed. **[Amended 3-19-2008 ATM by Art. 37]**
 - (2) The Building Commissioner shall refer the tree proposal to the Tree Warden. The Tree Warden shall conduct a site visit. If the applicant's proposal is consistent with the mitigation requirements herein and the rules, regulations or manuals issued by the Selectmen, the Tree Warden will issue a permit within 10 business days of receipt by the Tree Warden of the proposal to authorize the tree work. If the proposal does not meet or satisfy these requirements, the Tree Warden shall so notify the applicant and deny the permit.
 - (3) An applicant may appeal the denial or grant of a tree permit to the Tree Committee. The Tree Committee shall conduct a public hearing on the appeal and shall give the public notice thereof, at the expense of the applicant. Public notice shall include all persons owning land within 300 feet of any part of applicant's land at least 14 days before said hearing. The Tree Committee shall rule within 20 days of the public hearing.
 - (4) Appeals of final decisions of the Tree Committee shall be to Superior Court and shall be limited to whether the decision was arbitrary or capricious.
- C. Mitigation. A protected tree shall not be removed unless at least one of the following provisions is satisfied:

- (1) Replanting of trees: such replanting shall be on the basis of 1/2 inch of caliper of new tree(s) for each inch of DBH of tree(s) removed, and each replanted tree must have a minimum caliper of three inches. The replanting shall occur no later than 12 months after completion of the construction work, either on applicant's land or on land abutting applicant's land with express approval of the owner of such abutting land;
 - (2) Contribution into the Lexington Tree Fund, provided such fund is annually reauthorized, or otherwise to the surplus revenue of the Town: such contribution shall be \$50 per DBH inch of protected tree or Town tree removed not already mitigated as per Subsection C(1); or **[Amended 3-31-2004 ATM by Art. 34; 4-4-2005 ATM by Art. 16]**
 - (3) The applicant demonstrates that the removal of a protected tree is desirable to enhance the landscaping on the lot, and that such removal does not negatively impact in an excessive manner on the character of the neighborhood or on the privacy enjoyed by abutters.
 - (4) All evergreens planted as replacement trees must be a minimum of six feet in height and may include, without limitation, pine, hemlock, spruce and fir. Low-growing evergreens shall not be accepted as replacement trees. **[Added 4-4-2007 ATM by Art. 13]**
- D. Trees not removed. Trees that are to be left on the site must be protected as specified in the Tree Management Manual (pages 19-20 and figures 9, 10 and 11). **[Added 4-4-2007 ATM by Art. 13]**
- E. Failure to protect trees not removed. Trees left on site must be protected; and if not done so as required by this bylaw, the Tree Warden may impose the following: **[Added 4-4-2007 ATM by Art. 13]**
- (1) The Town may undertake tree protection measures and bill for any labor and material charges incurred.
 - (2) The Town may require replacement plantings larger than three inches in diameter to replace trees damaged during construction.
 - (3) The Town may hire an arborist whose charges will be billed to the owner/builder to ensure that trees left on the site will survive and remain healthy.
 - (4) The Town may impose fines as per the fine schedule in § 120-10 of this bylaw.

§ 120-9. Emergencies and exemptions.

Provisions of this bylaw shall not apply to:

- A. Emergency projects necessary for public safety, health and welfare as determined by the Director of Public Works or the Town Manager;
- B. Trees that are hazardous as determined in writing by the Tree Warden;

- C. Invasive tree species as identified in the Tree Manual;
- D. Trees identified by the Commonwealth that pose a risk of disease or insect infestation.

§ 120-10. Enforcement.

- A. Any person violating this bylaw is subject to the penalties under Chapter 1, § 1-6 of the General Bylaws, General Law Chapter 87 (for violations concerning public shade trees) and other legal enforcement action by the Town. The Tree Warden is authorized to enforce the provisions of Chapter 1 of the General Bylaws and of General Law Chapter 87. Any other legal enforcement action shall be determined by the Selectmen in consultation with the Tree Committee, the Tree Warden and Town Counsel.
- B. Each instance in which a Town tree or a protected tree is removed without a tree permit shall constitute an offense under this bylaw. When Town trees or protected trees have been removed without a permit, mitigation (as outlined in § 120-8C of this bylaw) and the payment of fines (as outlined in the Fine Schedule at the end of this bylaw¹) shall be required. **[Amended 3-31-2004 ATM by Art. 34]**
- C. If mitigation and the payment of fines are completed in due time as determined by the Tree Warden, the project will be approved. If not completed, then each day beyond the determined and agreed upon completion date shall constitute a new and separate offense. **[Amended 3-31-2004 ATM by Art. 34]**

§ 120-11. Rules and regulations.

The Selectmen may promulgate, after public notice and hearing, rules and regulations to effectuate the purposes and intent of this bylaw. Failure by the Selectmen to promulgate such rules and regulations shall not act to suspend or invalidate the effect of this bylaw.

§ 120-12. Severability.

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

§ 120-13. Relationship to other laws.

Nothing in this bylaw shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing Town of Lexington bylaws or Commonwealth of Massachusetts laws.

1. Editor's Note: See Ch. 1, General Provisions, Art. II, Use and Construction, § 1-6, Noncriminal disposition.

§ 120-14. Funds. [Added 3-31-2004 ATM by Art. 34; amended 4-4-2005 ATM by Art. 16; 4-4-2007 ATM by Art. 13]

Collection of voluntary contributions under this bylaw shall be deposited into the Lexington Tree Fund, provided such fund is annually reauthorized, or otherwise to the surplus revenue of the Town. The Tree Warden, with input from the Tree Committee, will request use of these funds for tree planting, transplanting, and other tree-related needs. The request to expend these funds will be approved by the Board of Selectmen.

§ 120-15. Tree Management Manual. [Added 4-4-2007 ATM by Art. 13]

The Lexington Tree Management Manual will be used as the standard for tree planting, maintenance and protection in the Town.