

CHAPTER 153: TREE PRESERVATION

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GENERAL PROVISIONS

§ 153.01 EMERGENCIES.

In case of emergencies involving natural disasters, including but not limited to, hurricanes, windstorms, floods, freezes or other natural disasters, the requirements of this chapter may be waived by the Town Manager, and the authority granted hereunder may be exercised by the Town Manager without prior notice.

(Res. 2714, passed 6-6-13; Ord. 831, passed 6-6-13)

§ 153.02 PROTECTION POLICY.

(A) Every property owner shall take reasonable and necessary steps to prevent his or her trees from endangering life, property, or other vegetation on his or her own property, property of adjoining property owners, and/or all places open to the public.

(B) No person shall willfully injure or disfigure any tree growing on land owned, leased or controlled by the town.

§ 153.03 REMOVAL OF DISEASED, INFESTED OR DANGEROUS TREES.

(A) The Zoning Administrator or his or her designee shall have the authority to administer the provisions of this section. The Zoning Administrator or his or her designee may, upon consent of the owner, enter upon private lands for inspection of trees. In the absence of this consent, the Zoning Administrator or his or her designee shall seek authority from the courts, except in the event that a condition of extreme danger is known to exist, and there is reasonable cause to believe that delay would impose a serious imminent danger or hazard to person, property or other vegetation.

(B) Upon finding that any tree or part thereof constitutes a nuisance or is found to be diseased or infested with insects, and an immediate danger exists, the Zoning Administrator or his or her designee shall notify the property owner or occupant in writing, describing the condition, stating the actions necessary for correction and setting forth the time period in which the corrective action must be taken, based on the urgency thereof in the sole discretion of the Zoning Administrator or his or her designee.

(C) The method of service shall be in one or more of the following ways:

- (1) By personal delivery of the order to the person responsible; or
- (2) By mailing the order by registered mail to the last known address of the owner of the premises.

(D) In the event that the responsible party or parties fail to comply within the time limits as above set forth, the Zoning Administrator or his or her designee, at the owner's expense, shall cause the removal of the tree(s) or parts thereof, and treatment thereof as may be necessary, including to prune or remove any or all of a diseased tree. All expenses incurred, including labor, equipment, materials and reasonable attorney fees shall become a recordable lien against the subject property.

(E) A tree shall be deemed a nuisance if it or any part of it:

- (1) Appears dead, dangerous or likely to fall;
- (2) Is not pruned to a height of 14 feet above a public easement or street to accommodate high profile vehicles;
- (3) Is not pruned to a height of ten feet above the sidewalk;
- (4) Obstructs a curb, gutter, street or sidewalk;
- (5) Interferes with sewers or underground utilities;
- (6) Is in dangerous proximity to interfere with public utilities;
- (7) Interferes with a public improvement project in process; or
- (8) Any diseased or infested tree which, after treatment, in the Zoning Administrator or his or her designee's sole opinion is deemed to be dead, dying or in a dangerous condition, unsafe or likely to cause damage.

(F) Any lien created pursuant to this section shall be enforceable pursuant to § 91.44 (assessments) and applicable state law.

§ 153.04 PROHIBITED REMOVAL OR CUTTING OF NATIVE TREES.

(A) No person shall remove or cause to be removed or intentionally destroy or injure any native tree in excess of six inches in diameter, measured four and a half feet above ground level, from an undeveloped or developed parcel of land without first obtaining a permit from the Community Development Department, except when necessary for construction of streets, driveways, utility lines and structures approved in a building permit.

(B) Prior to any permit being issued for the removal of a native tree, the applicant shall provide a detailed explanation of why the tree needs to be removed. The Zoning Administrator may also require submission of photos; a diagram plotting the tree or trees to be removed and those to remain; and details of the applicant's methods to control soil erosion, maintain drainage and abate dust problems.

(C) The applicant shall have the burden of providing sufficient information and details to enable the Zoning Administrator to review

the tree removal permit application. If the Zoning Administrator is satisfied that the applicant's proposal furthers the public welfare, or is not detrimental to the subject parcel or adjoining parcels, then the permit shall be issued within two working days for single-family residential parcels and five working days for commercial parcels.

(Res. 2714, passed 6-6-13; Ord. 831, passed 6-6-13)

§ 153.05 APPEALS.

Any person adversely affected by a decision under the provisions of this chapter may appeal the decision to the Board of Adjustment.

(Res. 2714, passed 6-6-13; Ord. 831, passed 6-6-13)

TREE PROTECTION

§ 153.30 TREE PROTECTION POLICY.

(A) Every property owner shall take such steps as are reasonable and necessary to prevent his/her trees from endangering other vegetation on his/her property, that of adjoining property owners, and/or all places open to the public. No person shall willfully injure or disfigure any tree growing on land owned, leased or controlled by the town.

(B) No person, entity or corporation shall remove, or cause to be removed, trees that are larger than eight inches in diameter, except as provided for herein.

(’82 Code, § 7-9-10) (Ord. 333, passed 3-9-89)

§ 153.31 PERMIT FOR REMOVAL OF TREES.

(A) *Permit required.*

(1) No person, entity or corporation shall remove, or cause to be removed, any healthy trees eight inches in diameter or greater which are growing on private property in any zoning district, except as provided herein under § 153.32.

(2) Every tree which is eight inches in diameter or more, removed on underdeveloped land, shall be replaced with a four inches diameter trunk tree minimum species of the town forester's choice at the affected site or at the option of the Forester purchased for the town's "Tree Bank" program.

(’82 Code, § 7-9-11)

(B) *Application for permit.*

(1) Applications for permission to cut or remove a tree or trees, pursuant to division (A) above, shall be submitted to the Zoning Administrator on forms provided by him. There shall be no fee for the application or for a permit. The Zoning Administrator or his designated representative shall review the application and shall render a decision thereon in conformity with good forestry practice and the following standards:

(a) The health or condition of the tree or trees.

(b) Whether or not the removal of the tree or trees is justified by reason of its poor health or a dangerous condition of the tree or trees and/or construction or other proposed improvements on private property.

(c) Whether planned improvements on the private property could be modified so as to permit the non-removal of the tree or trees without incurring any unreasonable expense to the person developing the property.

(2) Each application shall include a plot plan showing the location of the tree or trees on the subject property and shall further include a statement of the reason for the request for removal.

(’82 Code, § 7-9-12)

(C) *Issuance of permit.* If the Zoning Administrator finds, pursuant to the standards expressed in this chapter, that a permit for the removal of a tree or trees should be granted, he shall grant the same within a reasonable time, not to exceed five working days from the receipt of the application. He may grant a permit in whole or in part, or attach conditions thereto as will effectuate the purposes of this chapter. Any permit granted hereunder is nontransferable and shall expire six months from the date of issuance. In the event a permit for tree removal is granted, in order to enable the applicant to carry out some project of development or improvement of his property, the permit shall be effective only in connection with the actual accomplishment of the project.

(`82 Code, § 7-9-13)

(Ord. 333, passed 3-9-89)

§ 153.32 REMOVAL OF DISEASED, INFESTED OR DANGEROUS TREES.

(A) The Forester shall have the authority to regulate the provisions of this section. The Forester may enter upon private lands, as may be required, for inspection of trees and shall seek the consent of the owner when reasonable to do so. In the absence of same, the Forester shall seek authority from the courts, except in such event that a condition of extreme danger be known to exist, and there is reasonable cause to believe that delay would impose a serious imminent danger or hazard to person, property or other vegetation.

(B) Upon finding that any tree or part thereof constitutes a nuisance or is found to be diseased or infested with insects, and an immediate danger exists, the Forester shall notify the property owner or occupant in writing, describing the condition, stating the actions necessary for correction and setting forth the time period in which the corrective action which must be taken, based on the urgency thereof in the sole discretion of the Forester.

(C) The method of service shall be in one or more of the following ways:

- (1) By personal delivery of the order to the person responsible; or
- (2) By mailing the order by registered mail to the last known address of the owner of the premises.

(D) In the event that the responsible party or parties fail to comply within the time limits as above set forth, the Forester, at the owner's expense, shall cause the removal of the tree(s) or parts thereof, and treatment thereof as may be necessary, including to prune or remove any or all of a diseased tree. All expenses incurred, including labor, equipment, materials and reasonable attorney fees shall become a recordable lien against the subject property.

(E) A tree shall be deemed a nuisance if it or any part of it:

- (1) Appears dead, dangerous or likely to fall;
- (2) Is not pruned to a height of 14 feet above a public easement or street to accommodate high profile vehicles;
- (3) Is not pruned to a height of ten feet above the sidewalk;
- (4) Obstructs a curb, gutter, street or sidewalk;
- (5) Interferes with sewers or underground utilities;
- (6) Is in dangerous proximity to interfere with public utilities;
- (7) Interferes with a public improvement project in process;

(8) Any diseased or infested tree which, after treatment, in the Forester's sole opinion is deemed to be dead, dying or in a dangerous condition, unsafe or likely to cause damage.

(`82 Code, § 7-9-14) (Ord. 333, passed 3-9-89)

§ 153.33 PROHIBITED REMOVAL OR CUTTING OF NATIVE TREES.

(A) No person, entity or corporation shall remove or cause to be removed or intentionally destroy or injure any native tree in excess of six inches in diameter, measured 4.5 feet above ground level, from an undeveloped or developed parcel of land without first obtaining a permit from the Building Department, which shall bear the approval of the Zoning Administrator or his representative, except when necessary for construction of streets, driveways, utility lines and structures approved in a previously obtained building

permit. Prior to any permit being issued for the removal of a native tree, the applicant shall provide a detailed explanation of why the tree needs to be cut or removed. The Zoning Administrator may also require submission of accurate photos and a diagram, plotting the tree or trees to be removed and those to remain, plus details of the applicant's methods to control soil erosion, maintain drainage and abate dust problems.

(B) The applicant shall have the burden of providing sufficient information and details to enable the Zoning Administrator to review the tree removal permit application. If the Zoning Administrator is satisfied that the applicant's proposal furthers the public welfare, or is not detrimental to the subject parcel or adjoining parcels, then the permit shall be issued within two working days for single-family residential.

(C) Any decision of the Zoning Administrator may be appealed to the Planning and Zoning Commission and to the Council for final review and action. On applications concerning commercial properties or multi-family, the Zoning Administrator may hold public hearings to provide public input prior to rendering his decision. In no event shall more than 45 days elapse between the date the completed application is submitted and the date the final decision of the Zoning Administrator is rendered.

(`82 Code, § 9-7-1) (Ord. 337, passed 9-14-89)

ADMINISTRATION AND ENFORCEMENT

§ 153.45 RESPONSIBILITIES OF ZONING ADMINISTRATOR.

The Zoning Administrator or his designated representative shall supervise all tree cutting or trimming for which a permit has been granted.

(`82 Code, § 7-9-17) (Ord. 333, passed 3-9-89)

§ 153.46 RESPONSIBILITIES OF FORESTER.

The responsibilities of the Forester are to provide expertise and enforce regulations for the protection of and removal of diseased, infested and/or dangerous trees, as herein provided.

(`82 Code, § 7-9-18) (Ord. 333, passed 3-9-89)

§ 153.47 RESPONSIBILITIES OF BUILDING INSPECTOR.

It shall be the responsibility of a Building Inspector to inform every applicant for a building or grading permit of the applicable restrictions of this chapter. No building or grading permit shall be issued by the town for any property subject to the provisions of this chapter unless a permit for tree removal, if required hereunder, is obtained concurrently. If a building permit is issued in the absence of a tree removal permit, and a tree removal permit is necessary under this chapter, the building permit shall be deemed void until such time as a permit for tree removal is obtained by the owner of the property.

(`82 Code, § 7-9-19) (Ord. 333, passed 3-9-89)

§ 153.48 APPEALS.

Any person adversely affected by a decision in the enforcement or interpretation of any terms or provisions of this chapter may appeal the decision to the Planning and Zoning Commission with final appeal and authority vested in the town.

(`82 Code, § 7-9-21) (Ord. 333, passed 3-9-89)

§ 153.99 PENALTY.

(A) Any person who violates any provision of this chapter shall be subject to a fine up to \$2,500. Each instance of a tree which is

removed, damaged or destroyed will constitute a separate offense.

(`82 Code, § 7-9-20) (Ord. 333, passed 3-9-89)

(B) Any person removing a native tree may, in addition to any other penalties be required to replenish the affected parcel with a new native tree for each native tree removed.

(`82 Code, § 9-7-2) (Ord. 337, passed 9-14-89; Am. Ord. 756, passed 3-5-09; Am. Res. 2714, passed 6-6-13; Am. Ord. 831, passed 6-6-13)