

ARTICLE 5. BATH COMMUNITY FORESTRY ORDINANCE (Ord. 6/24/09)

Section 6-101 Purpose

The purpose of this ordinance is to promote and protect the public health, safety and general welfare by providing for the regulation of the planting, protection, maintenance, and removal of trees, shrubs, and other plants on property of the City of Bath, including city-owned rights-of-way.

Section 6-102 Administration and Enforcement

It shall be the duty of the Director of Cemeteries, Parks and Recreation and/or his designee to enforce and administer the provisions of this ordinance. Any person may appeal, in writing, any ruling or order issued by the Director of Cemeteries, Parks and Recreation and/or his designee by filing a notice of appeal with the City Manager within seven (7) days of date of the ruling or order.

Section 6-103 Bath Community Forestry Committee

A. Establishment: There is hereby established a Bath Community Forestry Committee.

B. Duties: The Committee shall have the duty and responsibility to oversee the administration and implementation of this ordinance, the purposes and activities of the Bath Community Forestry Trust, the Bath Community Forestry Management Plan and such other activities as affect the Bath community forest.

C. Ex Officio Members: The Director of Cemeteries, Parks and Recreation and the City Arborist serve the Committee as non-voting ex officio members.

D. Compensation: All members of the Committee shall serve without compensation.

Section 6-104 Applicability

The terms and provisions of this ordinance shall apply to all public trees located on public property, including city rights-of-way.

Section 6-105 Definitions

For purposes of this Article, the following terms shall have the meaning indicated. Terms not defined shall have their usual and customary meaning unless otherwise indicated by their use and context. Where the word "shall" is used, it is considered mandatory and not merely directory.

Abutter is one whose property touches or adjoins along a boundary or with a projecting part of the property of another.

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Forestry Division is the designated agency of the municipality of Bath under whose jurisdiction the public trees fall. This is a Division of the Cemeteries, Parks and Recreation Department.

Person is any individual, firm, partnership, association, corporation, company, organization, or legally organized entity of any kind.

Property Owner shall mean the person owning such property as shown by the City of Bath tax assessor's records, or the most recent transferee(s) as reflected in the indices or records of the Sagadahoc Country Registry of Deeds.

Public Hazard is a condition of any public tree or any other non-public tree, shrub or plant or any portion of a public tree or any other non-public tree, shrub or other plant which constitutes a hazard to natural persons or property or harbors insects or disease which constitutes a potential threat to other public trees or any other non-public trees, shrubs, or plants within the City.

Public Property shall include all property owned, leased, or occupied by the City of Bath.

Public Tree shall include all trees, shrubs and other plants on public property, including City rights-of-way.

Skeletal Soils are defined as a soil matrix mixture of gap-graded gravels composed of: crushed stone narrowly graded from ¾ - 1 ½", highly angular and with no fines; clay loam based on USDA soil classification system, with organic matter ranging between 2% and 5%; and a hydrogel added in a small amount to act as a tackifier, preventing the separation of the stone and soil during mixing and installation. The mixture ratio shall be 4:1.4 of stone:clay loam. The mixture shall be installed and compacted to achieve a compaction density to within 95% Proctor density.

Street or Highway is the entire width of every public way or right-of-way when all or any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular or pedestrian traffic.

Topping is the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

Tree Sizes:

Large Trees are designated as those tree species that habitually attain a mature height of forty-five feet (45') or more.

Medium Trees are designated as those tree species that habitually attain a mature height of thirty (30) to forty-five feet (45').

Small Trees are designated as those tree species that habitually attain a mature height of

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thirty feet (30') or less.

Section 6-106 Permits

A. Permit Required: Any person engaged in the business or occupation of pruning, planting, transplanting, treating, or removing public trees shall be required to secure a permit in advance of any such activity, said permit to be issued by the Director of Cemeteries, Parks and Recreation and/or his designee.

B. Permit Requirements:

(1) Each applicant shall possess and show proof of a current Maine Arborist License, and be a Certified Nurseryman, Tree Care Industry Association (TCIA) accredited, or International Society of Arboriculture (ISA) certified.

(2) Each applicant shall carry insurance furnishing benefits in accordance with the State of Maine General Laws or such other worker's compensation requirement as may pertain. The applicant shall also carry insurance coverage for employer's liability, general liability, including broad form coverage, and automobile liability, in an amount of not less than One Million Dollars (\$1,000,000.00), as well as insurance covering property damage in an amount not less than One Hundred Thousand Dollars (\$100,000.00) indemnifying the City or any person injured or damaged resulting from the pursuit of such endeavor as herein described.

(3) Any permit issued pursuant to this Section shall be revoked if the applicant's licensure identified in Section 6-106(B)(1) above is suspended or otherwise terminated, or if the applicant's required insurance coverage identified in Section 6-106(B)(2) above expires or lapses.

(4) Any permit issued shall run for a period of no longer than one (1) year from the date of issue, unless otherwise specified or terminated pursuant to Section 6-106(B)(3) above.

C. Notice Requirement: Prior to initiating any activity, the permittee shall notify the

Director of Cemeteries, Parks and Recreation and/or his designee as to the location of work on any public tree no less than forty-eight (48) hours prior to the commencement of the work.

D. Exception: Pruning, planting, removing or any other tree work done on public trees by volunteers or City employees under the supervision and operation of the Director of Cemeteries, Parks and Recreation and/or his designee, shall not require a permit under this section. Work on public trees by an electric utility company shall not require a City permit.

Section 6-107 Contract Supervision and Inspection

It shall be the duty of the Director of Cemeteries, Parks and Recreation and/or his designee to supervise and enforce all provisions of any contracts executed by or on behalf of the City concerning work within the scope of this ordinance.

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Section 6-108 Landscaping

Landscape plans and landscaping on Public Property and landscape plans and landscaping submitted for approval by the Bath Planning Board shall be reviewed by the Director of Cemeteries, Parks and Recreation and/or his designee with the assistance of the Bath Community Forestry Committee. Any landscaping plans submitted for approval by the Bath Planning Board shall include a Tree Preservation Plan reviewed and approved by the Director of Cemeteries, Parks and Recreation and/or his designee. Tree Preservation Plans submitted shall follow the City's Tree Preservation Guidelines.

Section 6-109 Specifications and Standards

American National Standards Institute (ANSI) Contract Specifications or any amendments or substitutes therefore shall be followed and enforced as a minimum standard for planting. All pruning shall meet, as a minimum standard, the Pruning Standards for Shade Trees published by the National Arborist Association or similar national organization. The Forestry Division may establish policies, procedures, or regulations which shall also be followed. Copies of these materials will be available to the general public at the Office of the Director of Cemeteries, Parks and Recreation.

Section 6-110 Tree Planting, Maintenance, and Removal

A. Authority to Plant or Remove Trees on Public Property

Trees planted on public property by abutting property owners or other persons shall be selected and located in accordance with Tree Planting, Section 6-110(B-G) of this ordinance and in accordance with Forestry Division policy. Notification shall be made to the Director of Cemeteries, Parks and Recreation and/or his designee and approval given, prior to any planting. In addition, Dig Safe, the Bath Public Works Department and the Bath Water District shall be consulted before any planting.

B. Tree Species To Be Planted On Public Property

The Recommended Tree Species List published by the Maine Urban & Community Forestry Council or its successor shall be used. This list shall be made available to the general public at the Office of the Director of Cemeteries, Parks and Recreation, and its use shall be encouraged for private planting. At the discretion of the Director of Cemeteries, Parks and Recreation and/or his designee resources identifying trees in similar hardiness zones may be relied upon.

C. Spacing and Minimum Area/Volume For Planting On Public Property

(1) Except in special plantings designed or approved by the Director of Cemeteries, Parks and Recreation and/or his designee, the spacing of City-owned trees shall be in accordance with the species sizes listed under Definitions, Section 6-105, of this ordinance, and no trees may

be planted closer together than the following:

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Species Size No less than: tree spacing

Small Trees 20 ft.

Medium Trees 30 ft

Large Trees 40 ft.

(2) Except in special plantings designed or approved by the Director of Cemeteries, Parks and Recreation and/or his designee, any tree planted must have an area of unrestricted soil surface open to air and water as follows:

Species Size No less than: area

Small Trees 36 sq. ft.

Medium Trees 48 sq. ft.

Large Trees 60 sq. ft.

(3) Except in special plantings designed or approved by the Director of Cemeteries, Parks and Recreation and/or his designee, any tree planted within a City right of way or adjacent to a sidewalk, shall have an adequate soil volume in relation to the tree's mature size as follows:

Species Size No less than: soil volume

Small Trees 36 cu. ft.

Medium Trees 48 cu. ft.

Large Trees 60 cu. ft.

These soil volumes can be achieved by using skeletal soils, as defined in 6-105, in the engineering of sidewalk design or renovation. All such designs shall be submitted to the Director of Cemeteries, Parks and Recreation and/or his designee for approval prior to any plantings.

D. Distance from Curb, Sidewalk, Street Corner, Driveway and Building on Public Property

The distance trees may be planted from curbs or curb-lines, sidewalks, street corners, driveways, buildings and sidewalks shall be in accordance with the species sizes listed in Definitions, Section 6-105, of this ordinance. No trees may be planted closer to any curb, sidewalk, driveway, building or street corner than the following:

Species Size Distance to Curb or

Sidewalk

Distance to

Driveway or

Building

Distance to

Street Corner

Small Tree 2 ft. 10 ft. 20 ft.

Medium Tree 3 ft. 10 ft. 20 ft.

Large Tree 4 ft. 10 ft. 20 ft.

E. Utilities and Hydrants

No public tree shall be planted within ten feet (10') of any hydrant or any underground utilities. Only small trees may be planted under or within 10 feet (10') of any overhead utility

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wire.

F. Public Tree Care

(1) The Forestry Division shall have the right to prune, spray, maintain, and remove public trees as may be necessary to ensure public safety or to preserve or enhance the beauty of public places. Spraying shall be undertaken in accordance with State laws. Notice of intent to remove, extensively prune or spray any public tree in a City-owned right-of-way shall be made in writing to abutters of that right-of-way. Any objecting person shall be allowed seven (7) days from the date of notice to request in writing a public hearing concerning the proposed work. Upon receipt of written request from any such abutter, the Director of Cemeteries, Parks and Recreation and/or his designee shall hold a public hearing concerning the proposed work within 14 days of the date of said request. Said work shall not occur until after said public hearing.

(2) The Forestry Division shall have the right to prune any public tree if, in the opinion of the Director of Cemeteries, Parks and Recreation and/or his designee, it interferes with visibility of any traffic control device or intersection, or interferes with pedestrian or vehicular traffic. A clearance of fourteen feet (14') above street surface or eight feet (8') above the sidewalk surface shall be maintained. If such obstructing public tree is on private property, the Director of Cemeteries, Parks and Recreation and/or his designee shall notify the property owner of the intent to prune. The property owner shall have a right to object in writing in accordance with the requirements of Section 6-110(F)(1) above, and a public hearing shall be held in accordance with the terms thereof.

(3) The Forestry Division may remove any public tree or part thereof which by reason of its nature damages or otherwise impairs sewers, electric power lines, gas lines, water lines, or other services, or is affected by an injurious fungus, disease, insect, or other pest. In each case, the abutters will be notified twenty-four (24) hours in advance. The abutters shall have a right to object in writing in accordance with the requirements of section 6-110(F)(1) above and a public hearing shall be held in accordance with the terms thereof.

(4) In case of an emergency as determined by the Director of Cemeteries, Parks and Recreation and/or his designee, work may be performed without written notification.

G. Tree Topping

It shall be unlawful for any person or the City to top any public tree. Trees severely damaged by storms or other causes may be exempted from this prohibition at the determination of the Director of Cemeteries, Parks and Recreation and/or his designee. In lieu of topping, public trees under utility wires or other obstructions where other pruning practices are impractical or not considered aboriculturally sound may be removed by the Director of Cemeteries, Parks and Recreation and/or his designee.

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Section 6-111 Protection of Trees on Public Property

A. During Excavation or Construction

All trees near any excavation or construction of any building, structure, or street work, shall be guarded with a substantial fence, frame, or box centered around the tree not less than four feet (4') high and enclosing an area of sixty-four square feet (64 sq. ft.), or at a distance in feet from the tree equal to the diameter of the trunk in diameter breast height (D.B.H.), whichever is greater, and all building material, dirt, or other debris shall be kept outside the barrier.

No person shall excavate any ditches, tunnels, trenches, or lay any drive within the radius of ten feet (10') from any city-owned tree without first obtaining a written permit from Director of Cemeteries, Parks and Recreation and/or his designee.

B. Placing Materials on Public Property

No person shall deposit, place, store, or maintain upon any public property anything which may impede the free passage of water, air or fertilizer to the roots of any tree growing therein, except by written permit of the Director of Cemeteries, Parks and Recreation and/or his designee.

C. Abuse or Mutilation of Trees On Public Property

Under no circumstance shall any person cut, carve, transplant, or remove any public tree; attach any rope, wire, nails, advertising posters, or other contrivance to any public tree; allow any gaseous, liquid or solid substance which is harmful to trees to come in contact with any public tree; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any public tree.

D. Destruction of Trees on Public Property

Any public tree deemed a public hazard or destroyed as a consequence of negligence, gross negligence, or intentional acts shall be valued by the Director of Cemeteries, Parks and Recreation and/or his designee as the sum of any removal and disposal costs, plus the replacement costs of a minimum two inch (2") caliper tree, its installation, care and maintenance, including watering, for the first three (3) years after planting. If the location of the destroyed tree does not meet the planting requirements of 6-110, the Director of Cemeteries, Parks and Recreation and/or his designee may replace the public tree at another location of his choosing.

Section 6-112 Interference With Forestry Division Employees

It shall be unlawful for any person to prevent, delay, or interfere with any Forestry Division employee, volunteer, or contractor hired by the Forestry Division, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any public tree, as authorized in this ordinance Section 6-110.

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Section 6-113 Violations

Any failure to comply with the terms, conditions, provisions, or any notice issued pursuant to this ordinance, shall constitute a violation.

Section 6-114 Penalties

Any person who violates any provision of this ordinance shall be subject to a fine payable to the City of Bath of up to \$100.00 each day of the violation. No penalty shall be assessed for failure to act during any notice period, unless remediation ordered by any notice is not accomplished within the designated timeframe.

In addition, if, as a result of the violation of any provision of this ordinance, the injury, mutilation, or death of a public tree occurs, the penalty shall include the replacement value of the public tree as calculated in accordance with Section 6-111(D) hereof.

Section 6-115 Severability

Should any section, clause, or provision of this ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the ordinance as a whole, or parts thereof, other than the part so declared to be invalid.

REFERENCES:

Buchanan, Tim, City Forester, City Forestry Standards and Specification. 1986. [Municipal Code Fort Collins, Colorado](#).

1919 Code of the [City of Bath, Maine](#) re: City Forester.

Memo from Bath, Maine City Manager, Larry D. Cilley, to Therriault & Golin, City Solicitors, dated 5/9/78, re: Clarification of City Forester's Responsibilities and Authorities.

Memo from City Manager, Duncan Ballantyne, to Denis Hebert, dated 6/27/93, re: Transfer of Forestry Division to Cemeteries and Parks Department, Bath, Maine.

Municipal Tree Ordinance Manual. Revised Edition 1990. International Society of Arboriculture in cooperation with the Municipal Arborist and Forester Society, Savoy, IL.

Sample Municipal Tree Ordinance designed for mid-western communities. (General)

Sample Municipal Tree Ordinance for Stevens Point, Wisconsin.

South Portland, Maine, Tree Ordinance. 1975.

Maine State Law Title 30-A, Sections 3101, 3252-3264, 3282-3291; Title 12, Sections 8101-8305; Title 23, Sections 2702 and 2952.

Tree City USA Bulletin, No. 9, How to Write a Municipal Tree Ordinance. 1993. The National Arbor Day Foundation, Nebraska City, Nebraska.

Waterville, Maine, Tree Ordinance. 1990.

Westbrook, Maine, Tree Ordinance. 1972.

Tree Preservation Guidelines, 2006, and any amendments thereto