

## **ORLEANS GENERAL BYLAW, CH. 127: PUBLIC TREES**

### Chapter 127 – Public Trees

#### 127-1. Purpose

The purpose of this bylaw is to promote a diverse, healthy and sustainable community forest in order to provide for the general welfare of Orleans' citizens. Public trees define public spaces and create a civic identity. This bylaw protects public trees located on public rights of way from removal or preventable damage.

#### 127-2. Definitions

Diameter breast height (DBH): The diameter of the trunk of a tree 4½ feet above the existing grade at the base of the tree.

Drip line: A vertical line running through the outermost portion of the crown (outer branch tips) of a tree and extending to the ground.

Public tree: Any tree located within the boundaries of a public right of way.

Remove (including removing and removal): The cutting down of any public tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a public tree, including, but not limited to, excessive or improper pruning, excavation, or construction damage.

#### 127-3. Applicability

This bylaw applies to all public trees. The Tree Warden shall have jurisdiction over all public trees. This bylaw is intended to supplement Chapter 87 of the Massachusetts General Laws, known as the Shade Tree Act.

#### 127-4. Activities Requiring a Permit

- A. Planting a tree on public property or right-of-way
- B. Removal of a public tree
- C. Pruning of a public tree, including root pruning or disturbance
- D. Construction activities within the drip line of a public tree that may be damaging to the tree.

#### 127-5. Prohibited activities

- A. Carving
- B. Breaking of limbs
- C. Poisoning
- D. Cutting or digging of roots
- E. Girdling, nailing
- F. Posting of signs
- G. Topping or otherwise damaging
- H. Injuring or otherwise putting public trees at risk

127-6. Emergencies

Pruning or removal is allowed without a permit for any public tree which is determined by utility or emergency response officials to create a public hazard so as to immediately endanger the public health, safety or welfare or cause an immediate disruption of public services. A written record shall be completed within a reasonable time and kept on file with the Tree Warden.

127-7. Permit and Application process

A person who wishes to initiate any activity affecting a public tree for which a permit is required shall make application to the Tree Warden. Applications are available at the Town Clerk, and office of the Tree Warden. There is no fee for filing an application.

In the case of a proposed removal, a public hearing will be required. For activities except removal, the Tree Warden shall issue or deny the permit within 14 business days of receipt of a completed application. A permit will be valid for one hundred twenty (120) days from issuance unless specified in the permit.

Where a public hearing is required, the Tree Warden shall cause a notice of the time and place of the hearing for the removal of public trees, which notice shall identify the size, type and location of the public trees to be cut down or removed, to be posted in two or more public places in the Town of Orleans and upon the tree at least seven days before such hearing and published in a newspaper of general circulation in the Town of Orleans once in each of two successive weeks, the first publication to be not less than seven days before the day of the hearing or if no such local newspaper exists then in accordance with the provisions of M.G.L. Chapter four, Section six; provided however, that when a public hearing must be held under the provisions of this section and under M.G.L. Chapter forty, Section fifteen C prior to the cutting or removal of a tree, such hearings shall be consolidated into a single public hearing before the Tree Warden and the Planning Board. Cost for posting and notice shall be borne by the applicant.

127-8. Approval Criteria

The criteria for granting removal of a public tree, after a public hearing, are as follows:

- A. The public tree interferes with structures, utilities, streets, sidewalks or proposed necessary improvements, and there is no alternative to removal;
- B. The public tree is dead, diseased, 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
- C. The removal of the public tree is necessary and/or desirable as determined by the Tree Warden.

The Tree Warden shall not grant a permit for the cutting down or removal of a public tree if, at or before a public hearing as provided in this section, objection in writing is

made by one or more persons, unless such cutting or removal or permit to cut or remove is approved by the Board of Selectmen.

#### 127-9. Tree replacement

The removal of a public tree shall require its replacement, which shall be provided as follows.

- A. 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 public tree that was removed. Installation shall be included.
- B. In the event that a tree of equivalent size cannot be obtained or is not appropriate, multiple smaller replacement trees may be used if approved by the Tree Warden.
- C. If multiple smaller trees are not approved, a payment to the Town of the value of the tree, as determined by a qualified arborist, shall be made.

Replacement may be waived if the Tree Warden finds it is in the interest of the Town to remove the subject tree(s).

#### 127-10. Waivers

The requirements of this bylaw may be waived by the Tree Warden within a specified period of an emergency such as a hurricane, windstorm, flood or other natural event.

#### 127-11. Enforcement and Penalties

Any person who violates any of the provisions of this bylaw shall be notified by the Tree Warden of the specific violation, including a time frame to address the violation and penalties.

Any person who removes or alters a public tree without a permit shall be assessed a penalty equal to the cost of replacing the tree in addition to the fixed penalty amount described below:

- A. Removal without a permit or performing prohibited activities - \$300 per instance
- B. Failure to obtain a permit for activities requiring a permit, or prohibited activities other than removal of a tree - \$300 per instance

#### 127-12. Appeal

Any decision of the Tree Warden under this section may be appealed to the Board of Selectmen. Said 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 shall make a final decision on the matter within thirty (30) calendar days from the date of receipt of the appeal request.

#### 127-13. Severability

Should any part or provision of this by-law be determined by a court of law to be invalid, such determination shall not affect the validity of the by-law as a whole nor any part thereof other than the part found invalid.