

# Farmington Maine

## Municipal Tree Ordinance

### 19-1.1 Title

This ordinance shall be known and cited as the Town of Farmington Tree Ordinance and will be referred to herein as “this ordinance”.

### 19-1.2 Authority

This ordinance is adopted pursuant to the enabling of Article VIII, Part 2, Section 1, of the Maine Constitution and the provisions of 30-A M.R.S §3001 et. Seq. (Home Rule) and §3261 et. Seq. (Conservation Commissions).

### 19-1.3 Purpose

Whereas the Town of Farmington recognizes the value of its public trees in providing a positive quality of life in the community, the Town has put forth a Community Tree Ordinance. The purpose of this ordinance is to promote and protect public health, safety, and general welfare by providing clear guidance to Town officials, contractors, and individuals regarding planting, protection, maintenance, care and removal of trees, shrubs, and other vegetation on the Town of Farmington properties, including Town-owned rights of way. The Town Selectboard herein delegates the authority and responsibility for managing public trees, maintains a Conservation Commission per Maine statute, establishes practices governing the planting and care of trees on public property, and makes provision for the emergency removal of trees on private property under certain conditions.

### 19-1.4 Applicability

Areas subject to the Ordinance: All streets, highways, parks or other grounds owned by the Town, including any Town-owned right-of-way along public roads (“Public Property”).

Activities subject to the ordinance: Planning, planting, treatment, preservation, maintenance, care and removal of trees on Public Property within the Town of Farmington. Any work on Public Trees shall comply with the tree regulations regardless of who performs the work.

### 19-1.5 Definitions.

As used in this Article, the following words and phrases shall have the meanings indicated:

- A. Caliper** - Tree Caliper means an American National Standards Institute (ANSI) standard for the measurement of nursery trees and shall be used for trees 12” in Diameter at Breast height (DBH). The caliper measurement of a trunk shall be taken 6” above the ground for trees up to and including a 4” caliper size at that height. If the caliper at 6” above ground exceeds 4”, the caliper measurement should be taken at 12” above the ground. For trees above 12” diameter, DBH is used.
- B. Central Leader** - Referred to as the leader or dominant leader. It is a vertical continuation of the main trunk, beginning above the highest lateral branch and extending to the top of the tree.
- C. Diameter at Breast height (DBH)** - The measurement of a tree’s trunk diameter in inches at breast height (4.5’) above ground level at the tree’s base. For trees with less than 4.5’ of clear trunk, the diameter shall be of the largest leader measured 4.5’ above ground level. For multi-trunk trees, it shall be the sum of the diameter of the individual trunks measured 4.5’ above ground level.
- D. Damage** – any injury to or destruction of a tree, including but not limited to: uprooting; severance of all or part of the root system or main trunk; storage of material on or compaction of surrounding soil; a substantial change in the natural grade above a root system or around a trunk; surrounding the tree with impervious paving materials; or any trauma caused by accident or collision.
- E. Park** - An area of land owned and managed by the Town and set aside for recreation.
- F. Property Owner** - A person or business entity with a legal or equitable interest in a property (as shown by the Town Assessor’s list)

**G. Pruning** - A horticultural practice of selectively cutting/removing specific portions of a tree (such as roots, buds, branches) that are dead, undesirable, overgrown, or trimming for healthy plant development and aesthetic purposes. Pruning can be considered preventive maintenance.

**H. Public Nuisance** – any tree, or limb thereof, that has an infectious disease or insect; is dead or dying; obstructs the view of traffic signs or the free passage of pedestrians or vehicles; or threatens public health, safety, and welfare, and which constitutes a threat to other public trees or any other non-public trees, shrubs, or plants within the town. A tree or tree part that has defects or structural weaknesses that pose a risk upon its failure of causing personal injury or death or damage property, public or private.

A tree becomes a potential hazard when its woody structure is weakened by one or more defects, which decrease its structural integrity and increase its potential for failure. Defects are visible signs that a tree has failed, is failing, or has the potential to fail. There are seven main categories of defects:

1. Cracks,
2. Weak branch unions,
3. Stem or branch decay,
4. Cankers, infectious disease, insect problems,
5. Dead trees, tops or branches,
6. Root problems, and
7. Poor tree Architecture.

As defined by the International Society of Arboriculture (ISA), a hazard tree must meet three (3) criteria:

1. The tree is sufficiently large enough to cause damage should it fall;
2. The tree has a target that would be damaged should it fall;
3. The tree has a condition that would make it likely to fall.

Certain Trees Declared a Nuisance:

- (a) Any tree, or limb thereof, on private property determined by the Department Head and/or the Conservation Commission to have contracted a lethal, communicable disease or insect; to be dead or dying; to obstruct the view of traffic signs or the free passage of pedestrians or vehicles; or that threatens public health, safety, and welfare is declared a nuisance and the Town may require its treatment or removal.
- (b) Private property owners have the duty, at their own expense, to remove or treat nuisance trees on their property. The Town may remove such trees at the owner's expense if the owner does not comply with treatment and/or removal as specified by the Department Head within a written notification period.

**I. Public Property** - All streets, highways, parks, or other grounds owned by the Town, including any Town-owned right-of-way along public roads.

**J. Public tree** – any tree or woody vegetation on town-owned or town-maintained property or rights-of-way.

**K. Replacement Trees** – A tree or trees to be planted to replace any trees removed. The replacement trees will be native trees.

- (a) Equivalent Replacement: The replacement of a removed or damaged tree to compensate for that tree's removal, or its damage, with one tree the same diameter, or a combination of smaller trees that will equal that removed tree's DBH as defined herein.
- (b) Tree-for-Tree Replacement: Replacing a removed tree with a tree, or trees, with minimum of two to two-and-one-half inches in cumulative trunk diameter at breast height (DBH). Please refer to the American National Standards Institute (ANSI) A-300 "Standards for Tree Care Operations"

for acceptable species including all tree care Best Management Practices (BMPs) published by the International Society of Arboriculture.

(c) Requirements of Franchise Utility Companies. The maintenance of public trees for utility clearance shall conform to all applicable utility industry standards.

- L. The Town** - is any designated department of the municipality of Farmington under whose jurisdiction the public trees fall.
- M. Top or Topping** – the non-standard practice of cutting back of limbs to stubs within a tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.
- N. Tree Maintenance and Treatment** - Activities, equipment, plans and provisions to keep trees alive and flourishing.
- O. Tree Program** - The Farmington Conservation Commission's Tree Program is designed as a resource to allow Town departments, residents, organizations, and businesses the opportunity to participate in the beautification of public spaces. The Tree Program contributes to the Town's goal of increasing trees in the community through the efforts of the Conservation Commission.
- P. 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 purpose of vehicular or pedestrian traffic.

#### **19-1.6 Authority and Power.**

**A. Delegation of authority and responsibility.** The Department Head of the Public Works Department and/or their designee, hereinafter referred to as the "Department Head," in conjunction with the Conservation Commission, shall have full authority and responsibility to plant, prune, treat, maintain, and remove trees and woody plants growing in or upon all municipal streets, rights-of-ways, city parks, and other public property. This shall include the removal of trees that may threaten electrical, telephone, gas, or any municipal water or sewer line, or any tree that is affected by fungus, insect, or other pest disease.

**B. Coordination among Town departments.** All Town departments, especially the Parks and Recreation Department, will coordinate as necessary with the Department Head, in conjunction with the Conservation Commission, and will provide services as required to ensure compliance with this Ordinance as it relates to streets, alleys, rights-of-way, drainage, easements, and other public properties not under the direct jurisdiction of the Department Head, in conjunction with the Conservation Commission.

**C. Interference.** No person shall hinder, prevent, delay, or interfere with the Department Head or his/her agents, conservation commission members, town volunteers, or hired contractors while engaged in and about the planting, cultivating, mulching, pruning, spraying, or removing of any public tree(s) and vegetation.

#### **19-1.7. Conservation Commission.**

The Town Selectboard hereby maintains a "Conservation Commission," hereinafter referred to as the "Commission." Please refer to 30-A M.R.S §3261 et. Seq. The Farmington Conservation Commission has the authority to work with the Public Works Department Head to advise and administer the maintenance of Public Trees and advise the public on matters related to Public Trees.

The Commission, working with the Department Head, at their discretion, may provide advice on tree removal, tree selection and placement of trees on projects that come before the Planning Board for site Review. The Commission shall advise on and help coordinate landscaping efforts on Town properties and/or within the Town's right of way. Other duties as listed below:

##### **A. Duties:**

1. Coordinate and promote Arbor Day activities;
2. Support public awareness and education programs relating to trees;
3. Review city department concerns relating to tree care;

4. Submit an annual report of its activities to the Town Manager;
5. Assist with the annual application to renew the Tree City USA designation;
6. Recommend a list of tree species for planting on Town property, and a list of prohibited species;
7. Other conservation projects
8. Other duties that may be assigned by Town Selectboard.

**B. Membership.** The Commission shall consist of seven members approved by the Town Selectboard. Members of the Board will serve without compensation.

**C. Term of office.** Commission members shall be appointed for three-year staggered terms<sup>1</sup>. If a vacancy shall occur during the term of any member, a successor shall be appointed by the Town Selectboard.

**D. Officers.** The Commission shall annually select one of the members to serve as chair, may appoint a second member to serve as vice-chair, and may appoint a third member to serve as secretary.

**E. Meetings.** The Commission shall meet a minimum of four times each year. All meetings shall be open to the public. The Commission chair may schedule additional meetings as needed.

#### **19-1.8. Prohibition Against Harming Public Trees.**

- A.** It shall be unlawful for any person, firm, or corporation to damage, remove, or cause the damage or removal of a tree or commencing any activity on Public Property that may disturb roots, trunks, or limbs of Public Trees on public property without written permission from the Department Head. This can include but is not limited to, trimming, fertilizing, planting, and treating with chemicals (fertilizer, herbicides, or pesticides).
- B.** It shall be unlawful for any person, firm, or corporation to attach any cable, wire, sign, or any other object to any street, park, or public tree. No person shall willfully or mischievously break down, injure, climb upon or commit any injury to Public Trees, nor shall they interfere with the roots. Removal of any guard, stake, or watering device intended to promote the health and protection of a Public Tree is also prohibited.
- C.** It shall be unlawful for any person, firm, or corporation to “top” any public tree. Trees severely damaged by storms or other causes, where best pruning practices are impractical, may be exempted from this provision at the determination of the Department Head and/or the Commission.
- D.** Any person, firm, corporation, or town department performing construction near any public tree(s) shall consult with the Department Head and/or the Commission and shall employ appropriate measures to protect the tree(s), according to procedures contained in the Best Management Practices (BMPs) for “Managing Trees During Construction” published by the International Society of Arboriculture.
- E.** Any person engaging in the business of cutting, planting, pruning, removing, spraying or otherwise treating Public Trees must first provide evidence of competence and certification/license, if necessary, to the Department Head and/or the Commission or their designee.
- F.** Permission for removal of a Public Tree will not be granted without first establishing an acceptable plan for replacement. The Department Head and/or the Commission shall determine which replacement method (see definition of “Replacement Trees”) is appropriate for the given circumstances.
- G.** When a Public Tree has been (unlawfully) damaged or destroyed, in addition to tree replacement, the responsible party shall pay a 3-year guarantee of success. Trees that do not survive must be replaced.

#### **19-1.9 Sponsorship of Public Tree:**

The sponsorship of Public Trees on Public Property by abutting property property owners is permissible and encouraged provided that the Conservation Commission approves the location and selection of such trees. The selected tree or trees will be planted by the Department of Public Works, and it will be the responsibility of the abutting property owner to water the

tree(s) until they have become successfully established.

**19-1.10 Penalties:**

Anyone who violates any provision of this ordinance, upon being found guilty of violation, shall be subject to a fine not to exceed \$500 for each separate offense. If the injury, mutilation, or death of any Public Tree(s) is caused, the cost of repair or replacement, or the appraised dollar value of such tree(s), shall be borne by the party in violation.

**19-1.11 Enforcement:**

The Department Head, in conjunction with the Conservation Commission, shall have the power to promulgate and enforce regulations, rules, and specifications concerning the spraying, trimming, removal, planting, and protection of Public Trees.

**19-1.12 Private Trees:**

If the Department Head, in conjunction with the Conservation Commission, determines that a tree on private property along a Town road is a public safety or traffic hazard, they will notify the property owner to make them aware of the problem and alert them that immediate action must be taken to resolve the issue. If the property owner does not take corrective action within ten days of notification, the Town Manager will be notified, and the Town may take such necessary actions to ensure public safety, including removal of the hazardous tree. The wood from any tree removed from private property shall, at the owner's option, be left on site for the owner's use.

**19-1.13 Standards for Proper Planting and Maintenance:**

Please refer to the American National Standards Institute (ANSI) A-300 "Standards for Tree Care Operations" for acceptable species including all tree care Best Management Practices (BMPs) published by the International Society of Arboriculture.

**19-1.14 Planting Diagrams and Permitted Trees:**

Please refer to the American National Standards Institute (ANSI) A-300 "Standards for Tree Care Operations" for acceptable species including all tree care Best Management Practices (BMPs) published by the International Society of Arboriculture.

**19-1.15. Appeals.**

Appeals to decisions by the Department Head or the Conservation Commission or to penalties imposed after violations of this ordinance shall be heard by Town Selectboard.

**19-1.16. Savings and repeal.**

All ordinances or parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

**19-1.17. Severability.**

Should any word, sentence, clause, paragraph, or provision of this Ordinance be held to be invalid or unconstitutional, the remaining provisions of this Ordinance shall remain in full force and effect.