

ARTICLE VII. PUBLIC TREE ORDINANCE*

* **Editor's note**--Ord. No. 32-75, enacted Dec. 15, 1975, repealed former Art. IV, relative to the tree warden, and enacted in lieu thereof a new Art IV as set out in §§ 2-127--2-136. Former Art. IV was derived from Code 1966, §§ 7-8-4, 7-8-5, and Ord. No. 10-67, adopted Sept 6, 1967.

Sec. 2-206. Position of city arborist created; appointment, qualifications.

The position of city arborist is hereby created. The position shall be filled by appointment of the city manager. The city arborist shall be a person skilled and trained in the arts and sciences of municipal arboriculture, and shall hold a college degree or its equivalent in arboriculture, ornamental or landscape horticulture, urban forestry, or other closely related field. The city arborist shall have passed the state examination and shall hold a current regular arborists license from the State of Maine.

(Ord. No. 32-75, 12-15-75; Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000])

Sec. 2-207. Definitions.

For the purpose of this article, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and not merely directory.

- (a) *City arborist* is the designated official of the city assigned to carry out the enforcement of this article.
- (b) *Diameter at breast height (DBH)* shall mean the diameter of a standing tree measured 4.5 feet from ground level.
- (c) *Property owner* shall mean the person owning such property as shown by the assessor's maps of the city, unless proof to the contrary is available and presented.
- (d) *Property line* shall mean the outer edge of a street or highway right-of-way.
- (e) *Public places* shall include all grounds owned by the city.
- (f) *Public trees* shall include all shade and ornamental trees now or hereafter growing on any street or any public areas.
- (g) *Street or highway* means the entire width of every public way or right-of-way when any part thereof is open to the use of the public, as a matter of right.

- (h) *Treelawn* is that part of a street or highway, not covered by sidewalk or other paving, lying between the property line and that portion of the street or highway usually used for vehicular traffic.

(Ord. No. 32-75, 12-15-75; Ord. No. 4-79, 3-19-79, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000] Ord. No. 2-23/24, 8/15/2023 [Fiscal Note: Less than \$1000])

Sec. 2-208.

Duties of arborist.

The city arborist shall have the authority to promulgate the rules and regulations of the arboricultural specifications and standards of practice governing the planting, maintenance, removal, fertilization, pruning, and bracing of trees on the streets or other public sites in the city and shall direct, regulate, and control the planting, maintenance, and removal of all trees growing now or hereafter in any public area of the city. The city arborist shall cause the provision of this article to be enforced. In their absence, these duties shall be the responsibility of a qualified alternate designated by the city manager.

(Ord. No. 32-75, 12-15-75, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000]; Ord. No. 2-23/24, 8/15/2023 [Fiscal Note: Less than \$1000])

Sec. 2-209.

Authority of the city arborist.

- (a) *Generally.* The city arborist shall have the authority and jurisdiction of regulating the planting, maintenance, and removal of public trees on streets and other publicly owned property to insure safety or preserve the aesthetics of such public sites.
- (b) *Supervision.* The city arborist shall have the authority and it shall be their duty to supervise or inspect all work done under a permit issued in accordance with the terms of this article.
- (c) *Condition of permit.* The city arborist shall have the authority to affix reasonable conditions to the granting of a permit in accordance with the terms of this article.
- (d) *Master street tree plan.* The city arborist shall have the authority to formulate a master street tree plan with the advice and approval of the city council. The master street tree plan shall specify the species of trees to be planted on each of the streets or other public sites of the city. From and after the effective date of the master street tree plan, or any amendment thereof, all planting shall conform thereto.
 - (1) The city arborist shall consider all existing and future utility and environmental factors when recommending a specific species for each of the streets and other public sites of the city.

- (2) Amend. The city arborist, with the approval of the city council, shall have the authority to amend or add to the master street tree plan, at any time that circumstances make it advisable.
- (e) *Authority over privately owned trees.* The city arborist shall have the authority to order the trimming, spraying, preservation or removal of trees or plants located on private property when they shall find such action necessary for public safety or to prevent the spread of disease or insects to public trees or places.

(Ord. No. 32-75, 12-15-75; Ord. No. 4-79, 3-19-79, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000]; Ord. No. 2-23/24, 8/15/2023 [Fiscal Note: Less than \$1000])

Sec. 2-210.

Permits required.

(a) *Planting, maintenance or removal.*

(1) No person shall plant, spray, fertilize, preserve, prune, remove, cut above ground, or otherwise disturb any tree on any street or city-owned property without first filing an application and procuring a permit from the city arborist or otherwise specified municipal authority. The person receiving the permit shall abide by the arboricultural specifications and standards of practice adopted by the city arborist. In emergency situations, such as storm damage to trees, requiring immediate pruning or removal, the work may be done. The arborist must, however, be informed of such action within two (2) days thereafter.

(2) Application for permits must be made at the office of the city arborist not less than forty-eight (48) hours in advance of the time the work is to be done.

(3) Standards of issuance. The city arborist shall issue the permit provided for herein if, in their judgment, the proposed work is desirable and the proposed method and workmanship thereof are of a satisfactory nature. Any permit granted shall contain a definite date of expiration and the work shall be completed in the time allowed on the permit and in the manner as therein described. Any permit shall be void if its terms are violated.

(4) Notice of completion shall be given within five (5) days to the city arborist for their inspection.

(b) *Planting.*

(1) Application data. The application required herein shall state the number of trees to be set out; the location, grade, species, cultivar or variety of each tree; the method of planting; and such other information as the city arborist shall find reasonably necessary to a fair determination of whether a permit should be issued.

(2) Improper planting. Whenever any tree shall be planted or set out in conflict with the provisions of this section, it shall be lawful for the city arborist to remove or cause removal

of the same, and the exact cost thereof shall be assessed to the owner as provided by law in the case of special assessments.

(c) Maintenance.

(1) Application data. The application required herein shall state the number and kinds of trees to be sprayed, fertilized, pruned, or otherwise preserved; the kind of treatment to be administered; the composition of the spray material to be applied; and such other information as the city arborist shall find reasonably necessary to a fair determination of whether a permit should be issued.

(d) Removal, replanting and replacement.

(1) Whenever it is necessary to remove a tree or trees from a treelawn in connection with the paving of a sidewalk, or the paving or widening of the portion of a street or highway used for vehicular traffic, the city shall replant such trees or replace them. Provided that conditions prevent planting on treelawns, this requirement will be satisfied if any equivalent number of trees of the same size and species as provided for in the arboricultural specifications are planted on the adjoining property.

(2) No person or property owner shall remove a tree from the treelawn for the purpose of construction, or for any other reason, without first filing an application and procuring a permit from the city arborist, and without replacing the removed tree or trees in accordance with the adopted arboricultural specifications. Such replacement shall meet the standards of size, species, and placement as provided for in a permit issued by the city arborist. The person or property owner shall bear the cost of removal and replacement of all trees removed.

(Ord. No. 32-75, 12-15-75, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000], Ord. No. 2-23/24, 8/15/2023 [Fiscal Note: Less than \$1000])

Sec. 2-211.

Abuse or mutilation of public trees.

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

(Ord. No. 32-75, 12-15-75, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000])

Sec. 2-212.

Interference with city arborist.

No person shall hinder, prevent, delay, or interfere with the city arborist or any of their assistants while engaged in carrying out the execution or enforcement of this article; provided,

however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the municipality.

(Ord. No. 32-75, 12-15-75, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000]; Ord. No. 2-23/24, 8/15/2023 [Fiscal Note: Less than \$1000]))

Sec. 2-213.

Protection of public trees.

All trees on any street or other publicly owned property near any excavation or construction of any building, structure, or street work, shall be guarded with a good substantial fence, frame, or box not less than four (4) feet high and eight (8) feet square, or at a distance in feet from the tree equal to the diameter of the trunk in inches DBH, 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 a radius of ten (10) feet from any public tree without first obtaining a written permit from the city arborist.

(Ord. No. 32-75, 12-15-75, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000]; Ord. No. 2-23/24, 8/15/2023 [Fiscal Note: Less than \$1000]))

Sec. 2-214.

Placing materials on public property.

No person shall deposit, place, store, or maintain upon any public place of the city, any stone, brick, sand, concrete, or other materials which may impede the free passage of water, air and fertilizer to the roots of any tree growing therein, except by written permit of the city arborist.

(Ord. No. 32-75, 12-15-75, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000])

Sec. 2-215.

Arboricultural specifications and standards of practice.

The city arborist shall have the authority to promulgate the rules and regulations of the arboricultural specifications and standards of practice governing the planting, maintenance, removal, fertilization, pruning and bracing of trees on the streets of other public sites in the city. Any such regulations shall be posted for seven (7) days in the city hall prior to the effective date thereof and shall be available at the office of the city clerk during regular office hours.

(Ord. No. 32-75, 12-15-75, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000])

Secs. 2-216. Tree Mitigation Fund.

- (a) Purpose. To further the acquisition and planting of trees within the City, the City hereby establishes the City of South Portland Tree Mitigation Fund, which shall consist of voluntary

donations of funds, in-lieu payments to the Fund pursuant to Article XXI (Tree Protection) of Chapter 27 of the Code of Ordinances, and other funds to be used in accordance with this Article.

- (b) Contributions to the Fund. Deposits to the Fund may include:
- (1) Any funds appropriated to be deposited into the Fund by vote of the City Council;
 - (2) Voluntary donations of money or other liquid assets to the Fund, subject to City acceptance by vote of the City Council;
 - (3) Interest from deposits and investments of the Fund;
 - (4) In-Lieu fee payments to mitigate for Tree Removal pursuant to Article XXI of Chapter 27 of the Code of Ordinances;
 - (5) Any federal, state or other grant funds; and/or
 - (6) Interest or surplus from fund deposits, property sale, and investments.
- (c) Fund Management. The Tree Mitigation Fund will be managed by the Finance Director in consultation with the City Arborist and the Parks, Recreation, and Waterfront Department or any other department for purposes that may overlap with the authorized activities for the Fund.
- (1) All expenses lawfully incurred in carrying out this Article must be evidenced by proper vouchers and accounting practices. The City shall prudently invest available assets of the Fund and all income from any investment shall accrue to the Fund.
 - (2) Activity conducted with, and funds held by, the Fund are not intended to supplant budgetary appropriations to the Parks, Recreation, and Waterfront Department or any other department for purposes that may overlap with the authorized activities for the Fund.
- (d) Authorized Activities. The Tree Mitigation Fund may be used by the City Arborist and the Parks, Recreation, and Waterfront Department exclusively for tree planting or tree maintenance that ensures the long term viability and health of existing trees.

2-217--2-220. Reserved.

(Ord. No. 2-23/24, 8/15/2023 [Fiscal Note: Less than \$1000])